

Alberta's Responsible Energy Development Act

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On June 17, 2013, the majority of the *Responsible Energy Development Act (REDa)*¹ came into force. *REDa* replaces the *Energy Resources Conservation Act (ERCA)*² and amends several other Alberta acts and regulations.³ This new piece of legislation substantially changes Alberta's regulatory framework in relation to energy resource activities.

The Alberta Energy Regulator

The main regulatory change brought in by *REDa* is the creation of the Alberta Energy Regulator (AER).⁴ The AER is the result of recommendations from Alberta's Regulatory Enhancement Task Force, which was established in 2010 to simplify and improve the Province's regulatory regime. The stated purpose of the AER, set out in section 2 of *REDa*, is to provide for the "efficient, safe, orderly and environmentally responsible development of energy resources in Alberta." Essentially, the AER is meant to establish a single regulatory body to comprehensively manage all aspects of energy resource development, from commencement to completion of an energy project.

Changes to Other Legislation and Regulatory Bodies

Prior to *REDa*, Alberta Energy, Alberta Environment and Sustainable Resource Development (Alberta Environment) and the Energy Resources Conservation Board (ERCB)⁵ were involved at different stages of an energy development

project's life cycle. *REDa* dissolves the ERCB and reallocates responsibilities between different ministries. A transition committee has been appointed to supervise the Province's transition from the ERCB to the new regulator. Alberta Energy and Alberta Environment will jointly administer *REDa*.

To give the AER its broad jurisdiction over energy resource activities, *REDa* has introduced major changes to the Province's regulatory landscape. Most significantly, the AER has replaced the ERCB.⁶ ERCB Board members had a both a managerial and adjudicative role. In contrast, the AER will be managed by a board of directors and a chair, with hearings conducted separately by independent hearing commissioners. The AER has also assumed part of Alberta Environment's functions in relation to the disposition and management of public lands, the conservation and management of water, and the protection of the environment.

The AER's broad new role has been made possible through Part 4 of *REDa*, which gives the AER jurisdiction over portions of several statutes (referred to as "specified enactments"), which were previously managed by Alberta Environment and Alberta Energy. These statutes include the *Public Lands Act*,⁷ the *Water Act*,⁸ the *Environmental Protection and Enhancement Act (AEPEA)*,⁹ and Part 8 of the *Mines and Minerals Act*.¹⁰ Alberta's primary environmental legislation, *AEPEA*, is still in force; however, it will now be applied in conjunction with *REDa*.¹¹ *REDa* also amends several other important environmental statutes, including the *Oil and Gas Conservation Act*,¹² the *Oil Sands Conservation Act*,¹³ and the *Pipeline Act*.¹⁴

The AER's Powers, Duties, and Functions

The AER will be solely responsible for regulating Alberta's upstream oil, gas, oil sands, and coal projects. This includes making decisions on energy development applications, monitoring and enforcing compliance, and decommissioning developments. The AER has been given the powers, duties, and functions of government officials, as they relate to all "energy resource activities."¹⁵ These powers, duties, and functions are set out in sections 2(a) - (j) and 14 - 22 of *REDA*.

Relevant Legislation and Regulations

While *REDA* is the AER's governing statute, the AER will also exercise its powers, duties, and functions in accordance with various "energy resource enactments." Energy resource enactment is defined in section 1(1)(j) of *REDA* as including the *Coal Conservation Act*,¹⁶ the *Gas Resources Preservation Act*,¹⁷ the *Oil and Gas Conservation Act*, the *Oil Sands Conservation Act*, the *Pipeline Act*, the *Turner Valley Unit Operations Act*,¹⁸ and any regulations associated with these acts.

Several regulations have also been enacted under *REDA*, all of which came into force on June 17, 2013.

- The *Miscellaneous Corrections (Alberta Energy Regulator) Regulation (Miscellaneous Corrections Reg.)*¹⁹ addresses how *REDA* will impact the many Alberta energy-related regulations. The list of affected statutes and regulations are set out in sections 85 through 111 of *REDA*.
- The *Security Management for Critical Upstream Petroleum and Coal Infrastructure Regulation (Security Management Reg.)*²⁰ sets out the security measures that critical facilities must establish, including the preparation of a corporate emergency response plan.
- The *Responsible Energy Development Act Transition Regulation (Transition Reg.)*²¹

explains how Alberta will transition from the ERCB, and its governing legislation, *ERCA*, to the new AER and *REDA*. It notes that all proceedings commenced under *ERCA*, which are not completed by June 17, 2013, will be completed by the AER under *REDA*.

- The *Alberta Energy Regulator Administration Fees Rules (Fees Rules)*²² detail the administration fees that an operator of a well, coal mine, or oil sands project must pay each fiscal year.
- The *Responsible Energy Development Act General Regulation (General Reg.)*,²³ the most detailed regulation associated with *REDA*, explains the application and hearing process.

The Alberta government has also created the *Alberta Energy Regulator Rules of Practice (Rules of Practice)*.²⁴ The *Rules of Practice* deal with the specifics of the application process, including hearings, regulatory appeals, and reconsiderations. It also addresses cost issues for proceedings under *REDA*.

The Application Process

All applications regarding energy resource activities, under either an "energy resource enactment" or a "specified enactment," must be made to the AER.²⁵ The application process is set out in Part 2 of *REDA*. The form of these applications is outlined in section 3(1) of the *Rules of Practice*. An application under *REDA* may be combined with applications under another statute, and the AER may consider them jointly or separately.²⁶ The AER must give public notice of all applications received.²⁷

When considering an application, the AER must consider at least the following three factors:²⁸

- the social and economic effects of the energy resource activity;
- the effects of the energy resource activity on the environment; and



- how the use of the land on which the energy resource activity is or will be located will impact a landowner.

Hearings

The hearing process, which is explained in Part 2, Division 2 of *REDA*, has been streamlined under the new act. Hearings are not required for every application, and the AER has broad discretion on whether or not to conduct a hearing.²⁹ If a hearing is required, it will be held by one or more hearing commissioners.³⁰ The AER must give public notice of all hearings.³¹

At this point, the AER may direct parties to “alternative dispute resolution” (ADR), which was previously referred to as “appropriate dispute resolution.”³² ADR provides facilitation, mediation, and assistance to parties who want to resolve various concerns and issues.³³

The AER must make a written decision within 90 days from the conclusion of a hearing, and must publish the decision on its website.³⁴

All proceedings commenced under *ERCA* that have not been completed by June 17, 2013 will be completed by the AER under *REDA*.

One significant change to the hearing process involves standing to challenge an application. Prior to *REDA*, anyone who was “directly affected” by an application could file an “objection.” Section 32 of *REDA* narrows the scope of standing to a person who is “directly and adversely affected” by an application. A person that meets this threshold may file a written “statement of concern” with the AER in accordance with section 6 of the *Rules of Practice*.³⁵ A statement of concern must be made while the application is still under consideration. Filing a statement of concern, however, does not guarantee that the AER will conduct a hearing on the matter.

Reconsiderations and Appeals

The AER has discretion to reconsider its own decisions, and it can do so with or without a hearing.³⁶ AER decisions can also be appealed either through an internal review or to the Alberta Court of Appeal.

The internal review is a “regulatory appeal.” An “eligible person”³⁷ may request a regulatory appeal of an “appealable decision.”³⁸ The request must follow the form and process set out in section 30 of the *Rules of Practice*. This request does not operate as a stay of the decision being appealed.³⁹ A hearing will only be conducted for a regulatory appeal if the eligible person’s concerns have not already been addressed through an ADR process, or have not been otherwise resolved by the parties.⁴⁰ The AER must issue a written decision within 90 days from the conclusion of a hearing.⁴¹

Part 2, Division 5 of *REDA* has altered how decisions may be appealed to the Alberta courts. Previously, these regulatory decisions could be reviewed by the Alberta Court of Queen’s Bench through a judicial review application. Now, the final level of appeal is to the Alberta Court of Appeal, and only if leave to appeal is granted by the court.⁴² Additionally, the Environmental Appeal Board will no longer hear appeals from decisions concerning energy resource activities.⁴³

Enforcement

The AER’s enforcement powers are set out in Part 5 of *REDA*. The AER has all the powers and functions relating to inspections, investigations and other compliance and enforcement matters under energy resource enactments and specified enactments.⁴⁴

Significantly, the AER has the power to issue administrative penalties.⁴⁵ It has up to two years from the date of contravention or non-compliance to issue an administrative penalty. *REDA* has substantially increased the penalties from those



currently levied by the ERCB. Corporations can now be fined up to \$500,000 per day, and individuals can be fined up to \$50,000 per day.⁴⁶ The penalty must be paid within 30 days and is enforceable as a judgment of the Alberta Court of Queen's Bench.⁴⁷

The AER must publish the particulars of all enforcement actions taken under *REDA*, including the names of the licensees, approval holders, or operators.⁴⁸

Government Involvement in the AER and Its Policy

REDA has also introduced changes to the source of Alberta's energy-related policy. Previously, the ERCB had a policy setting role in addition to its administrative and adjudicative roles. Now, energy-related policy will be directed by the new Policy Management Office, a separate entity from the AER. Further, the AER's policies can be shaped by specific directions from the Alberta Energy Minister or the Alberta Minister of Environment and Sustainable Resource Development (Alberta Environment Minister).⁴⁹

REDA also gives the Alberta government a substantial amount of control over the AER. For example, section 16 of *REDA* requires the AER to disclose any information to the Alberta Energy Minister or Alberta Environment Minister upon request. Further, these ministers may order the AER to follow certain priorities and/or guidelines to ensure its work is "consistent with the programs, policies and work" of the Alberta government.⁵⁰ Further, the Alberta Cabinet nominates the AER's chair, board of directors, and hearing commissioners.⁵¹

Public Interest Changes

Public interest considerations have also been altered by *REDA*. Under section 3 of *ERCA*, the ERCB had to consider whether the project was in the "public interest." Since *REDA* has repealed

ERCA, and it does not replicate the "public interest" provision, the AER will likely not be required to consider whether a particular energy project is in the public interest.

Voluntary Landowner Registry

In creating a new registry for private surface agreements, *REDA* has also introduced greater protection for such agreements in Alberta.⁵² If a dispute arises between parties, the AER will now be able to order the holder of a registered private surface agreement to comply with its terms or conditions.⁵³ This, however, does not alter the Surface Rights Board's ability to set compensation regarding surface rights.

Conclusion

REDA and the AER indicate that Alberta's regulatory regime surrounding energy resource activities will become much simpler and more comprehensive. However, the full impact of *REDA* will not be completely understood until it is fully implemented over the next year. *REDA* is going to be implemented in three phases.⁵⁴ Phase one began on June 17, 2013, with the majority of *REDA* coming into force and the official launch of the AER. Phase two and three will follow, with an expected completion date of spring 2014. In phase two, the AER will assume additional responsibilities from Alberta Environment and create the private surface agreement registry. New rules for public participation will also be introduced. In the final phase, all environmental and water jurisdictions under *REDA* will come into force and will be transferred to the AER. During this transition period, companies will continue to make applications to both the AER and Alberta Environment.

More information about the new AER is available online at www.aer.ca. The AER may be contacted by email, phone, or mail.⁵⁵

Endnotes

- ¹ S.A. 2012, c. R-17.3. *REDA* became law on December 10, 2012. Available online at www.qp.alberta.ca/1266.cfm?page=r17p3.cfm&leg_type=Acts&isbncln=9780779769377&display=html.
- ² R.S.A. 2000, c. E-10.
- ³ On June 4, 2013, the Alberta government announced that *REDA* comes into force on June 17, 2013, by Order in Council 163/2013. Several sections are omitted from this, including: *REDA*, Part 3, ss 1(1)(s)(i) - (v), 2(1)(b) and (2)(b), (c), (d), (e), (h) and (i), 31, 36(a)(i) - (iii) and (b)(i), 84, 88(2), 97(9) and (12)(b), 101(12)(a), 102 and 110. These sections will be phased in over the next year by proclamation from the Alberta government.
- ⁴ For more information, see the AER's website at www.aer.ca.
- ⁵ *ERCA* established the Energy Resources Conservation Board (ERCB). *ERCA* is repealed by *REDA*, s. 112, and the ERCB is dissolved.
- ⁶ The ERCB previously regulated the development of Alberta's energy resources.
- ⁷ R.S.A. 2000, c. P-40.
- ⁸ R.S.A. 2000, c. W-3.
- ⁹ R.S.A. 2000, c. E-12.
- ¹⁰ R.S.A. 2000, c. M-17.
- ¹¹ *REDA*, s. 88.
- ¹² R.S.A. 2000, c. O-6.
- ¹³ R.S.A. 2000, c. O-7.
- ¹⁴ R.S.A. 2000, c. P-15.
- ¹⁵ "Energy resource activity" is defined in section 1(1)(i) of *REDA*, as "(i) an activity that may only be carried out under an approval issued under an energy resource enactment, or (ii) an activity described in the regulations that is directly linked or incidental to the carrying out of an activity referred to in subclause (i)."
- ¹⁶ R.S.A. 2000, c. C-17.
- ¹⁷ R.S.A. 2000, c. G-4.
- ¹⁸ R.S.A. 2000, c. T-9.
- ¹⁹ Alta. Reg. 89/2013.
- ²⁰ Alta. Reg. 91/2013. This regulation expires on May 31, 2018, unless repassed.
- ²¹ Alta. Reg. 92/2013.
- ²² Alta. Reg. 98/2013.
- ²³ Alta. Reg. 90/2013. This regulation expires on May 31, 2018, unless repassed.
- ²⁴ Alta. Reg. 99/2013. These rules expire on May 31, 2018, unless repassed.
- ²⁵ *REDA*, s. 30.
- ²⁶ *REDA*, s. 30(2).
- ²⁷ *REDA*, s. 31, *Rules of Practice*, s. 5.
- ²⁸ General Reg., s. 3.
- ²⁹ *REDA*, s. 34(1).
- ³⁰ *REDA*, ss 12, 34(2). For a list of the current hearing commissioners (and Board members), see the Alberta Energy website at www.energy.alberta.ca/Initiatives/3489.asp.
- ³¹ *Rules of Practice*, ss 8, 38.
- ³² *REDA*, s. 46, *Rules of Practice* s. 16.
- ³³ For more information, contact the ADR program at ADR@aer.ca.
- ³⁴ *REDA*, s. 35, *Rules of Practice*, ss 28, 38.
- ³⁵ The AER has created a bulletin on how to file a statement of concern, available online at www.aer.ca/documents/enerfaqs/AER_EnerFAQs15_StatementOfConcern_Final.pdf.
- ³⁶ *REDA*, ss 42, 43.
- ³⁷ "Eligible person" is defined in section 36(b) of *REDA*. It is also defined in section 29 of the *Rules of Practice* as a person who is "directly and adversely affected" by a decision of the Regulator made under an energy resource enactment without a hearing" [emphasis added].
- ³⁸ "Appealable decision" is defined in section 36(a) of *REDA*.
- ³⁹ *REDA*, s. 38(2).
- ⁴⁰ *REDA*, s. 40; General Reg., s. 4.
- ⁴¹ Rules of Practice, s. 33.
- ⁴² *REDA*, s. 45(1). Note that only questions of jurisdiction or law are appealable to the Alberta Court of Appeal. *REDA*, s. 45(1). An application for leave to appeal must be filed and served within a month after the AER's decision. *General Reg.*, s. 5(1).



⁴³ REDA, ss 2(2), 25.

⁴⁴ REDA, s. 69.

⁴⁵ REDA, s. 70. Administrative penalties may be issued if a person contravenes a provision of an ALSA regional plan, REDA, or an energy resource enactment prescribed in the regulations. They may also be issued if a person fails to comply with a term or condition of an approval, order, direction, or declaration of the regulator.

⁴⁶ S. 86(13), REDA if found guilty of an offence under the *Coal Conservation Act*, R.S.A. 2000, c. C-17. S. 91(6), REDA, if found guilty of an offence under the *Gas Resources Preservation Act*, R.S.A. 2000, c. G-4. S. 97(29), REDA, if found guilty of an offence under the *Oil and Gas Conservation Act*. S. 99(11), REDA, if found guilty of an offence under the *Oil Sands Conservation Act*. S. 101(16), REDA, if found guilty of an offence under the *Pipeline Act*.

⁴⁷ REDA, ss 71(3), 75.

⁴⁸ REDA, s. 76; General Reg., s. 6.

⁴⁹ REDA, s. 67.

⁵⁰ REDA, s. 67.

⁵¹ REDA, ss 5(1), 11(1).

⁵² REDA, s. 63.

⁵³ REDA, s. 64.

⁵⁴ For more details, see www.aer.ca/documents/enerfaqs/AER_EnerFAQs01_What_is_the_AER_Final.pdf.

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