

June 12, 2006

Our File: 99-881

SENT VIA E-MAIL WITH HARDCOPY IN THE MAIL

EUB Commingling Review
Resources Applications Group
640 – 5 Avenue SW
Calgary AB T2P 3G4
E-mail: eub.commingling@gov.ab.ca

To the EUB Commingled Production Review Team,

RE: Comments on Bulletin 2006-16 - Commingling of Production From Two or More Pools in the Wellbore

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 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 Board") *Bulletin 2006-16 - Commingling of Production from Two or More Pools in the Wellbore* (the "Bulletin").

Comments by the Pembina Institute

We have had the opportunity to review the comments provided by Dr. Mary Griffiths of the Pembina Institute and wholly concur with the concerns raised by the Institute with respect to risks to groundwater protection which are posed by the Bulletin. We would like to take this opportunity to expand on the ELC's concerns with respect to compliance and enforcement, shifts in the burden of proof, and access to information.

Compliance and enforcement

The ELC believes that the protection of nonsaline groundwater is the paramount priority in Alberta and all regulatory tools should be used to support this objective. We note that that prosecution is not listed in Appendix 8 of the Bulletin as one of the enforcement actions that would be used by the Board to deal with non-compliance events related to commingling. The deterrent effect of prosecution make it an important tool to secure compliance with regulatory requirements, particularly when dealing with situations where

Recycled Paper

the damage done may be difficult or impossible to rectify after the fact. For these reasons, we suggest that the Board include prosecution as a tool to be used in conjunction with other enforcement tools such as partial and full suspension.

The ELC notes that Alberta Environment is the Ministry tasked with protection groundwater against contamination. The Bulletin states that “the EUB will work with Alberta Environment in cases where impacts to or production of nonsaline groundwater may be at issue,” but the Bulletin provides no detail how groundwater contamination will be handled by either regulatory body. In conjunction with the Bulletin, the ELC strongly recommends that Alberta Environment outline the steps that it will take to investigate and respond to groundwater contamination caused by commingling above the base of groundwater protection.

Burden of proof

The Bulletin proposes a significant shift in the burden of proof for commingling above the base of groundwater protection. Under *Directive 65*, the licensee is currently required to make a full application and “provide justification as to why the proposed commingling will not jeopardize the nonsaline water zone.” The Bulletin proposes to remove this burden from licensees provided they meet the risk-based requirements, and relies heavily on self-reporting by industry to ensure compliance. The ELC is concerned that self-reporting will not be sufficient to protect groundwater, and we recommend that the Board establish a transparent auditing process to verify industry results.

The proposed shift also means that public and private landowners will further bear the burden of proving any negative impacts to aquifers caused by commingling. Landowners will be left seeking compensation or injunctions for water related damage through the civil litigation process, which is often prohibitive due to the difficulties associated with proving causation in a court of law. If the Board proposes to make it easier for licensees to commingle oil and gas, the Board should also consider easing the burden on those who may be negatively affected by such activities by providing a contractual guarantee against contamination on water wells or providing reverse onus provisions in the regulations if commingling has been permitted to occur.

Access to information

We note that the Bulletin does not address the issue of public access to commingling information. Although under *Directive 65* landowner notification is not currently a requirement in a commingling application, we suggest that landowner notification be revisited if commingling becomes routine above the base of groundwater protection. Landowners need to be notified of commingling to ensure they have their water wells tested and baseline data to verify the condition of their water wells prior to commingling. Again, if landowners will be burdened with proving any negative impacts to their aquifers, they must have some comparative data on which to properly base their claim.

Recycled Paper

General comments

As stated on page 1 of the Bulletin, this “proposal represents a shift from upfront regulatory intervention prior to wellbore commingling to surveillance and enforcement activities after commingling.” Generally speaking, the ELC cannot support a proposal that purports to delegate away regulatory responsibility to proactively act to protect groundwater; this is contrary to the precautionary principle. In our view, protecting water wells and groundwater takes priority over expediting approvals for oil and gas development.

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

Yours truly,

Jodie Hierlmeier
Staff Counsel

c.c. Bev Yee, ADM Alberta Environment

Recycled Paper