

September 29, 2005

Our File: 33

BY FAX: (780) 427 - 3411

Alberta Energy
5th Floor North Petroleum Plaza
9945-108 Street
Edmonton, AB T5K 2G6

Attention: Tracy

To the Hon. Greg Melchin,

RE: Preliminary Findings From the Multi-Stakeholder Advisory Committee on Coalbed Methane/Natural Gas in Coal

The Environmental Law Centre (ELC) is a charitable organization, incorporated in 1982, to provide an objective source of information on environmental law and policy in Alberta. The Centre provides services in legal education and assistance, research and law reform to achieve its mission to ensure that laws, policies and legal processes protect the environment. Accordingly, we have prepared comments on the Preliminary Findings from the Multi-Stakeholder Advisory Committee (MAC) on Coalbed Methane (CBM)/Natural Gas in Coal.

General Comments

Generally, we are pleased that Alberta Energy convened a multi-stakeholder process to examine how CBM development can be better regulated. The distinctive characteristics and environmental impacts of CBM development necessitate special attention and modification to existing rules and regulations.

As will be discussed later in our comments, our principle concern is that CBM development proceed in accordance with the precautionary principle. The precautionary principle requires that where there is a potential for adverse environmental effects associated with a particular process, all steps to prevent the potential adverse effects should be taken even if there is scientific uncertainty as to those effects. This principle urges decision-makers to err on the side of caution in situations of scientific uncertainty. Generally, our concern is that the MAC recommendations do not go far enough in adhering to this principle, particularly with respect to CBM development in non-saline coal formations.

Our remaining comments will follow the same format as the Preliminary Findings.

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Water

The ELC recommends that there be a moratorium on all CBM development in non-saline coals until sufficient scientific data is available to minimize to the impact on groundwater supplies. As noted in MAC recommendations 3.2.1 and 3.6.1, there is still much to learn about CBM extraction and its effects on water. The province has not yet completed its groundwater inventory in accordance with the *Water for Life* strategy. Further understanding is also needed with respect to the potential for methane migration and methane release into surrounding aquifers including those supporting water wells. In light of this scientific uncertainty, the ELC does not believe that the decision tree approach, in MAC recommendation 3.3.2, can ensure that CBM development in non-saline coals proceeds safely and without potential adverse effects to the province's groundwater.

The ELC agrees with MAC recommendation 3.3.5 that there should be requirements for testing and monitoring non-saline water wells. The ELC supports the recommendation by some MAC members who wanted mandatory water well testing. We recommend that there be a regulatory requirement for water well testing rather than this being adopted as a best practice. The regulatory requirement should require companies to pay for water wells to be tested before and after the dewatering process and set a minimum distance radius of at least one kilometre from each CBM well where testing will occur. If a water well is found to be impacted, the testing zone should be expanded from that well. Mandatory well testing is necessary to effectively monitor possible methane migration and to ensure that water levels are not lowered in adjacent aquifers through the dewatering process.

With respect to water well testing, the MAC did not consider the issue of whether companies should be required to compensate landowners for any losses or damage incurred to water wells. We recommend that this be incorporated into a regulatory testing requirement. After baseline testing is completed, companies should be required to maintain the status of the water supply that was established before CBM development began. There should also be a regulatory compensation process in place to account for any deficiencies and/or contamination that may occur as a result of CBM extraction. Although landowners may seek compensation for water related losses or damage through the civil litigation process, this process is often prohibitive for landowners due to the expense and burden of proof associated with civil suits. Compensation through a regulatory process could better insure that those who extract the resource are held financially responsible for any loss or damage caused as a result of that extraction. This is consistent with the "responsibility of polluters to pay for the costs of their actions" as stated in purpose section of the *Environmental Protection and Enhancement Act*.

Surface / Air

The MAC did not make any specific recommendations regarding reduced subsurface well spacing nor is there any mention of the proposed changes to landowner notification set out in the Alberta Energy and Utilities Board (EUB) Bulletin 2005-08 *Consultation Regarding Proposed Changes to Reservoir Related Well Spacing Regulations, Application Requirements, and Application Review Process* (Bulletin 2005-08). We acknowledge that the EUB's position is that downhole spacing does not predispose decisions on surface access applications. We also recognize that Bulletin 2005-08 applies generally to oil and gas development and not just to

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CBM development. However, Bulletin 2005-08 is, in part, focused on CBM. Increased surface access to facilitate recovery from subsurface locations will often be required to optimize CBM recovery in shallow formations. In light of relevance of these issues to CBM development, the ELC would like the MAC to provide its position on the changes proposed in Bulletin 2005-08 as they relate to CBM.

Royalties

The ELC strongly opposes any royalty or tax reductions related to CBM production in the Mannville formation as set out in MAC recommendations 5.2.1 and 5.2.2. The ELC does not support the use of public subsidies to advance non-renewable energy initiatives.

Broad Based CBM Issues

The ELC agrees with MAC recommendation 7.2.1 that there needs to be project-based planning and disclosure for CBM developments. There is a definite need to be able to review and comment on regional plans for development rather than being restricted to providing comments on individual wells. Although project-based planning is done by some companies to varying degrees, there needs to be a more uniform approach. This is particularly critical in areas where CBM development may be overlapping with other oil and gas development such as in the Drayton Valley area. The ELC proposes that there be a trigger for project-based planning in areas with potential cumulative impacts. For example, project-based planning could be triggered when a certain percentage of land is likely to be affected by CBM development.

The ELC also agrees with MAC recommendation 7.3.1 that the provincial departments should review all guidelines related to public input and notification to ensure these guidelines are appropriate for CBM development. The ELC generally supports an increase in the 100 metre minimum distance for consultation under EUB *Guide 56: Energy Development Applications and Schedules*. Appropriate increases are needed given the potential impacts on aquifers some distance away from the CBM development.

Lastly, the ELC would like a firm commitment from Alberta Energy and the EUB to make information on CBM and other oil and gas activity more accessible to the public. While MAC recommendation 7.5.2 concerning a publicly accessible database is a first step, the ELC recommends that this undertaking be legislatively entrenched. This is consistent with other government departments, such as Alberta Environment, which have legislated the disclosure of information. For example, sections 35 and 237.1 of the *Environmental Protection and Enhancement Act* provide for the public disclosure of enforcement information, information related to approvals and registrations, as well as monitoring data and reports. The recent *Disclosure of Information Regulation* (Alta. Reg. 273/2004) and Ministerial Order 23/2004 identify further information that is now publicly accessible without the need for a formal request under the *Freedom of Information and Protection of Privacy Act*. Mandatory and uniform information disclosure will be required in order to ensure the integrity and completeness of any CBM database.

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Conclusion

Thank you for the opportunity to provide comments on the MAC's Preliminary Findings. Please contact the writer if you have any questions or require further clarification.

Yours truly,

Jodie Hierlmeier
Staff Counsel

c.c. Office of the Minister of Energy

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