



March 27, 2013

Our File: 5000-600-6020

Energy Resources Conservation Board
Suite 1000, 250 – 5th Street S.W.
Calgary, AB T2P 0R4

Via E-mail: urf_feedback@ercb.ca

RE: *Regulating Unconventional Oil and Gas in Alberta Discussion Paper*

Dear Sirs,

The Environmental Law Centre (ELC) is an Edmonton-based charitable organization established in 1982 to provide Albertans with an objective source of information about environmental and natural resources law and policy. The ELC's vision is an Alberta where the environment is a priority, guiding society's choices. It is the ELC's mission to ensure that Alberta's laws, policies and legal processes sustain a healthy environment for future generations.

Introduction

As noted in the Discussion Paper, "unconventional oil and gas development requires a greater scale of development and intensity of infrastructure (wells, roads, and other facilities) to be economical" (page 1). The ELC is greatly encouraged that the ERCB has decided to take proactive approach to address concerns associated with unconventional oil and gas operations in Alberta. The ELC hopes that, in the future, the ERCB/Single Energy Regulator will continue to anticipate and address issues associated with oil and gas operations in a proactive manner.

In the Discussion Paper, the ERCB has proposed a regulatory approach which aims to achieve several key outcomes:

- water management;
- waste management;
- air quality;
- conservation of oil and gas resources;
- orderly development;
- public safety; and
- information and advice.

The ELC agrees that these are key regulatory outcomes (and not just in the context of unconventional oil and gas development). However, the ELC does have some comments on these regulatory outcomes.

With respect to the **orderly development** regulatory outcome, the ELC would propose clarification that “issues of a regional nature and cumulative effects” go beyond limiting the proliferation of oil and gas infrastructure. Other key considerations associated with unconventional oil and gas activities on a regional and cumulative basis include habitat fragmentation, associated gravel mining, use of dams and the invasion of non-native species.

With respect to the **water management** regulatory outcome, the ELC would propose reframing this as a matter of “water quality and quantity protection”. The issue of water quality, both surface water and groundwater, is an important concern associated with both CBM and hydraulic fracturing operations. In the ELC’s view, it would be appropriate to implement regulatory requirements for water well testing and other precautionary approaches (similar to those taken for CBM projects) for all unconventional oil and gas developments. It is the ELC’s view that this requires sufficient monitoring capacity to address potential risks to potable supplies. As well, there is a requirement for monitoring the impacts on public lands (which is currently lacking).

In addition, the ELC submits that alternatives to potable water use should be promoted through policy and other instruments. This could include the use of pricing signals to promote conservation of potable water. As an example, volumetric pricing could be applied to water that is deep well injected where non-saline water was the original source.

It is the ELC’s view that **public participation** should be included as a distinct regulatory outcome. The ELC acknowledges that reference is made to stakeholder participation throughout the Discussion Paper. As well, the ELC recognizes that recent changes have been made to improve access to information about the chemicals used in hydraulic fracturing activities. However, given the pivotal role of public participation in decision-making, it is the ELC’s view that public participation ought to be recognized as a regulatory outcome itself. In addition, the ELC submits that the definition of “stakeholder” should be expansive enough to include those members of the public and organizations that represent a genuine public interest (and not merely those who are directly affected).

In addition to our above comments on the regulatory outcomes enumerated in the Discussion Paper, the ELC has some general comments on the proposed regulatory approach.

The ELC is supportive of the concept of **play-focused regulation** as a form of regional and cumulative effects planning. However, the ELC notes that the Discussion Paper does not disclose the regulatory tools that will be used to implement the play-based regulation. It appears from the Discussion Paper that the ERCB will be primarily relying on voluntary measures to obtain the cooperation necessary to achieve play-based regulation.

It is the ELC’s view that, in order for play-based regulation to be successful, there will need to be some mandatory requirements to ensure the necessary level of cooperation amongst operators. Cooperation amongst operators will be essential to success of the play-based regulatory approach

and the ERCB cannot hope to rely entirely on voluntary measures to achieve the requisite level of cooperation. It is the ELC's hope that the ERCB will explore appropriate regulatory tools to ensure success of play-based regulation.

The ELC is concerned that the Discussion Paper indicates that the ERCB intends to rely upon the industry developed guides as part of the proposed regulatory scheme. It is the ELC's view that guidelines and requirements intended to be used as part of the regulatory scheme be developed and set by the ERCB. At the very least, it would be the ELC's expectation that such guidelines and requirements would be developed with extensive participation of the public, the ERCB and any other relevant regulatory and government bodies.

It is the ELC's position that public participation must be a mandatory component of play-based regulation. As indicated above, the ELC submits that the definition of "stakeholder" should be expansive enough to include those members of the public and organizations that represent a genuine public interest (and not merely those who are directly affected).

Conclusion

The ELC thanks the ERCB for the opportunity to provide written comments on the *Regulating Unconventional Oil and Gas in Alberta* discussion paper. Please feel free to contact the undersigned with any questions or comments.

Yours truly,



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