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SENT VIA E-MAIL WITH HARDCOPY IN THE MAIL

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Dear Mr. Neilson:

**RE:      Comments on *Bulletin 2006-46* and *Draft Directive 071: Emergency Preparedness and Response Requirements for the Petroleum Industry***

The Environmental Law Centre (the “ELC”) is a charitable organization, incorporated in 1982, to provide an objective source of information on environmental law and policy in Alberta. The ELC provides services in legal information, education, research and law reform to achieve its mission to ensure that laws, policies and legal processes protect the environment. Accordingly, we have prepared comments with respect to the Alberta Energy and Utilities Board's (the “EUB”) *Bulletin 2006-46* and *Draft Directive 071: Emergency Preparedness and Response Requirements for the Petroleum Industry* (“*Draft Directive 071*”).

### **Calculating Emergency Planning Zones (“EPZs”)**

The ELC was encouraged by the summary in Table 1 which stated that the “the EUB will no longer consider reduced EPZ requests.” However, page 15 of *Draft Directive 071* indicates that if a licensee demonstrates good hazard management practices, “[t]hese practices may result in smaller and more appropriate EPZs than is calculated by the EUB’s default input parameters.” Good hazard management practices were vaguely described as including the “optimization of systems” or “appropriate procedural actions.” While the ELC understands that the new computer software program (“EUBH2S”) for calculating EPZs can incorporate site-specific details into the calculation, the ELC would like further clarity from the EUB on what is meant by “good hazard management practices” which could result in the reduction of the EPZ.

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It is the ELC's position that the EUB should use the precautionary principle when considering inputs to the EUBH2S program. Under current EUB practice, the size of the EPZ has been used to determine directly and adversely affected status and the ability of persons to participate in an EUB hearing and to have their costs covered. Reductions in the size of an EPZ may jeopardize the legal rights of persons to participate in EUB processes. The ELC recommends that reductions in an EPZ should only be made in exceptional circumstances and the input parameters allowing for the reduction must be transparent and clearly communicated to the public affected.

### **Emergency Response Assessment Program**

We note that *Draft Directive 071* includes the Emergency Response Assessment Program which will assess a licensee's ability to implement its emergency response plan. Since the Program will work on an audit system, the ELC requests that details of the audit system (such as number of facilities audited and number of reports filed) be publicly available. Any reports produced as a result of an audit, including any recommendations and corrective actions that the licensee must implement, should also be publicly available. There is no detail in *Draft Directive 071* which states if or how this information will be disclosed to or accessed by the public. Further details in this regard are warranted.

### **Compliance and Enforcement**

The language in *Draft Directive 071* is soft when it comes to compliance and enforcement. Most enforcement related statements in the Directive include the word "may" instead of "will" or "shall." For example, page 88 reads "[f]ailure to implement all corrective actions [identified in the Emergency Response Assessment Program] may result in enforcement as per EUB *Directive 019: Compliance Assurance – Enforcement.*"

The ELC's position is that enforcement actions must have some "teeth" in order to be effective. We recommend that mandatory language be used with respect to all enforcement related statements in *Draft Directive 071*. Under *Directive 019*, the EUB has built in the discretion to choose enforcement actions appropriate to address specific non-compliance incidents; it does not need to build in further discretion in determining whether a non-compliance incident triggers an enforcement response.

### **Grandfathering**

*Bulletin 2006-46* states that many EPZs for existing wells, pipelines and facilities will change as a result of the use of the EUBH2S program and that the EUB is developing an implementation plan to address existing EPZs. The ELC is concerned about how *Draft Directive 071* will be grandfathered in and whether this will result in a reduction or alteration of existing EPZs. We think that it is prudent that the EUB allow stakeholders to comment on the implementation plan prior to the release of the revised *Directive 071* in April.

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Thank you for the opportunity to comment on *Draft Directive 071*. Please contact the writer should you have any questions about our comments or require clarification.

Sincerely,

Jodie Hierlmeier  
Staff Counsel

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