

Oil and Gas Regulation in Canada: Overview

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A Q&A guide to oil and gas regulation in Canada.

The Q&A gives a high-level overview of the domestic oil and gas sector, rights to oil and gas, regulation, transportation by pipeline, health, safety and the environment, enforcement of regulation, and sale and trade in oil and gas.

Domestic Sector

1. What is the role of the domestic oil sector in your jurisdiction?

Domestic Production

According to *Natural Resources Canada* (the government department responsible for natural resources, energy, minerals and metals, forests, earth sciences and so on), Canada is the fourth-largest producer of crude oil in the world and has the fourth-largest proven reserves of crude oil. Of Canada's 163.1 billion barrels of remaining established reserves, 158.8 billion barrels are located in the oil sands of Alberta. About 18% of oil sands in Canada can be surface mined with the remainder accessible by in situ drilling methods. A further 4.3 billion barrels of Canadian oil are held in conventional, offshore, and unconventional tight oil formations. Within Canada's extensive oil industry, there are two main areas of production:

- The Western Canada Sedimentary Basin.
- The Eastern Canada offshore basins.

In 2024, the federal *Canada Energy Regulator* (CER) reported that estimated Canadian production reached an average of 659,900 cubic metres per day. Of that production:

- 136,200 cubic metres per day was light oil including conventional light oil and upgraded bitumen.
- 523,700 cubic metres per day was heavy crude oil.

Increasingly, light sweet crude is produced by unconventional methods that combine horizontal drilling and hydraulic fracturing to access low permeability oil reserves. These new extraction methods have created opportunities for oil production on previously unsuitable land.

Oil Imports/Exports Market

In 2022, the CER reported that Canada exported about 3.9 million barrels of crude oil per day while importing 467,000 barrels of crude oil per day. 97% of Canadian crude oil exports were to the US, which remains Canada's main crude oil export market. Restrictions and measures related to COVID-19 caused demand for crude oil to drop in early 2020, leading to reduced Canadian crude oil exports in 2020. In 2021, Canadian crude oil exports increased to approximately pre-pandemic 2019 levels and have shown steady growth in the following years. Canadian crude oil exports include conventional light, medium, and heavy oil along with upgraded and raw bitumen destined for refineries in the US.

Market diversity and access is a key consideration of the Canadian oil industry. The majority of crude oil exports rely on pipelines. However, other sources of transportation include rail, tanker ship, and truck.

Transport of crude oil by rail decreased from around 280,900 barrels per day in 2019 to about 98,200 barrels per day in 2023. Transport of crude oil by pipeline has increased to approximately 3.69 million barrels per day in 2023, up from 3.22 million barrels per day in 2019. On May 1, 2024, shipments began on the Trans Mountain pipeline expansion project, which increased the pipeline's capacity from 300,000 barrels per day to 890,000 barrels per day. Pipeline exports in 2024 are currently at 3.83 million barrels per day.

The CER regulates the export of oil and gas from Canada. Exports of oil and gas products are authorised through long-term licences and short-term orders. The CER monitors the market to ensure that Canadian requirements for oil and gas are met before surplus oil and gas is exported. Exporters of oil and gas products are subject to reporting regulations requiring the submission of monthly reports to the CER, including amount and type of oil being exported. No CER order is required for imports of oil into Canada.

Domestic Market Structure

Trade in oil is on the free market. In 1985, the Western Accord on oil and gas pricing and taxation between the federal government, Alberta, Saskatchewan, and British Columbia eliminated crude oil price controls and allowed for free trade. The *North American Free Trade Agreement* (NAFTA) ensured the free flow of oil from Canada to the US and encouraged investment in the Canadian energy market. In 2020, the *Canada-United States-Mexico Agreement* (CUSMA) came into force and replaced NAFTA. The oil and gas provisions in NAFTA were largely preserved in CUSMA.

Government Policy Objectives

In 2019, the CER superseded the National Energy Board (NEB) as the federal energy regulator and became responsible for overseeing Canada's inter-provincial energy strategy (see [Question 9](#)). The *Canada Energy Regulator Act*, S.C. 2019, c. 28, s. 10 requires the CER to consider certain factors in its project reviews, including:

- Climate change and environmental effects.
- The interests and concerns of indigenous peoples.
- Health, social and economic effects.

The CER must develop an early engagement programme and foster indigenous participation and inclusive public participation. The CER regulates oil and gas pipelines that cross a national, provincial, or territorial border, offshore production, and energy development and trade in the Canadian public interest.

However, the bulk of regulation remains provincial. Each province has distinct regulatory policies that affect the oil and gas industry. These policies include those addressing climate change and indigenous consultation. Government regulation and policies are currently undergoing change in response to public pressure to better prevent waste and protect the environment. Natural Resources Canada continues to implement joint actions with provinces and territories to advance Canada's net zero transition and bolster energy and mineral security in Canada. For example, in Alberta, the Alberta *Responsible Energy Development Act*, S.A. 2012, c. R-17.3 is used to implement energy policy objectives and establish the mandate of the *Alberta Energy Regulator* (AER), which is the single regulator for upstream oil, gas and oil sands development in the province, responsible for regulating energy resource developments from initial application to reclamation.

With regards to government-mandated limitations on foreign ownership of oil production and related infrastructure, see *Restrictions on Transfer*.

2. What is the role of the natural gas sector in your jurisdiction?

Domestic Production

According to Natural Resources Canada, Canada is the world's fifth-largest natural gas producer and accounts for about 4% of global production. Natural gas is abundant in Canada in both conventional and unconventional sources including tight gas, shale gas, and natural gas from coal, with 87 trillion cubic feet of proven natural gas reserves. Most recent statistics indicate that, in 2022, conventional production represented 12% of natural gas production and unconventional production, being tight gas, coal bed methane and shale gas, accounted for the remaining 88%.

Western Canada is the primary natural gas producing region, contributing over 99% of total Canadian natural gas production in 2022, with Alberta producing 66.9% and British Columbia producing 31.8% of the marketable natural gas in Canada in 2022. According to the CER, in 2024, Canada exported 8.58 billion cubic feet of natural gas per day and imported 1.53 billion cubic feet of natural gas per day, for a net export total of 7.05 billion cubic feet per day.

Natural Gas Imports/Exports Market

The Canadian natural gas market has been fully liberalised since gas pricing was deregulated in Canada in 1985. Investment is largely open and the commodity price is determined by supply and demand. The CER regulates the export and import of natural gas in Canada, as well as inter-provincial movements of natural gas. Exports and imports must be authorised under long-term licences of up to 40 years or short-term orders.

Canada's natural gas markets are heavily integrated with those in the US. Canada exports its surplus natural gas to the US and imports smaller amounts from the US into central and eastern Canada in return. Between 2007 and 2014, Canadian natural gas exports declined as American production increased. Canadian net exports rose in 2014 before steadily declining until 2020. After 2020, Canadian net exports have steadily risen, most recently from 5.66 billion cubic feet per day in 2023 to 7.05 billion

cubic feet per day in 2024. Some areas of eastern Canada have found it to be more economical to import natural gas from nearby US production areas rather than transporting western Canadian gas across the country.

The glut in production and excess capacity has led producers to invest in the potential of liquefied natural gas (LNG) exports to overseas consumers. There are currently two LNG import facilities:

- Saint John LNG (formerly Canaport LNG), located in New Brunswick.
- Port of Hamilton, located in Ontario and operating as an import facility for marine (bunkering) fuel.

There are currently seven LNG export projects in various stages of development in Canada, representing a potential production capacity of 50.3 million tonnes per annum of LNG. All export facilities are located in British Columbia. LNG Canada, located in Kitimat, British Columbia, will be Canada's first large-scale LNG export facility once complete. LNG Canada is forecasting first exports in 2025.

Domestic Market Structure

See [Domestic Market Structure](#).

Government Policy Objectives

Various broad federal and provincial policies affect the energy industry (see [Question 1](#)). The application of these policies is dependent on the geographical location of the natural gas and the specific type of development. Currently, the natural gas sector in Canada is concerned by a lack of regulatory certainty as new government climate change policies are developing. Beyond this, as with other resource-based industries, natural gas producers are concerned about market access. Natural gas producers require provincial and federal regulatory policies that allow infrastructure to be built to deliver natural gas to new markets to be served when and if further LNG export facilities are built.

As with oil exports, the CER monitors supply and demand to ensure that Canadian demand continues to be met. In Alberta, the AER issues licences for the removal of natural gas from the province. These licences are issued under the Alberta [Gas Resources Preservation Act](#), R.S.A. 2000, c. G-4 and are designed to ensure that the province maintains a sufficient gas supply.

With regards to government-mandated limitations on foreign ownership of natural gas infrastructure, see [Restrictions on Transfer](#).

3. Are domestic energy needs met by domestic oil and gas production?

Oil Needs

In 2023, Canada exported 3.996 million barrels per day of crude oil, an increase of 3% from 2022, of which 97% was destined for the US. The vast majority of Canada's crude oil is exported by pipeline, with a small percentage by sea and rail. In 2022, Canada imported around 467,000 barrels per day, despite its ability to meet its oil requirements through domestic production

alone. This represented a 1% decrease in the import of crude oil from 2021 and 227,000 barrels per day less than pre-pandemic import levels.

Natural Gas Needs

In 2023, the CER reported that Canada exported 8.12 billion cubic feet per day and imported 2.46 billion cubic feet per day of natural gas, leaving total net natural gas exports of 5.66 billion cubic feet per day. Despite that Canada's domestic natural gas production is sufficient to meet domestic demands, central and eastern Canada continue to import natural gas from the US, due to the lower cost of transportation. Canada exports very small amounts of LNG, and in 2023 imported 18.97 million cubic feet per day of LNG.

4. Are there specific government policies to encourage the exploration and production of conventional or unconventional gas or oil?

There are currently no specific federal or territorial policies encouraging exploration and production of unconventional oil and gas. However, the federal government has established a number of collaborative activities to address environmental and health concerns for developing mineral resources. For example, the *Office of Energy Research and Development* (OERD) is an interdepartmental programme which funds sustainable energy research and development.

Provinces have also regulated geographic restrictions on exploration. Restricted areas are often near aquifers or residential areas. In Alberta, the *Exploration Regulation 284/2006* identifies prohibited areas and restrictions on the conduct of geophysical exploration.

Rights to Oil and Gas

Ownership

5. How are rights to oil and gas held?

Ownership of oil resources in Canada is split between:

- The provincial Crown.
- The federal Crown.
- Private freehold ownership.

- First Nations.

The extent of private ownership largely depends on the time that the land was settled. Before 1887, the government did not reserve mines and minerals in the granting of land, whereas since 1887 the government's usual practice is to reserve mineral rights. In Alberta, the province owns about 81% of the mineral rights. The federal government owns 9% of the mineral rights, which includes most Indian reserves and national parks. The final 10% is held privately under freehold ownership. In areas of Canada which were settled earlier, such as southern Manitoba, up to 80% of mine and mineral rights are privately owned.

In Canada, mines and minerals are severable from other land rights. In many cases, surface rights owners do not also own the mines and minerals below the surface. The proportion of oil and gas interests which are held privately or by the government varies by province. To prevent waste of oil and gas resources under this regime, provinces have legislation designed to encourage efficient extraction. In Alberta, the Alberta *Oil and Gas Conservation Act*, R.S.A. 2000, c. O-6 creates a licensing regime for oil and gas wells that imposes certain spacing requirements between wells.

The federal government owns most mines and minerals on Indian reserves. The *Indian Oil and Gas Canada* (IOGC) (a specialist operating agency) is responsible for managing and regulating oil and gas resources on First Nation reserve lands across Canada. The revenue generated is held in trust for First Nations due to the Crown's fiduciary obligations to First Nations and the Crown's obligations under the federal *Indian Oil and Gas Act*, R.S.C. 1985, c. I-7. Exceptions to this ownership are those First Nation groups with settled land claims. If a land claim has been settled, a First Nations group may have freehold ownership of mines and minerals without management being conducted by the federal government. In 2014, an indigenous group was able to successfully assert title to land. In *Tsilhqot'in Nation v British Columbia, 2014 SCC 44*, Canada's highest court held that Aboriginal title was established in an area of interior British Columbia by demonstrating continuous and exclusive occupation prior to sovereignty.

In Alberta, oil and gas resources on Métis settlement lands, owned by the Métis Settlements General Council, are developed and managed in collaboration with the government of Alberta under the framework provided by a Co-Management Agreement between the provincial government and all eight Métis settlements.

Generally, oil and gas rights are subject to the law of capture, which means that the first person to "capture" the resource owns the resource. While the law of capture is the starting point, each province controls the ability of producers to extract hydrocarbons in a responsible manner that ensures conservation and prevents waste of oil and gas resources.

Nature of Oil and Gas Rights

6. What are the key features of the leases, licences, or concessions?

Lease/Licence/Concession Terms

Oil and gas exploration and production rights are typically conveyed by a private contract, such as a lease. Depending on the owner of the lands, the rights are granted as either a freehold or Crown lease agreement.

A freehold lease is granted on privately held lands. Although various lease forms are used within the industry, in 1988, the *Canadian Association of Petroleum Landmen* (CALEP) introduced the first standard oil and gas lease. A standard form lease agreement grants a primary term of three to five years during which the lessee can explore and start drilling in exchange for the payment of a royalty to the lessor. If the lessee fails to perform its obligation to drill during the primary term, the lease may expire. If the lessee drills within the primary term, the lease can extend indefinitely provided there is production or deemed production.

For Crown lands, the Crown issues a licence or lease for petroleum rights, natural gas rights or both. These rights can be issued on request or through a bid process. In Alberta, the initial term for a licence varies based on geographic location. The initial term is:

- Two years in the Plains Region.
- Four years in Northern Regions.
- Five years in the Foothills region.

A Crown lease is granted for this initial term and on application can be extended for an indefinite period provided there is either continuous production or it is productive (capable of producing in economic quantities). Under a Crown licence, once a well has been drilled, the mineral rights granted can be extended for an intermediate term of five years. During the intermediate term, licensees have similar rights and obligations to lessees under the primary term of a Crown lease.

Fees

An oil and gas lease or licence includes rental payments and royalty payments. The standard freehold royalty clause provides that a certain percentage of production is payable to the lessor.

In Alberta, the *Modernized Royalty Framework* provides that a company must pay a flat royalty of 5% on a well's early production until the well's total revenue (from all hydrocarbon products) equals the Drilling and Completion Cost Allowance. Afterwards, the company must pay higher royalty rates that vary depending on the resource and market prices. Royalty rates will drop to match declining production rates when the well reaches a maturity threshold.

Liability

Freehold and Crown leases or licences do not have specific liability associated with them. However, the applicable common law, oil and gas regulatory regime, environmental legislation and surface leases impose certain liabilities on the parties.

Restrictions

Licensees and lessees are restricted to taking only what has been granted to them in relation to the substance and zone under the terms of the lease or licence.

7. How are rights to explore for and produce oil and gas awarded?

Freehold leases are privately negotiated contracts. In contrast, Crown leases are acquired by public auction in which either the province designates the lands to be auctioned or an individual requests that certain parcels be put up for auction. The oil and gas rights are then leased to the highest bidder. The Crown retains title and only auctions the rights to exploit those minerals.

Transfer of Rights

8. How are oil and gas rights transferred?

Transfer of Rights

Generally, oil and gas rights in Canada are leased rather than sold. However, oil and gas rights that are subject to freehold ownership, like other real property rights, can be sold outright. As is the case for real estate, the transfer must be in writing.

If subject to a current lease, oil and gas rights can be assigned in most cases. Freehold leases can generally be transferred by assignment by the lessee to a third party, with notice to the lessor. A Crown lease can be transferred in whole or as an undivided part of the interest in a Crown disposition.

Restrictions on Transfer

The owner of freehold mines and minerals can generally dispose of their rights under any negotiated terms or conditions. If the rights are leased, restrictions on transfer are governed by the specific contractual rights agreed to under the oil and gas lease. Generally, Crown leases are freely assignable.

The federal *Investment Canada Act*, R.S.C. 1985, c. 28 includes restrictions on the sale of oil and gas rights and oil and gas companies to foreign investors. Under the Act, a foreign non-World Trade Organization (WTO) investor has their investment subject to review if it is a direct investment of over CAD5 million or an indirect transaction of over CAD50 million. In addition, large WTO country transactions can be reviewable. As of 2024 the threshold for review of WTO investments is CAD1.326 billion for the private sector and CAD528 million for a state-owned enterprise (SOE). SOEs are those that are owned, controlled or influenced, directly or indirectly, by a foreign government. The Minister applies the principles in the Investment Canada Act to determine whether a reviewable acquisition of control by a non-Canadian SOE is of net benefit to Canada. Under the Act, the burden of proof is on foreign investors to demonstrate to the satisfaction of the Minister that proposed investments are likely to be of net benefit to Canada. Failure to meet certain standards can result in the transaction being denied.

Regulation

Regulatory Bodies

9. Who regulates the exploration and production of oil and gas?

Oil

The regulation of the extraction of oil and gas varies depending on the jurisdiction and nature of the development. Federal regulatory bodies include the:

- CER, which regulates inter-provincial and international trade and commerce, including the import, export and transport of natural resources.
- *Impact Assessment Agency of Canada*, which provides environmental assessments in support of sustainable development for specific projects that trigger federal environmental assessments.
- *Department of Fisheries and Oceans*, which delivers programmes and services including monitoring pollution in waterways and conducting environmental assessments.

The following laws regulate the impact on fish, migratory birds, endangered species and waterways, respectively:

- The federal *Fisheries Act*, R.S.C. 1985, c. F-14.
- The federal *Migratory Birds Convention Act, 1994*, S.C. 1994, c. 22
- The federal *Species at Risk Act*, S.C. 2002, c. 29.
- The federal *Canadian Navigable Waters Act*, R.S.C. 1985, c. N-22.

Regulatory authority over oil and gas production and environmental protection within provincial boundaries lies primarily with provincial governments, and each province has its own environmental laws. However, the CER regulates "frontier lands" in Canada, defined by the federal *Canada Petroleum Resources Act*, R.S.C. 1985, c. 36 (2nd Supp.) to include:

- Nunavut and Sable Island.
- Submarine areas not within a province in the internal waters of Canada.
- The territorial sea or continental shelf of Canada.

In Alberta, the AER is the single regulator for upstream oil, gas and oil sands in the province. The *Alberta Land and Property Rights Tribunal* is the independent adjudicative tribunal established by the provincial Crown to manage conflicts over surface access rights when an owner of mineral rights is unable to negotiate land access required to produce oil and gas.

Natural Gas

See above, *Oil*.

The Regulatory Regime

10. What is the regulatory regime for onshore and offshore oil and gas exploration and production?

For onshore production, see [Question 5](#).

For offshore production, the relevant federal legislation includes:

- The *Canada Energy Regulator Act*.
- The *Energy Safety and Security Act*, S.C. 2015, c. 4.
- The *Canada Oil and Gas Operations Act*, R.S.C. 1985, c. O-7.
- The *Canada Petroleum Resources Act*.
- The *Canada Oil and Gas Drilling and Production Regulations*, SOR/2009-315.
- The *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act*, S.C. 1987, c. 3.
- The *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, S.C. 1988, c. 28

The legislation addresses:

- The lease of federally owned oil and gas rights on defined "frontier lands" to oil and gas companies.
- Development of oil and gas in marine areas controlled by the federal government.
- Implementation of agreements between the federal and provincial governments relating to offshore petroleum resources.

Regulation of Transportation by Pipeline

11. What regulatory requirements apply to the construction of oil and gas pipelines?

Oil Pipelines

A licence from the appropriate provincial regulator must be obtained to construct and operate a pipeline. The federal regulator, the CER, has jurisdiction if the pipeline crosses provincial or international boundaries. The appropriate surface rights must be

obtained from either the Crown or freehold owner. In Alberta, the Alberta *Surface Rights Act*, R.S.A. 2000, c. S-24 ensures that pipeline companies have a right to access lands to construct a pipeline. If an agreement cannot be freely negotiated, the AER may become involved to facilitate alternative dispute resolution. Ultimately, a right-of-entry order can be issued by the Land and Property Rights Tribunal if the terms and compensation are deemed appropriate.

Under the *Canada Energy Regulator Act*, the CER is delegated the power to ensure that pipeline tolls are just and reasonable. The CER accomplishes this by monitoring pipeline tolls and addressing formal complaints. If a tariff is deemed unreasonable by the board it can be disallowed.

Gas Pipelines

See above, *Oil pipelines*.

12. What regulatory requirements apply to the operation of oil and gas pipelines?

Federally (that is, CER) regulated oil pipelines operate as common carriers in Canada and as such are generally under a duty to receive, transport, and deliver all oil tendered to them, subject to capacity limits. If needed, the CER can order an oil pipeline to expand its facilities to meet a demonstrated need for additional capacity. Federally-regulated gas pipelines are generally considered to be contract carriers which distinguishes them from oil pipelines that are common carriers. Gas transmission contracts (tariffs and terms and conditions of access) are set by the CER through regulation. While access to gas transmission is generally by agreement, the CER can nevertheless direct a gas pipeline to provide available capacity to a party.

Owners of a pipeline gathering and transportation systems can grant access to third parties and charge a fee under a negotiated agreement. Standard industry agreements that set out costs and general terms of access are the norm, but there are exceptions.

In Alberta, if parties cannot agree on access, an application can be made to the AER for access rights to infrastructure that does not cross Alberta's borders. Under the *Oil and Gas Conservation Act*, the AER can order any oil and gas pipeline owner to operate as a common carrier so that a producer can access existing pipeline capacity. There are basic general requirements that must be met to obtain access, including that:

- Producible reserves must be available for transportation through an existing pipeline.
- There must be a reasonable expectation of a market for the oil or gas to be transported by the pipeline.
- The applicant was unable to negotiate a reasonable arrangement with the pipeline or processing facility owner.
- The proposed access is the only feasible way to economically transport the oil or gas, it avoids an unnecessary duplication of facilities or is clearly environmentally superior.

In Alberta, certain gas pipelines fall under the jurisdiction of the *Alberta Utilities Commission* (AUC), which has the authority to regulate rates and terms and conditions of access associated with such pipelines.

Health, Safety, and the Environment

Health and Safety

13. What is the health and safety regime for oil and gas exploration and production, and transportation by pipeline?

The federal government has a separate regulatory regime for health and safety that applies to the lifecycle of an oil and gas project from exploration, extraction, and transportation, including federal legislation such as:

- The *Food and Drugs Act*, R.S.C. 1985, c. F-27
- The *Canada Consumer Product Safety Act*, S.C. 2010, c. 21.
- The *Nuclear Safety and Control Act*, S.C. 1997, c. 9.
- The *Radiation Emitting Devices Act*, R.S.C. 1985, c. R-1.
- The *Hazardous Products Act*, R.S.C. 1985, c. H-3.
- *Hazardous Products Regulations*, SOR/2015-17.

All workplaces in Canada are subject to legislation governing occupational health and safety. Federally, the *Canada Labour Code*, R.S.C. 1985, c. L-2 outlines health and safety requirements for employees and includes the oil and gas occupational safety and health regulations specific to the industry. However, federal jurisdiction over employees is limited and the code only applies to certain aspects of oil and gas production, such as inter-provincial and international transport.

In addition, employees in the oil and gas sector are generally subject to provincial labour laws. In Alberta, workers are protected by the Alberta *Occupational Health and Safety Act* S.A. 2020, c. O-2.2 and the accompanying *Occupational Health and Safety Code 191/2021*. This legislation includes specific sections governing the oil and gas industry.

The Canadian Standards Association includes comprehensive standards for pipeline construction, operation, and maintenance. Accidents and incidents for rail and pipeline are investigated by the federal *Transportation Safety Board*. In the provinces, regulatory bodies with specific mandates and responsibilities regulate pipelines that do not cross provincial or international boundaries. In Alberta, the AER has issued directives which include requirements relating to:

- Pipeline spills.
- Noise control.
- Setbacks.
- Compliance assurance.
- Emergency preparedness.

- Reporting.
- Measurement.

For offshore oil, statutes such as the *Canada Oil and Gas Operations Act*, *Canada Shipping Act* and *Marine Liability Act* regulate exploration, production, processing and transport of oil and gas in federal marine areas.

Environmental Impact Assessments (EIAs)

14. Is an EIA required before extracting or processing onshore or offshore oil and gas?

Depending on the jurisdictional and environmental nature of the oil and gas project, either a provincial, federal, or both a provincial and federal environmental assessment may be required prior to extracting or processing onshore or offshore oil and gas.

In 2019, the *Canadian Environmental Assessment Act 2012* was repealed, and the *Impact Assessment Act*, S.C. 2019, c. 28, s. 1 (IAA) was enacted, which created the new *Impact Assessment Agency of Canada* (Agency). The IAA introduced a new early planning and engagement phase, increased public participation opportunities and new legislated timelines. In 2023, the Supreme Court of Canada deemed portions of the IAA to be unconstitutional. In response, the federal government amended the IAA in June of 2024 to clarify when impact assessments must be conducted and to ensure consideration of equivalent provincial assessments that may address adverse effects.

In Alberta, the AER is responsible for environmental assessments related to energy resource activities, while *Alberta Environment and Protected Areas* is responsible for the environmental assessment process related to non-energy resource activities. The determination of whether a provincial environmental impact assessment is required is based on whether the activity is mandatory, exempt, or discretionary under the Alberta *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 and its regulations.

15. What are the different stages of the EIA?

The different stages of an EIA are as follows:

- **Planning phase.** The assessment begins with the planning phase, which may last for up to 180 days. This phase determines whether an impact assessment of a designated project is required. During this time, the proponent must provide the Agency with a project description and a response to the summary of issues prepared by the Agency.

- **Impact statement phase.** Following this is the impact statement phase, during which the Agency gives tailored impact statement guidelines to the proponent. The proponent then has up to three years to prepare an impact statement. This three-year period can be extended at the request of the proponent.
- **Impact assessment phase.** Once the impact statement is received, the impact assessment phase begins. If led by the Agency, this phase has a timeline of 300 days. The impact assessment may also be substituted to a provincial, territorial, or indigenous jurisdiction, as identified in the planning phase or referred to a review panel (the Panel), where the Agency, in consultation with the relevant provincial, territorial, or indigenous jurisdiction, develops and engages on a Joint Review Panel Agreement. The Agency or the Panel seek feedback on the project from the public and other stakeholders and consider factors (set out in section 22 of the IAA). The Agency or the Panel will then prepare an impact assessment report, which is submitted to the Minister and posted online.
- **Decision.** Once the Minister receives the impact assessment report, they will then decide whether the project would be in the public interest, or whether the report should be referred to the Governor in Council. The Minister has 30 days, and the Governor in Council has 90 days to reach a decision. Decision statements are issued with each decision and posted online.
- **Compliance/enforcement.** Following the decision, the Agency undertakes compliance and enforcement measures to ensure compliance with the decision statement.

Environmental Permits

16. Is there a permit regime for environmental damage or emissions produced during the extraction or processing of oil and gas?

Each province has its own regime for permits relating to environmental damage and emissions. Generally, environmental approvals are required if any substance is released which could have an adverse impact on the environment. Permits for most activities are governed by provinces and issued by a provincial regulator. For example, in Alberta, the *Environmental Protection and Enhancement Act* is administered by directors that are responsible for particular administrative regions. All oil and gas activities receive such approval through the AER. The extent of approval required depends on the specific activity and environmental impact. Alberta's *Emissions Management and Climate Resilience Act*, Alta. Reg. 140/2007 gives the province the power to implement programmes to reduce emissions. Large emitters are subject to emissions limits under the *Technology Innovation and Emissions Reduction Regulation 133/2019*. Under the Alberta *Oil Sands Emissions Limit Act* S.A. 2016, c. O-7.5, overall oil sands greenhouse gas emissions are limited to 100 megatonnes per year.

In 2018, the federal *Greenhouse Gas Pollution Pricing Act*, S.C. 2018, c. 12, s. 186 (GHGPPA) was enacted to impose minimum carbon pricing in provinces that have not yet developed a carbon pricing framework. Several provinces challenged the constitutionality of the GHGPPA and in 2021 it was deemed constitutional by the Supreme Court of Canada. British Columbia, Northwest Territories, and Quebec have provincial or territorial carbon pollution pricing systems in place. Alberta, along with the remainder of the provinces and territories in Canada, is subject to the federal carbon pricing system.

Environmental Concerns

17. Are there any specific government policies and/or incentives aimed at meeting the environmental concerns associated with the exploration and production of oil and gas?

Current federal government policy focuses on responsible resource development. The current government has emphasised that future projects must obtain a "social licence." Many environmental policies in Canada incorporate the "polluter pays" and "precautionary" principles. This means that regulations are designed to ensure that parties responsible for producing pollution are responsible for paying for the damage done to the natural environment, and to prevent harm when not all evidence is readily available.

Contentious extraction methods, such as hydraulic fracturing (fracking), remain legal and regulated in most jurisdictions within Canada. However, some areas are averse to such development, for example:

- In 2018, the province of Québec proposed measures to tighten oil and gas drilling, and to ban fracking across the province.
- In Nova Scotia, a ban on fracking was legislated in 2014 by an amendment to the Nova Scotia *Petroleum Resources Act*, R.S.N.S. 1989, c. 342. The amendment introduced a prohibition on high-volume hydraulic fracturing in shale, unless for the purpose of testing or research.

To meet environmental concerns, the federal *Oil Tanker Moratorium Act*, S.C. 2019, c. 26 received royal assent in June 2019. The Act bans oil tanker traffic carrying more than 12,500 metric tonnes of certain petroleum products from the northern part of Vancouver Island to the Alaska border. In Alberta, the AER has developed seismic protocols to limit the potential of induced earthquakes from hydraulic fracturing through the implementation of seven subsurface orders each relating to a specific region.

Waste

18. What are the regulations on the disposal of waste products resulting from oil or gas extraction or processing?

The *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33 and its regulations regulate pollution prevention and waste management in matters of inter-provincial or international application. Other federal statutes of note include:

- The *Fisheries Act*.
- The federal *Antarctic Environmental Protection Act*, S.C. 2003, c. 20.

- The federal *Arctic Waters Pollution Prevention Act*, R.S.C. 1985, c. A-12.

Environmental protection legislation in each province governs oil and gas waste management. For example, in Alberta, the *Environmental Protection and Enhancement Act* regulates waste disposal and includes regulations such as the:

- *Waste Control Regulation*, Alta. Reg. 192/96.
- *Designated Materials Recycling and Management Regulation*, Alta. Reg. 93/2004.

In British Columbia, the main legislation which governs the disposal of waste products is the British Columbia *Environmental Management Act*, S.B.C. 2003, c. 53 and its regulations such as the:

Hazardous Waste Regulation, B.C. Reg. 63/88.

Oil and Gas Waste Regulation, B.C. Reg. 254/2005.

Flares and Vents

19. Do regulations apply to the flaring or venting of oil and gas?

Flaring is highly regulated across Canada. For example, in Alberta, the AER has published *Directive 060*, which regulates flaring and venting in the province. Flaring gas that could be economically conserved makes the flared gas ineligible for a royalty waiver under the *Otherwise Flared Solution Gas Royalty Waiver Program*, which is aimed at encouraging the reduction of solution gas flaring in Alberta. In British Columbia the *Flaring and Venting Reduction Guideline* regulates flaring, venting and incinerating and the Canadian Association of Petroleum Producers reports that British Columbia's goal to eliminate all routine flaring has been achieved.

For development under federal jurisdiction, flaring is prohibited without special approval, unless it is necessary because of an emergency situation. In 2016, Canada committed to eliminating routine flaring by 2030, when it endorsed the *World Bank's Zero Routine Flaring by 2030 initiative*.

Decommissioning

20. What are the decommissioning obligations and liabilities that arise?

Wells, pipelines and facilities under federal jurisdiction must be decommissioned and abandoned in accordance with the *Canada Oil and Gas Drilling and Production Regulations*. In addition, the CER regulates inter-provincial and international pipeline abandonment. Decommissioned pipelines must be removed or cleaned and treated before being left in the ground. As part of this process, the *Canadian Energy Regulator Act* may impose conditions to protect the public interest.

Provincial legislation provides that all inactive wells, pipelines and facilities must be properly abandoned and reclaimed by the licensee. Provincial regulators enforce timely decommissioning. For example, to minimise the risk of licensees being unable to fund decommissioning, *Alberta* and *Saskatchewan* have implemented the Licensee Liability Rating Program which uses a ratio of deemed assets to deemed liabilities to determine a licensee's ability to fund remediation. If the ratio is below a certain level, the regulator can require additional security deposits. In exceptional circumstances (such as a licensee's default in providing acceptable security) the AER can appoint a receiver to take over the assets of a defaulting licensee. On 1 December 2021, the AER introduced its new Licensee Life-Cycle Management Program in *Directive 088*, which departed from the prescribed formula of asset versus liability comparison and provided a holistic approach to risk assessment that considers financial health, asset lifespan, compliance and closure data.

The 2019 *Redwater* decision involved the ability of a receiver to "renounce" non-producing AER licences and thereby avoid the licensee's abandonment liability (which is regulated under the provincial legislation) At issue in the proceeding was whether the provincial legislation was in conflict with federal bankruptcy legislation. The Supreme Court of Canada found no conflict between the federal bankruptcy legislation and the provincial regulatory regime, holding that abandonment and reclamation obligations are binding on bankruptcy trustees and supersede the priority of secured creditors (*Orphan Well Association v. Grant Thornton Ltd.*, 2019 CarswellAlta 141). All licences received by oil and gas companies are subject to end-of-life obligations. A trustee or receiver cannot disclaim licences, having received the benefits of the assets when they were productive. Therefore, the trustee or receiver must use the bankrupt company's assets to meet the abandonment and reclamation obligations attached to the licences.

In Alberta, the *Orphan Well Association* (OWA) (that is, a non-profit organisation overseen by the AER) completes closure work on wells, facilities, pipelines and associated site that do not have a financially viable and responsible owner, known as "orphan" sites. The OWA is governed by the *Alberta Oil and Gas Conservation Act* and *Orphan Fund Delegated Administration Regulation 45/2001* and is funded through AER-directed levies on oil and gas licenses and large industry facilities.

Enforcement of Regulation

21. What are the various enforcement powers of the regulator(s)?

Orders

Federally, the CER and other agencies such as *Fisheries and Oceans Canada* and *Transport Canada* have powers to issue binding orders under their enacting legislation that allow them to enforce regulatory compliance.

Fines and Penalties

Non-compliance with the CER can result in monetary penalties of up to CAD100,000 per day per violation for a company. In addition, the *Environmental Enforcement Act* enhanced the enforcement tools and fine regime under the *Canadian Environmental Protection Act*, adding tailored ranges of fines for different categories of offenders and introducing minimum fines and higher maximum fines for serious offences. Each province also has its own regulator with varied powers to issue orders, fines and penalties.

22. Is there a right of appeal against regulatory decisions?

The applicable regulatory regime in Canada generally provides for a right of appeal from administrative bodies to the courts. Judicial interpretation of statutory privative clauses and statutory rights of appeal has resulted in a high degree of curial deference to administrative tribunal decisions. In general, the time frame to appeal ranges from 30 to 60 days but varies depending on the jurisdiction and level of decision being appealed.

Sale and Trade

23. How is trade in oil and gas usually carried out?

Trade in oil and gas in Canada operates on a free market basis. Generally, private companies conduct sales of oil and gas at the wholesale and consumer level. However, in some provinces a monopoly on consumer gas sales may be held by a provincially owned Crown corporation.

There is no separate wholesale and consumer market.

24. Are oil and gas prices regulated?

As a commodity, oil and gas prices in Canada are unregulated and market-driven. However, the transmission, distribution, and retail sale of oil and gas may be subject to regulation by provincial governments (which have powers under the *Constitution of Canada* to manage non-renewable resources). Provincial policies may impact the consumer price. For example, consumer gasoline prices are regulated in the Atlantic provinces and Quebec to reduce pricing volatility at the retail level. Still, the pricing in these provinces remains strongly associated with market conditions. Additionally, the distribution of gas can be monopolised by a crown corporation or otherwise regulated. This is the case in Saskatchewan where SaskEnergy distributes all-natural gas in the province and dictates the price of natural gas at the consumer level.

As with other goods, the federal *Canadian Competition Bureau* has an oversight role in ensuring that prices remain fair and to prevent anti-competitive behaviour.

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