



PEACE RIVER REGIONAL DISTRICT

DIRECTORS' NOTICE OF NEW BUSINESS

TO:	Chair and Directors
FROM:	Director Goodings
DATE:	January 6, 2010
RE:	Regulatory process

Purpose / Issue:

The re-write of OGAA (oil & gas activity act) was past either 2009 or perhaps late 2008. The regulations are now being developed and there is a push to finish so they can be enacted in the spring legislature, likely May. Drilling and production; environmental; seismic; pipelines; Roads (which we have not yet seen); notification and consultation. There may be more that I have not thought of tonight. One of the concerns that have come forward through all of these is the lack of baseline information; lack of enforcement; and the need for meaningful consultation. The OGC is charged with being the regulators, they will use the regulations to determine the need for enforcement, if the enforcement is not clearly laid out the result could be the landowners/companies ending up in the court system to settle their differences. Meaningful consultation is when you sit down in the same room, discuss the issues, bargain for the final result and then move forward. The problem here is there is a form of consultation with landowners, then with industry, never do the two have the opportunity to sit down and work through the issues. It is sincerely felt that if the consultation is done right, there will be much less conflict. Once these regulations become part of the OGAA there will be much less opportunity to "get it right".

Recommendation / Action:

Write to Minister Lekstrom, suggest that these are important regulations that will be in place to serve us well if they are done with adequate thought and discussion. Consultation is the beginning of getting it right.

Background:

We really appreciate everything the Minister is doing to recognize the importance of the oil and gas industry to our region. Let's not rush this and get it wrong.

Attachments:

Department Head

John Goodings

CAO

January 14, 2010

Comments on Drilling & Production Regulations
by
Custodians of the Peace Country Society

II Section 2.1 Exemptions:

The numbering is evidently still in draft form, as some numbers are skipped, but there appears to be about 75 sections in the Draft Regulations. Section 2.1 gives authority to “an official” to grant exemptions from 23 of them, so roughly a third of these regulations are really only “guides.” One of the complaints heard from landowners is that they don't know what the rules are – just when they think they understand how things work, they find out there is a special circumstance or an exception for some reason. Landowners agree that there needs to be some flexibility in order to adjust to circumstances but these regulations give a great deal of latitude to one individual and when an exemption which is detrimental to a landowner/resident's interests is contemplated, there ought to be consultation with that individual.

There is no definition of “official” in the definitions (Part I). The OGA Act itself provides a definition but it would seem logical that if there is a list of definitions to be included in the Drilling /Production Regulations, that “official” be one of them, given the wide-ranging power which this official is destined to wield.

Some of the regulations which may be exempted are significant. Exemptions of concern: Sections 5(1) and 5(2), the position of wells: There is no guidance provided a landowner as to what might prompt an exemption. The possibility of exemption means he has no certainty regarding the basic set-back. A landowner ought to have the right of refusal of a well which is closer than the basic set-back.

Section 34(2): See Part III Air Quality

Section 35: - See Part IV Water

Section 43: Suspension of inactive well. The official is given complete freedom to do as he wishes regarding an inactive well. What assurance does the landowner or the general public have that the variance of this regulation would be done for the public interest as opposed to the corporate interest? There ought to be some guidelines delineating the circumstances under which this regulation would be exempted.

Section 45: These appear to deal with safety and with the exception of 45(1)k, it is difficult to understand why they would be open to exemption. Again justification for departing from the regulation should be available to the landowner and/or public if requested.

Section X: Emergency Planning Zones. These are of considerable concern to landowners/residents in the rural areas. We would appreciate the opportunity to be consulted on these whatever is proposed for EPZ's **prior** to final concepts being decided upon.

Section 58: See Part III Air Quality

Section 94: See Part IV Water

Recommendations Regarding Exemptions:

- 1) Define “official” in the list of definitions.
- 2) Provide detail and guidance as to when & under what conditions exemptions can be made so that landowners have some assurance that these regulations are more than just a guide for the “official.”

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III Regulations Pertaining to Air:

Air is essential; gas is important but not essential.

Air quality is fundamental to health and safety. There is only one atmosphere to which substances can be emitted. These Draft Regulations approach air quality from the individual operation specifying how much an individual well or facility can emit. There is no attention to the base state of the air to which these emissions are being added; no attention to cumulative impact; no requirement to use alternatives to emitting into the atmosphere.

There is no choice as to what air one breathes: one must breathe that which is next to one's nose. The approach taken in this Draft to regulate individual wells as opposed to the quality of the total air envelope misses the point. It doesn't matter to landowner/resident/wildlife whether poor air quality comes from one well/facility gone amok, fugitive emissions from an unknown source, or from many wells/facilities all operating within regulation but each contributing to the accumulation of emissions. What matters is that the air quality is poor. For that reason, some way of regulating air quality other than by looking at individual wells or facilities must be found.

We understand that air quality in oil/gas production areas could be improved by the use of varied technologies such as in-line testing, vapour recovery units, incinerators, and so on. We've been told that these technologies are sometimes passed over in favor of venting or flaring because they cost more. Air quality should not be sacrificed for corporate profit. What is the cost of *not* maintaining air quality, in terms of health and well-being?

Landowners have neither the expertise nor the capacity to hire expertise to advise what should be used. This seems to be a case where "Results Based Regulation" would be effective. A regulation based on what is allowed to go into the air, either by venting, flaring, etc., would be a more effective means of controlling air quality than regulating by setting out how much gas can be flared or vented.

Air Quality Recommendations:

- 3) *Develop "results-based" regulations based on what will be added to the air, rather than the prescriptive approach which specifies how much gas can be flared.*
- 4) *Develop a regulation to deal with cumulative impact of emissions on air quality.*
- 5) *Specify that venting or flaring should only be approved as a last resort, when other technologies have proven unsuitable.*

IV Regulations Pertaining to Water:

Water is essential. Gas and oil are important but not essential.

Other than regulations pertaining to ground water protection, the Draft Regulations appear to completely ignore the use of water in drilling and production.

Water Quality & Quantity Recommendations:

- 6) *Develop regulations which require:*
 - a) *that the use of water for drilling and production be minimized,*
 - b) *that surface as well as ground water be protected,*
 - c) *that to the extent possible, water used for drilling and fracking be recovered and treated for re-use rather than pumped deep underground in a disposal well.*

V Regulations Pertaining to Noise:

Noise affects people differently and those who live in rural or isolated places often do so in order to be away from constant noise and activity. They find it is now being imposed upon them and it is

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interfering with their lifestyle needs and with the quiet use and enjoyment of their property. 40 decibels may be acceptable in locations where ambient noise is already present; it may well be too high for the tolerance of a resident who has been without ambient noise.

Guidelines presently in use measure noise at the outside of a residence, not at the edge of a property. Rural people spend significant amounts of time outside, whether it be in their garden, a barnyard, sundeck, firepit or some other favorite retreat. Noise detracts from the enjoyment of those locations. Measurement of noise should, therefore, be done at the edge of the curtilage area and/or locations where landowners spend significant amounts of time.

Some people find noise that varies in intensity levels more troublesome than noise that is constant and therefore need regulation that has a lower threshold for noise that varies rather than one that is constant.

Noise measurements should stipulate the upper level of that which is acceptable; measurements should not be averaged.

We are told that if included in the design at the outset of construction, the cost of reducing noise in a facility such as a compressor is much less than if it is done as a retrofit. Other site-specific factors such as weather, prevailing winds, topography, also determine noise levels in surrounding areas. That being so, it would seem prudent to have regulation which requires that those facilities should be built to the highest standard of the day to start with, particularly in areas which are settled or are expected to be settled. Also, that considerable time be taken to explain the noise issue to people living in the vicinity so they are able to consider the implications and make suggestions *before* it becomes an issue and requires expensive retrofit.

Regulations Pertaining to Noise:

- 7) *That regulations be developed to ensure that noisy facilities such as compressors be built to the highest standard at the outset to avoid problems at a later date.*
- 8) *That noise thresholds be lower for vacillating noise than for a steady noise.*
- 9) *That noise regulation be based on an upper level rather than an average.*
- 10) *That the threshold for noise be lower in areas where there is no ambient noise than in areas where ambient noise is present.*
- 11) *That there be extensive consultation with nearby residents and that they be made fully aware of the noise levels which will emanate from the facility they will live with.*
- 12) *That measurement of noise be done at the edge of the curtilage area and/or locations where landowners spend significant amounts of time.*

Custodians of the Peace Country Society

response to

**Oil and Gas Activities Act Consultation Draft -
Environmental Protection and Management Regulation**

November 29, 2009

Prepared by Gwen Johansson after consultation with CPCS membership.

General Comments:

Custodians of the Peace Country Society (CPCS) is pleased to see environmental regulations brought to the oil/gas industry. CPCS appreciates the opportunity to comment on the November 4, 2009 Consultation Draft: Environmental Protection and Management Regulation (the “Environment Regulation” or “regulation”).

With the exception of one topic (impact on humans), we believe the Draft covers the topics needed although, as previously noted, it seems odd that the industry's effect on air quality is dealt with in the Drilling & Production Regulation rather than in the Environmental Regulation.

As with the Drilling & Production Regulations, these appear to be more guidelines than firm regulations. Wording is vague and exceptions abound. A great deal of latitude is built in:

- First, in most sections, the BC Oil and Gas Commission (OGC) officer has wide latitude in deciding whether the company proposal is the “practicable option,” and/or is disturbing “no more than necessary.”
- Then we get to Part 5, which allows the various ministers to exempt petroleum companies from complying with regulations pertaining to their ministry.
- Finally, there is Section 6, which allows ministers to delegate their responsibilities under the *Water Act*, *Wildlife Act*, *Land Act* or *Forest Act*, to another body. One assumes that this is to facilitate more agreements similar to the Agricultural Land Commission's Delegation Agreement with the OGC. The delegation model appears to us to be ineffective in protecting that which ministers are responsible to protect.

A pattern appears in the Environmental Regulation in that often the Clause (1) will be quite clear and definitive. But then Clause (2) will undercut the strength of (1) with “*unless there is no practicable option,*” or some other provision which will allow the activity.

There is no public interest decision review. A reconsideration mechanism should be built into the regulations.

In order to be at all meaningful, the environmental regulations need to be much more focused on protecting water, land and air than is in these draft regulations.

Specific Comments:**Part 2 – Environmental protection and Management Requirements:****Division 1 – Water Protection**

It is hard to see where water is afforded any protection of consequence by these regulations.

Water very much needs protection.

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A company provided this information regarding water use in drilling operations. Other sources indicate a greater use of water and less return.

- they use 1500 cubic meters per frac;
- they frac each well 10 times;
- they are customarily getting about 50% of the water back;
- That 50% which is recovered is stored, diluted with new fresh water and used again. (*We understand that some companies are not re-using any of the recovered water – any that comes back is injected into deep disposal wells so this example appears to be “the best” of the story;*);
- they are currently siting 8 wells per pad, expect to go to 12, are doing calculations to see if 24 would work, and
- they anticipate approximately 1 pad per section (640 acres).

The company is permitted to use surface water and drill wells to access shallow aquifer water.

You do the math.

This is a tremendous amount of water which will be used and lost from the water cycle. It will be drawn both from surface sources and aquifers.

Where in the regulations is there protection of water that will stand up to this scale of demand?

Especially when:

- there is no requirement for operators to minimize the use of water and
- there is no requirement for operators to clean up and re-use the water that comes back after a frac.

There is a requirement that an operator does not negatively affect an aquifer. But how will anyone know? As we understand it, the aquifers in at least some parts of the northeast have never been mapped. How many monitoring wells are there? As we understand it, there is one in the Peace River region. How can you assess damage if there is no baseline to start with?

There is a requirement that an operator not negatively impact a waterworks or water supply well and if it happens, then a “qualified professional” selected and hired by the company will determine whether the problem was caused by the operator. This system appears to be copied from Alberta. Landowners in that province have told us that the system is inadequate to protect their water supply. There is no mechanism for appeal and ultimately it falls to the affected resident to prove there has been damage if the operator's “qualified professional” comes down on the side of the company. Should “replacement” water be supplied under Section 6.2 subsection (3) it should be not only of equal or better quality of the water supply it replaces but also of equal or greater *quantity*.

The wetlands that cover Northeast BC serve as a massive sponge holding water for plant and animal life. It appears to us that the projected scale of development threatens that role as well as the viability of the rivers and streams. Protection of water should be much, much stronger.

Fracking Fluids: There should be a requirement that if asked, an operator is required to disclose all ingredients in the fracking fluid they are using.

Division 2 – Riparian Management Areas, Fish and Fish Habitats

Are the terms “riparian management area” and “riparian reserve zones” used interchangeably here?

Division 3- Conserving Wildlife and Biodiversity

14 (2) d – an operator is required, “to the extent practicable,” to choose an area for carrying out the activity that minimizes the clearing required.”

Preserving wildlife habitat is admirable but as was pointed out by grazing tenure holders, they have spent considerable time, effort and money to develop grass in their grazing tenures. Having the oil company move in to their improved pasture reduces the grass available for their animals. In the past, these tenure holders say they were consulted but that has been downgraded to “notified” in recent years and they have been unable to protect their interest in the tenure area. They wish to be consulted rather than notified and they wish to see regulations which would protect their interests on the tenure.

General Comment re: Activity Siting: we note that the regulations specifically mention that operators should

- stay away from riparian zones (Section 7.2);
- avoid clearing wildlife habitat (Section 14 {2} [d]);
- restrict activity in old-growth management areas (Section 17);
- minimize activity in areas containing commercial timber (Section 21), and
- watch out for resource features such as karst systems, range development, Crown land used for research or experimental purposes, sample sites, interpretive forests, recreations sites, trails etc.

One feature that didn't merit specific mention was agricultural land and/or private land generally. Why are other values specifically mentioned but agricultural land is not? Operators are cautioned about disturbing wildlife or wildlife habitat but no cautions are made about disturbing humans or human habitat in the rural areas where these activities take place. If the other values are worthy of specific mention one would think that human rural residents might merit the same attention. We ask that these concepts be included in the regulation.

Missed Topic in Regulation:

The topic that was missed altogether in this draft regulation is that of oil/gas activities' impact on human health or impact on humans. As noted above, the regulation should deal with this topic.

Division 6 – Soil Conservation

24. (b) Soil should be allowed to settle after the activity is completed, before it is re-worked. We suggest that 24.1 {b} have an addition so that it would read: “*if the activity disturbs the land surface of an area, as soon practicable after the completion of the activity, and after soil settlement has occurred, ensure that....*”

24.1(b) ii We suggest the following addition: “*or is returned to a level that meets or exceeds the productivity of the disturbed land adjacent to the area.*”

26 Landowners suggest that on private land, culverts should **not** be used to concentrate flows unless requested by the landowner. (Water should be allowed to spread out over a field or be directed through shallow depressions which facilitate it being absorbed by the soil.

Landowners further suggest that in 26(2), the “*altered surface drainage pattern is compatible with the original natural surface drainage pattern...*” should be augmented with wording which would require two assessments of drainage: one at the time of temporary construction, say when a berm is built around a lease site, and the second when the well goes into production and the longer-term “tear-drop” is put in place.

Topsoil:

In 2004, J Clapperton of Agriculture Canada, wrote that, “*Soils that have been severely disturbed and stockpiled for more than 4 weeks continuously lose most of their biological activity.*” When speaking

of pipelines, she said, *“There is a dilution effect as well: the sub soil dilutes any remaining top soil biological activity when the soils are replaced in the trench.....There will continue to be difficulty until the populations of mycorrhizae and other beneficial soil microbes and micro and meso fauna have been re-established.”*

We note that some oil/gas activity results in topsoil being stockpiled for more than 4 weeks, at which point the microbial activity in the soil would have been lost. It has been suggested that if the disturbance will endure more than 4 weeks, then the best way to preserve the topsoil is to feather it over the rest of the field where it will be of use and where biological activity will be maintained.

If topsoil must be brought on to a private landowner's farm from elsewhere, the landowner should have the right to determine what topsoil comes on to his land. This is to prevent unwanted import of weeds or diseases. I believe this was in past regulations.

**It takes a very long time to build topsoil; it is precious and should be treated as such.
The importance of topsoil should be reflected in the regulations; the draft doesn't do that.**

On behalf of CPCS and its members, thank you for accepting comments on the Draft Environmental Regulation. We hope this input will be of value as the regulations are finalized. A summary of CPCS recommendations follows on the next page.

Summary of CPCS Recommendations

- 1) General Recommendation: Make the regulations much stronger, especially water and topsoil.
- 2) Include a mechanism by which the public can appeal decisions.
- 3) Include a requirement for operations to minimize the use of water.
- 4) Include a requirement for operators to recycle water that returns following oil/gas operations.
- 5) Include a mechanism whereby the owner of a private well can appeal the judgment of a qualified professional and that if the appeal is successful, the costs will be paid by the operator.
- 6) Section 6.2(3) Include a provision that the replacement water must be of equal *quantity* as well as equal quality.
- 7) Include a regulation requiring that, if requested, operators disclose all ingredients in fracking fluids.
- 8) Review the activity siting guidelines so that consideration is given to all tenure holders rather than just those presently included.
- 9) Include a regulation addressing health and habitat protection of humans as well as wildlife.
- 10) 24.1(b) Include an addition so that it would read: “*if the activity disturbs the land surface of an area, as soon practicable after the completion of the activity, and after soil settlement has occurred, ensure that....*”
- 11) 24.1(b) ii We suggest the following addition: “*or is returned to a level that meets or exceeds the productivity of the disturbed land adjacent to the area.*”
- 12) Include a regulation that on private land, water flows should not be concentrated in culverts unless authorized by the landowner.
- 13) Section 26: Augment the regulation to ensure there are two assessments of drainage patterns: one following temporary disturbance (such as lease construction such as when a berm is built around the site) and the second when the well goes into production and the long-term disturbance is in place.
- 14) Include a regulation which ensures that topsoil is preserved and that treatment of the topsoil does not impede microbial/biological activity.
- 15) Include a regulation that ensures that if it is necessary to import topsoil on to private land, that the landowner has the right to determine what topsoil is imported on to his property.