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Introduction

In April 2018, the NDP government of British Columbia introduced *Bill 15: Energy, Mines and Petroleum Resources Statutes Amendment Act, 2018*, which, among other things, gave the Oil and Gas Commission (BCOGC) express authority to make regulations regarding "dormant sites". On May 30, 2019, pursuant to that new authority, the BCOGC made the *Dormancy and Shutdown Regulation*, BC Reg. 112/2019 (D&S Regulation), which establishes a framework for requiring permit holders to decommission well sites, complete the required environmental site assessments and any remediation work, and restore the sites within specified timelines. This is the first instance of any provincial energy regulator prescribing such timelines.

Scope of the D&S Regulation

The D&S Regulation applies to the operating area for a "dormant" well. For the purposes of the D&S Regulations, a well is generally considered "dormant" if, over the last five calendar years:

- There has been less than 720 hours of production, injection, or disposal into the well in a calendar year;
- No zones have been completed;
- No drilling events have occurred; or
- The well has not been active on at least one day, in the case of observation wells.

The BCOGC has limited ability to temporarily extend the five-year window if it determines, taking certain economic and safety considerations into account, that the well will be active within a "reasonable period of time".

A well is also considered "dormant" if a permit holder provides the BCOGC with written notice that a well is dormant. The D&S Regulation confirms that portions of an operating area will not be "dormant" if facilities, pipelines or roads not solely associated with the dormant well are also located in the operating area.

Permit Holder Obligations

The D&S Regulations classify all dormant well sites into either "Type A", "Type B", or "Type C", depending on the calendar year in which the well meets the regulatory definition of "dormant", referred to as the "reference year". For every dormant well site, the permit holder is required to decommission the site in accordance with the applicable

requirements of the *Drilling and Production Regulation*, and to remove any facilities and equipment from the dormant site. The permit holder must also carry out environmental site assessments in accordance with the *Contaminated Sites Regulation* and submit the required report to the BCOGC. Finally, the permit holder must "restore" the site by satisfying all applicable permit conditions and requirements of the *Oil and Gas Activities Act*, as well as by remediating the dormant site (and any neighbouring lands to which contamination has migrated) in accordance with the numerical or risk-based standards of the *Contaminated Sites Regulation*, as applicable. While licensees would be required to carry out "restoration" work, they would **not** necessarily be required to obtain a restoration certificate, which can be a more onerous process to complete.

The timelines for completing decommissioning, assessment and restoration work vary depending on the classification of a given site.

	Reference year	Decommissioning	Assessment	Restoration
Type A	2018 or earlier	30% by 2021 70% by 2026 100% by 2030	2030 for all wells decommissioned prior to 2019; For all other sites, two years after decommissioning	40% by 2024 70% by 2030 100% by 2036
Type B	2019-2024	Eight years after the reference year	Within 10 years for sites decommissioned before the "reference year" Within two years of the reference year for all other sites	13 years after the reference year
Type C	2024 onward	Five years after the reference year	Two years after decommissioning	10 years after the reference year

The D&S Regulation also gives the BCOGC discretion to identify "priority sites" if the BCOGC determines it is in the public interest that a site be decommissioned, assessed and restored on an "expedited basis." Priority sites must be decommissioned within two years of the date the BCOGC identifies the site. Environmental assessments and restoration of priority sites must be completed within three and five years, respectively. In making that determination, the BCOGC can consider, among other things, the age of the site, public safety, the cultural and environmental values of local Indigenous nations, and the "capacity and portfolio of the permit holder." It is unclear at this point whether the BCOGC might consider other factors as part of that public interest mandate, such as the compliance record or financial status of the permit holder.

Implications of the D&S Regulation

The BCOGC news release accompanying the D&S Regulation stressed that the regulation is the first of its kind in western Canada. While this is true in some sense, the general structure of the program will be familiar to many producers with operations in Alberta. In 2014, the Alberta Energy Regulator (AER) introduced the Inactive Well Compliance Program (IWCP), targeted at reducing the inventory of inactive wells in the province. The IWCP requires licensees to bring 100 percent of their inactive well inventory into compliance with the AER's well suspension requirements by 2020. Unlike with the IWCP, however, producers in British Columbia do not appear to have the option of "reactivating" or "suspending" a dormant well.

The D&S Regulation casts a wide net, targeting wells that have less than 720 hours of production in a calendar year

over a five-year period. For many producers, commercial realities make it necessary to shut-in production for long periods. Because D&S Regulation obligations do **not** generally depend on whether a well is "capable of production", producers must determine whether any of their wells meet the initial criteria as "Type A" wells, and begin planning to meet decommissioning, assessment and restoration obligations set out in the D&S Regulations.

Producers must also determine whether any wells are at risk of falling dormant in the coming years, and plan to meet the thresholds for keeping such wells active. This requirement may have impacts on a producer's borrowing base. It could also create practical challenges in the short term, as some wells are either already dormant or will become dormant in the near future. If a producer anticipates such practical concerns, it may need to consider requesting temporary relief from the BCOGC.

While the introduction of the D&S Regulation increases the burden placed on industry players, the specific designation, by type, of dormant sites will provide important information to parties evaluating upstream assets located in British Columbia.

For more information, please reach out to one of our key contacts or another member of the Energy group.

1. All references to dates are to the end of the calendar year unless otherwise noted.↩

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