

History of the Orphan Fund

Background

In the latter half of the 1980s the severe and uncertain economic climate in Alberta's oil and gas industry focused EUB attention and concern on the escalating number of ownerless "orphan" wells. Increases in corporate insolvencies, bankruptcies, defunct companies and reluctant licensees coupled with the rationalization activities that were shifting assets between different sectors of the industry, resulted in a growing fear of unmanageable future well abandonment liabilities. In addition, the number of inactive wells was increasing dramatically raising concerns over wellbore integrity, public and environmental safety, and their potential to become orphans.

In February 1986 the EUB issued an Interim Directive (ID) 86-1, replacing its well deposit requirement with "a special well fund". This change was designed to allow the financing of the abandonment of those "few" wells where a licensee was unable to carry out proper operations.

The number of wells that required use of this fund, however, grew in numbers over the next few years. As a result, in December 1989, the EUB issued a report entitled "Recommendations to Limit Public Risk from Corporate Insolvencies Involving Inactive Wells", in which it proposed changes to legislation and procedures to ensure responsibility for the proper abandonment of a well fell to the primary beneficiaries of the well. The EUB also issued Informational Letter (IL) 89-22 advising industry that it would be taking a much firmer position on applications to transfer well licences, and requiring additional information to be filed in support of such applications. The additional informational requirements were subsequently released to industry in August 1990 as an "Interim Document".

These actions by the EUB resulted in industry expressing concerns with some of the proposals, and in particular with the previous licensees being included in the liability chain. As a result, in May 1990 an Orphan Well Steering Committee was formed to consider the positions put forward by the EUB. The committee consisted of senior representatives from the EUB, the departments of Energy (DRD) and Environment (AENV) and the three industry associations of that time: the Canadian Petroleum Association (CPA), the Independent Petroleum Association of Canada (IPAC), and the Small Explorers and Producers Association of Canada (SEPAC).

This committee advanced certain principles as the basis for a program to address the abandonment of orphan wells. One significant basic principle was that an abandonment fund would be established and maintained by industry, to pay for the downhole abandonment costs of insolvent or non-existent licensees and working interest participants in a well. This fund would be maintained by an annual levy on inactive wells. A second basic principle was that the liability chain, initially proposed by the EUB, would be limited primarily to the current licensee and working interest participants. Both industry and government committee members recognized the need to implement improved regulatory systems and processes to minimize the orphan burden.

The Orphan Well Steering Committee established two sub-committees (the Well License Criteria Subcommittee and the Orphan Well Program Administration Subcommittee) to review certain aspects of the orphan well issue. The recommendations of these sub-committees were adopted by the Steering Committee in May 1993, and formed the basis for the EUB's ID 93-2. This ID, which imposed additional requirements for the issuance of a well licence or approval of a well licence transfer, governed these processes until the expanded Orphan Program was introduced on October 24, 2000.

The legislative changes required to create the Abandonment Fund and to provide the EUB with the clear authority to deal with well abandonment were contained in the Oil and Gas Conservation Amendment Act, 1994 (Bill 5). This bill was passed unanimously by the legislature and became effective May 25, 1994.

Orphan Program Development

With the orphan well program essentially complete, the EUB asked industry to address the problem of facilities and pipelines associated with orphan wells. Industry was at that time having separate discussions with AENV with respect to reclamation. In response to this request, the Orphan Well Steering Committee established the Orphan Facilities, Pipelines and Reclamation Subcommittee in 1994 to develop a formal procedure for the abandonment and reclamation of certain orphan oil and gas production facilities and their associated pipelines.

The “Report and Recommendations of the Orphan Facilities, Pipelines and Reclamation Subcommittee” was issued in July 1996 and subsequently revised in October 1997. This report was formally accepted by the Board of Governors of SEPAC and the Canadian Association of Petroleum Producers (CAPP), the successor to CPA and IPAC, as well as by the Board of the EUB. This document became the basis of the expanded Orphan Program.

In an attempt to reduce the liability associated with the large number of inactive wells within the province, the EUB implemented the Long Term Inactive Well Program in November 1997. This program was developed to encourage licensees to take proactive measures to reduce their inactive well population by addressing wells that had not shown any activity in ten or more consecutive years. While a substantial portion of those wells were capped gas wells with established reserves, the EUB was concerned with the remaining wells that had apparently reached the end of their economic life and should be abandoned. These long term inactive wells were believed to have a greater likelihood of becoming orphan wells and therefore posed an increased financial risk to the Orphan Fund.

The EUB determined that its existing legislation would not support implementation of the recommended expanded orphan program, and that amendments would be required to both the Oil and Gas Conservation Act and the Pipeline Act. In response to this requirement the Energy Statutes Amendment Act, 2000 (Bill 13) was passed by the legislature and proclaimed into law June 30, 2000.

Orphan Program Implementation

The EUB formally announced its intention to implement an expanded Orphan Program in General Bulletin 2000-17. It noted the program was based on recommendations of a joint government/industry Fund Advisory Committee (FAC), successor to the Orphan Well Steering Committee, and was supported by both CAPP and SEPAC. It also noted that the program would be implemented through a series of EUB IDs that would subsequently be replaced by amendments to the Oil and Gas Conservation Regulations and the Pipeline Regulations.

On July 10, 2000 the EUB issued ID 2000-6 implementing the requirement for a deposit on the sale of any oil and gas production or injection facility that was operating at less than 20% of its engineering design capacity. This measure was imposed to prevent the transfer of potentially high-risk properties from more financially responsible to less financially responsible parties in advance of the controls of the Orphan Program.

On September 21, 2000 the EUB issued ID 2000-7 implementing additional requirements and a new process to qualify applicants to obtain EUB well, facility and/or pipeline licenses.

On October 24, 2000 the EUB issued three IDs implementing the core of the expanded Orphan Program.

Facility Licensing

In order to ensure that the abandonment and reclamation liability of oil and gas facilities would be considered in corporate liability assessments and proposed asset transfers, the EUB implemented a process to identify and/or confirm the number, location, capacity, and ownership of all upstream oil and gas production and injection facilities. The Orphan Program at that time did not include sulphur recovery gas plants, stand-alone straddle plants, and in-situ oil sands processing plants, having an approved design capacity of 5000m³/d or greater (Large Facilities), or upstream petroleum waste management facilities. A Large Facility Liability Management Program was subsequently introduced and included in the Orphan Program and a full-security Waste Management Program was also subsequently implemented, although not included in the Orphan Program.

- ID 2000-8 implemented the requirement to licence virtually any new upstream oil and gas facility on a go forward basis. It expanded the number of facilities requiring a formal approval from the EUB and changed the form of approval to a licence.
- ID 2000-10 implemented the requirement to licence virtually all existing upstream oil and gas facilities by February 21, 2001. This was essentially a registration process with licences replacing previous approvals at the end of the program.

Licensee Liability Rating Program

To minimize the risk to the Orphan Fund the EUB, with direct input and support from CAPP and SEPAC, developed a process to assess the corporate abandonment and reclamation liability of every licensee on a regular basis, and to consider the abandonment and reclamation liability of facilities in licence transfer applications. Security deposits would be required where either the licensee or a licence transfer application was determined to represent a risk to the Orphan Program.

- ID 2000-11 identified the criteria and process for determining the abandonment and reclamation liability of licensees for both corporate assessments and for licence transfer applications, that would be implemented on completion of the Retrospective Facility Licensing Program. The ID set out well equivalent values for facilities and security deposit calculation and refund criteria. This ID also replaced the interim controls on facility sales introduced in ID 2000-6, and cancelled the Long Term Inactive Well Program.

After its introduction some components of the Orphan Program were criticized by a number of industry participants. In response to this criticism, both CAPP and SEPAC requested that the Economic Limit based, licensee liability rating (LLR) and transfer liability rating (TLR) processes identified in ID 2000-11 not be implemented at the completion of the Retrospective Facility Licensing Program, and that the liability assessment and security deposit calculations be reconsidered. The EUB agreed to this request and in GB 2000-28 confirmed that this component would not be implemented without further detailed consultation with Industry.

Large Facility Program

The Large Facility Program (LFP) was implemented by Directive 024 Large Facility Liability Management Program, effective October 1, 2005.

The LFP was developed over a two year period in close collaboration with industry stakeholders, including the Canadian Association of Petroleum Producers (CAPP), the Gas Producers Association, Canada (GPAC) and the Small Explorers and Producers Association of Canada (SEPAC), to protect the public of Alberta and the Orphan Fund from a defunct licensee's share of the costs to suspend, abandon, remediate and reclaim any "orphaned" large upstream oil and gas facility. Large facilities include sulphur recovery gas plants, stand alone straddle plants and in-situ oil sands processing plants having an approved design capacity of 5000m³/d or greater.

Delegated Administrative Organization (DAO)

The Energy Statutes Amendment Act, 2000 (Bill 13) provided the legislative authority to establish a Delegated Administrative Organization (DAO), an "arms length" organization to oversee the operations of the Orphan Fund. Treasury, the Department of Resource Development (DRD) and the EUB determined that a DAO was the most appropriate method to resolve the outstanding issues related to the management of the Fund. Establishment of a DAO, and transfer of the accumulated surplus within the Fund to the DAO, removed the current financial restrictions on the Fund due to its consolidation within the EUB/DRD budget and inclusion under the Financial Administration Act.

The DAO is comprised of representatives from the EUB, CAPP and SEPAC

Orphan Fund (formerly Well Abandonment Fund) Administration

The Orphan Fund is fully funded by the oil and gas industry through a levy based on a licensee's share of its deemed liabilities to total industry deemed liabilities. As the EUB collects reclamation deposits on behalf of AENV, the Fund provides a one-window service to industry for the administration of security deposits.

The Orphan Fund is directed by the EUB with input from the Liability Management Advisory Committee (LMAC) composed of representatives from the EUB, the Department of the Environment (AENV), Sustainable Resource Development (SRD), the Department of Energy (DOE), CAPP, SEPAC, GPAC and the AOTDA.