

Alberta well cleanup: Directive 088 comes into effect with new mandatory closure spending targets for oil and gas operators

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On December 1, 2021, the Alberta Energy Regulator (AER) released the finalized [Directive 088: Licensee Life-Cycle Management](#) (Directive 088), which came into effect on that day. Directive 088 is a major step towards implementing the Alberta government's Liability Management Framework (the Framework), developed to reduce the province's inventory of orphan and inactive well sites.

This update provides an overview of Directive 088's significant changes for oil and gas operators in Alberta.

Background

A draft of Directive 088 was released for feedback in June 2021 and was discussed in [our Update](#) from that month. We have also previously written about

- [the Framework](#), which announced significant regulatory changes to address oilfield liabilities, and which Directive 088 (and other below-noted changes) will implement
- [changes to the *Oil and Gas Conservation Rules* and *Pipeline Rules*](#), which enabled the AER to set closure targets for licensees (among other things)
- [changes to Directive 067](#), including to financial disclosure requirements for licensees, assessment criteria for determining "unreasonable risk", and requirements for maintaining licence eligibility

Directive 088

Like the draft version released in June 2021, the finalized version of Directive 088 sets out the following changes to Alberta's liability management regime for oil and gas assets, which are discussed in more detail below:

- the introduction of a holistic assessment of a licensee's capabilities and performance across the energy development life cycle
- the Licensee Management Program, which determines how licensees will be managed

- across the energy development life cycle
- the Inventory Reduction Program, which sets mandatory closure spend targets for all licensees
- updated application requirements related to the licence transfer process
- changes to the collection of security deposits

A summary of feedback provided on the draft of Directive 088, as well as the AER's responses, is available on the [AER's website](#) [PDF]. The AER has also created [Manual 023: Licensee Life-Cycle Management](#) [PDF], which provides further information developed in response to feedback on the draft directive.

Holistic licensee assessment

With the introduction of Directive 088, the AER will now use a holistic assessment of a licensee to inform AER decisions at various times throughout the energy development life cycle, including: licence eligibility under Directive 067; decisions under the Licensee Management Program and Inventory Reduction Program; and decisions whether to approve licence transfer applications or to require security deposits (and, if so, the amount).

As part of its assessment of the capabilities of licensees to meet their regulatory and liability obligations, the AER will consider the risk factors listed in section 4.5 of Directive 067, along with the following factors from section 2 of Directive 088:¹¹

- financial health
- estimated total magnitude of liability (active and inactive), including abandonment, remediation and reclamation
- remaining lifespan of mineral resources and infrastructure, and the extent to which existing operations may fund current and future liabilities
- rate of closure activities and spending, and pace of inactive liability growth
- management and maintenance of regulated infrastructure and sites, including compliance with operational requirements
- compliance with administrative regulatory requirements, including the management of debts, fees and levies
- any other factor the AER considers appropriate in the circumstances (e.g., additional information provided by the licensee throughout the life cycle, including applications and other submission to the AER)

Licensee Management Program

Under the new Licensee Management Program, the results of the holistic licensee assessment will be used to identify licensees that are (or are likely to be) at risk of not meeting their regulatory and liability obligations throughout the energy development life cycle. The AER may specifically engage with at-risk licensees and, where special action is warranted, it may use regulatory tools or conduct compliance assistance activities (e.g., providing education, recommendations to follow industry best practices, changing licence eligibility, restricting licences/approvals, requiring security deposits or issuing orders).

Inventory Reduction Program

Directive 088 also introduces the Inventory Reduction Program, under which the AER will set mandatory and voluntary closure spend targets for each licensee, in July of each year. Each licensee must meet their annual mandatory closure spend target, and report on their annual closure activities and closure spends by March 31 of the following year (unless otherwise directed by the AER).^[2]

Instead of meeting their mandatory closure spend target through closure work, a licensee may provide a security deposit in the full amount of that target, by January 31 of that year.

If a licensee does not meet their mandatory closure spend target through closure work or provide a security deposit in the full amount of that target by January 31 of that year, a holistic licensee assessment will be performed to determine whether a security deposit is required (and, if so, the amount). The maximum amount of security that may be required is the licensee's total liabilities, including the costs of providing care and custody and to permanently end operations.^[3] As noted above, the AER may also take other regulatory actions to ensure compliance.

Licence transfer applications

Requirements for licence transfer applications have been significantly changed, and moved from Directive 006 to Directive 088. Notably, such applications will now trigger a holistic licensee assessment of both the transferee and transferor to ensure both companies will be capable of addressing their liabilities post-transfer. To offset any potential increase in risk that may arise from a licence transfer, either company may be required to provide a security deposit to the AER (based on the holistic assessment) as a condition of approval.

These and other changes to the requirements for licence transfer applications are set out in section 5 of Directive 088.

Implications, future changes and information sessions

Directive 088 is a major step towards implementing the Framework. Like the draft version released in June 2021, the finalized version of Directive 088 should reduce the risk of licensees becoming defunct with significant outstanding abandonment liabilities. While the shift away from the AER's historic formulaic approach towards a more holistic assessment provides improved flexibility in establishing licence eligibility, it also reduces certainty for oil and gas companies on how to manage counterparty risk inherent in operations and the licence transfer process through the requirement for AER security deposits (because the AER's new approach is inherently more discretionary). The new requirements will also increase reporting requirements and ongoing closure expenses for oil and gas companies, the latter of which may materially impact some companies' spending plans.

Most immediately, changes in Directive 088 will complicate asset transfers because any licence transfer applications not decided by the AER before December 1 (including those submitted but still pending as of that date) must be re-submitted under the new requirements and will trigger a holistic assessment (and potentially require a security deposit to the AER).

As the AER continues to implement the Framework, further phased revisions will be made to Directive 006 as part of the transition away from its Licensee Liability Rating Program and

implementation of the programs in Directive 088. Future phases will also include changes to other AER directives related to liability management (e.g., Directive 001, Directive 011, Directive 024, Directive 068 and Directive 075).

The AER will host information sessions in early 2022 about the new requirements in Directive 088, as set out in the table below.

Date	Session Topic	Intended Audience
January 25, 2022	Overview of Directive 088	Industry
February 3, 2022	Overview of Directive 088	Non-industry stakeholders and Indigenous communities
February 8, 2022	Licensee capability assessment	Anyone interested
February 10, 2022	Licence transfer process and security	Anyone interested
February 16, 2022	Inventory Reduction Program	Anyone interested

We encourage stakeholders to [register](#) for these information sessions if they are interested in learning more about the new requirements in Directive 088, and to [subscribe](#) to receive our updates as we continue to monitor the AER's implementation of the Framework over the coming months.

[1] Each of the specific factors listed consists of various parameters that are elaborated in [Manual 023: Licensee Life-Cycle Management \[PDF\]](#), which was created in response to feedback on the draft of Directive 088.

[2] Licensees must also provide other information to the AER as requested under the Inventory Reduction Program.

[3] The exact amount of security required may be calculated based on: the value of liability under Directive 011 for marginal wells, inactive wells, and inactive facilities; the value of Directive 001 site-specific liability; the present value of future cash flows, based on the reserves and economic analysis; and any other amount the AER considers appropriate in the circumstances.