

Intelligence MEMOS



From: Drew Yewchuk

To: Alberta's Orphan Well Watchers

Date: December 14, 2021

Re: **WHY ALBERTA'S PLAN FOR THE UNPAID MUNICIPAL TAXES OF OIL AND GAS COMPANIES WON'T WORK**

New Alberta [legislation](#) gives municipal governments the power to place liens on pipelines and wells of companies that fail to pay their assessed municipal taxes as part of the province's struggle with orphan wells.

The intent is to induce bankrupt or non-paying companies to negotiate payment plans with municipalities for their unpaid taxes, Municipal Affairs Minister Ric McIver [told](#) the Legislature last month during second reading for Bill 77.

However, this plan is likely to be ineffective because of the connection between oil and gas companies' unpaid municipal taxes and Alberta's orphan well problem.

(For background on the orphan well issue, see previous ABlawg posts [here](#) and [here](#).) The Alberta Energy Regulator (AER) did not try to collect financial security for the clean-up of oil and gas assets until an operator's ratio of deemed assets to deemed liabilities falls below 1, with possible licence transfer restrictions once a company's ratio falls below 2. Deemed assets are meant to represent an estimate of the remaining value of oil and gas assets, with deemed liabilities representing an estimate of the company's reclamation and remediation costs.

Connected to the orphan wells problem are inactive and low-production wells often held by operators nearing insolvency – these are wells likely to become orphans soon. Wells owned by licensees with low asset-to-liability ratios are basically soon-to-be orphans, and the remaining value of the production from these wells is often worth less than the cost of the necessary clean-up (for a detailed explanation, see past C.D. Howe publications on this issue [here](#), [here](#), and [here](#), or the Alberta Liability Disclosure Project's report [here](#)).

Only a small number of oil and gas companies do not pay their municipal taxes and may potentially face the new liens under Bill 77. These few troubled companies are unlikely to be malicious actors choosing not to pay for no reason – they are much more likely to be strapped for cash because they own mostly low-producing wells with high clean-up liabilities. Framing the unpaid municipal tax problem as a question of 'bad actors' is a misleading waste of time. The behaviour of the companies is determined by their economic situation, the nature of their oil and gas assets, and Alberta's chosen regulatory scheme, not by the moral character of individual corporate directors.

Companies that become bankrupt typically do not have a lot of highly valuable assets, and therein is the problem for Bill 77. Any liens are likely to be mostly on oil and gas assets that have little or no value, often worth less than the cost of the clean-up for those assets. In order for a lien to be useful, the lien needs to be on something valuable.

Most liens produced under the changes brought by Bill 77 are unlikely to meet that requirement. For the most part, they will cover empty wells, which are effectively a kind of toxic garbage. Bill 77 will be effective only in those rare instances where a company with high-value oil and gas assets in the municipality is not paying its taxes.

Another problem for Bill 77 is that if a bankrupt oil and gas company does have some valuable assets, those assets will often be taken by the AER and Orphan Well Association to try to pay for the company's clean-up liabilities.

None of this will come as a surprise to those involved in rural municipal government, who already understand this issue and [have been unenthusiastic about Bill 77](#). Rural municipalities have been asking for changes at the AER level, and they are correct to do so. The problem of oil and gas companies with unpaid rural municipality taxes is downstream from the AER's failures to regulate inactive and low-producing oil and gas assets with high clean-up liabilities.

Alberta needs to act fast on both oil and gas companies' unpaid municipal taxes and the orphan and inactive wells issue generally. A good first step would be for the AER to resume posting each company's asset-to-liability ratios, which it suspended on grounds of commercial confidentiality two years ago, so that Albertans can understand the problem instead of guessing about it.

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A version of this memo first [appeared](#) in ABlawg: The University of Calgary Faculty of Law Blog.