



## THE ROLE OF MUNICIPALITIES AND REGIONAL HEALTH AUTHORITIES IN OIL AND GAS DEVELOPMENT IN ALBERTA

Article by Nickie Vlavianos ♦

### Introduction

The potential for municipalities and regional health authorities to affect the course of oil and gas development in Alberta was most recently brought to light in January 2006 when the Energy and Utilities Board (EUB) closed Compton Petroleum Corporation's controversial application to drill six sour gas wells just southeast of Calgary.<sup>1</sup> Earlier, the EUB had approved the drilling of four wells on a number of conditions, including the filing of an emergency response plan (ERP) by a specified deadline.<sup>2</sup> To meet this deadline, Compton was required to work with the City of Calgary and the Calgary Regional Health Authority (CRHA) to develop an acceptable and workable ERP. Compton said it was the failure by the City and the CRHA to cooperate adequately in these negotiations that prevented it from filing the ERP as required.<sup>3</sup> The municipality and the regional health authority thus directly affected Compton's ability to proceed with the project.

Another recent example of local authorities affecting the course of oil and gas development in Alberta comes from Strathcona County, east of Edmonton. In 2003, the county created an energy exploration committee to make recommendations for how oil and gas development should proceed in the county.<sup>4</sup> Although a bylaw was ultimately not passed, the committee developed a protocol that it has asked the oil and gas industry to follow, and the EUB to implement. The protocol's stated purpose is to have oil and gas development occur in the county with the least possible impact on the environment, health, safety, and quality of life of the county's residents. The protocol adds to provincial public notification and consultation requirements, and obliges all oil and gas

operators to comply with the county's standards for, among other things, emergency preparedness, land reclamation, environmental and habitat protection, and restrictions on flaring and noise levels.<sup>5</sup>

Strathcona County's oil and gas protocol undoubtedly raises questions about jurisdiction over oil and gas development in Alberta. What are the powers of municipalities in the face of the broad mandate granted to the EUB? The Compton matter raised similar questions for regional health authorities in the province. Subsequent to the EUB's approval, the CRHA filed an application for leave to appeal the decision, but it also threatened to issue an order under public health legislation to prevent the drilling if its concerns about health risks were not addressed.<sup>6</sup>

This article examines the jurisdiction and role of Alberta municipalities and regional health authorities in oil and gas development. It begins with an analysis of the position of municipalities and then moves to consider that of regional health authorities. The article finds that, despite the EUB's jurisdiction over project approval, there are important avenues available for municipalities and regional health authorities to try to ensure that their concerns are adequately addressed.

### Municipalities

Historically, it is probably fair to say that municipalities in Alberta have, generally-speaking, preferred to leave the regulation of oil and gas development to the province. Most municipalities had (and many still do not have) neither the resources nor the expertise to take a proactive role. Nonetheless, as knowledge



## RÉSUMÉ

La récente demande déposée par Compton Petroleum Corporation pour forer six puits à gaz acide juste à l'extérieur de Calgary a mis en lumière la possibilité pour les municipalités et les autorités régionales de santé d'influencer le développement des ressources naturelles en Alberta. Ce cas a soulevé des questions relatives à la juridiction et au rôle des municipalités et des autorités régionales de santé eu égard au développement des hydrocarbures. Cet article se penche sur ces questions et conclut que, bien que leur juridiction soit limitée, les municipalités et les autorités régionales de santé disposent de moyens importants pour s'assurer que leurs préoccupations locales et régionales soient prises en compte lors du développement des hydrocarbures.

about health and environmental risks continues to grow alongside increasing development, many municipalities are being asked to do more. As the level of government closest to the community affected by the development, it is logical that citizens would turn to their municipality to have their concerns addressed.

Oil and gas development in Alberta is, however, currently regulated primarily by the province's energy regulator, the EUB. Before the EUB, municipal governments are simply like any other interested party. They are entitled to receive notice of any proposed activity from the applicant and they can raise any concerns they have with the company involved.<sup>7</sup> If these concerns cannot be resolved, municipalities may have standing to trigger a public hearing to express their concerns directly before the Board.<sup>8</sup> These concerns may or may not be addressed by the EUB, who makes the final decision on whether a project is to proceed or not and, if so, under what conditions.<sup>9</sup>

An analysis of the role and powers of municipalities in oil and gas development in Alberta necessarily begins with the *Municipal Government Act*, R.S.A., 2000, c. M-26 (the "MGA"). Because municipalities are creatures of provincial legislation, they can exercise only those powers given to them by the province. Most relevant in terms of oil and gas in Alberta are the planning and development powers provided for in Part 17 of the MGA, and the general bylaw-making powers in Part 2.

### *Planning and development powers*

Undoubtedly, some of the most significant powers granted to municipalities are the powers to control and regulate land use and development within their borders. In Alberta, Part 17 of the MGA enables municipalities to create statutory plans (including municipal development plans and area structure plans) and land-use bylaws. These documents assist approving authorities (such

as development and subdivision authorities, planning commissions and appeal boards) to make decisions on proposals to designate, subdivide or develop land.

With respect to oil and gas development, however, two provisions notably limit municipal control. First, section 618 of the MGA states that Part 17 of the Act (and the regulations and bylaws under it) do not apply when a development or subdivision is effected only for the purpose of an oil and gas well or battery, or an oil and gas pipeline. The effect of this language must be that a municipality's planning and development plans and bylaws do not apply to wells, batteries or pipelines, and that no planning approvals are required for these facilities.<sup>10</sup> This of course excludes the vast majority of oil and gas operations in the province. Nonetheless, where an application is contested and is therefore dealt with by the EUB, it is possible that the Board might look at municipal plans and bylaws in the context of wells, batteries and pipelines. The EUB has said that it may look at relevant land-use bylaws and area structure plans if it finds this necessary to determine whether or not to approve a particular project.<sup>11</sup>

The second provision in Part 17 of the MGA that limits municipal control over oil and gas development through planning and development powers is section 619. This section addresses oil and gas facilities not covered by section 618. Although these other facilities (for example, processing plants) need municipal planning approval, section 619 states that any licence or approval granted by the EUB with respect to the particular operation prevails over any municipal statutory plan, land-use bylaw, or subdivision or development decision. The section further says that if a municipality receives an application for a statutory plan amendment, land-use bylaw amendment, subdivision approval or development permit that is consistent with a licence or approval granted by the EUB, the municipality must approve the application to the extent that it complies with the EUB's licence or approval. An



appeal to the Municipal Government Board is available on the question of whether the proposed statutory plan or land-use bylaw amendment was consistent with the EUB licence or approval.

A number of decisions have considered the effect of section 619. In 2002, the Municipal Government Board concluded that the clear purpose of section 619 must be to promote the timely development of projects approved by the EUB, and to remove or restrict any municipal obstacles that could hinder or unduly burden the applicant with an EUB approval.<sup>12</sup>

In 2000, the EUB itself had to consider the effect of section 619 when Shell Canada Ltd. applied to construct a natural gas-fired cogeneration plant on its Scotford Upgrader site in Strathcona County.<sup>13</sup> At the hearing, an issue arose about whether the County's current planning documents supported this heavy industrial use. Shell argued that section 619 of the MGA made the particular land use designation given by a municipality largely irrelevant to the EUB's consideration of a project. The Board's mandate is to decide on the basis of whether the project is in the public interest, not whether a project is compatible with an existing municipal land-use designation. In response, the County submitted that, because section 619 in effect makes the EUB the final arbiter of land-use issues where oil and gas projects are concerned, the Board must take municipalities' land-use planning laws into account. If it did not, citizens and municipalities in Alberta would be deprived of an effective forum within which to deal with land-use planning matters arising from oil and gas development.

On the effect of section 619, the EUB concluded that the clear language of the provision means that Board licences and approvals take precedence over land-use bylaws or other planning instruments enacted by municipalities, as well as over decisions of local development appeal boards and other planning agencies. The provision does not, however, empower the EUB to assume authority for land-use planning generally. This remains the domain of municipal governments. And, since the EUB may be required to consider land-use issues (for example, land-use impacts from the proposed development on neighboring lands), a municipalities' land-use policies and plans may be relevant to the Board's determination of whether a project is or is not in the public interest. Elsewhere, the Board has stated as follows:

"[I]and use planning regimes are relevant to the Board's consideration because they indicate from the municipality's perspective, the nature of the past, present, and future uses of a proposed site or lands in close proximity to a site. The Board is thus better able to determine whether the relative impacts created by energy facilities on the use of land are acceptable."<sup>14</sup>

Thus, a strongly-worded land-use bylaw, for example, is something the EUB might consider in any given application.

Nonetheless, although it *may* look at municipal plans and bylaws, the EUB has also clearly said that the ultimate effect of section 619 of the MGA is that the EUB does not *have to* give effect to such instruments in determining applications before it. Approval or rejection of an application is based solely on criteria contained in the Board's legislation, and not on municipal plans or bylaws. Moreover, section 619 neither requires the Board to consider land-use planning issues generally, nor does it require the EUB to defer its consideration of an application until the municipal development permit process has been completed.<sup>15</sup>

The EUB has, however, highlighted an important qualification in the language of section 619 on a number of occasions. As noted, the provision gives precedence to EUB approvals and requires a municipality to approve an application for a land-use bylaw amendment, a subdivision approval or a development permit, but only to the extent that the application complies with an EUB licence or approval. The Board has explained as follows:

"EUB approvals of energy facilities will take precedence over land-use planning instruments enacted by municipalities to the extent that the Board has addressed land-use issues in its decision. The following passage from Professor F.A. Laux's *Planning Law and Practice in Alberta* (2d ed.) on page 3-17 is instructive:

'Where ... the AEUB has sanctioned a project that also requires planning approval, the project may not be vetoed or altered in any way by the planning body in respect of considerations and issues that have been addressed by the provincial body. On the other hand, the planning agency's powers remain unfettered in respect of planning considerations and issues that have not been addressed by the provincial body.'<sup>16</sup>

Thus, in an appeal under section 619 concerning an application to construct a power plant just east of Calgary, the Municipal Government Board (MGB) emphasized that, although the EUB is not constrained by land-use planning documents, it had acknowledged that the details of land-use planning for the site were to be left to the municipality involved. AES Calgary Ltd. had obtained approval from the EUB to construct the plant, but when it applied for redesignation of the site, the M.D. of Rockyview refused to pass the bylaw amendment it had drafted with the company. The MGB concluded that section 619 required the municipality to approve the application. This did not mean, however, that the municipality was left without any control over planning and development. According to the MGB,





“... section 619 was written to allow a municipality some control over how a mega-project is developed. There are many planning considerations despite the overall approval issued by a body that is not the municipal council. The M.D. [of Rockyview] and AES identified those considerations and prepared a comprehensive bylaw amendment which is intended to provide municipal control over the issuing of development and building permits.”<sup>17</sup>

The MGB therefore concluded that section 619 does not mean that the municipality is without authority or involvement in the implementation of EUB approvals. To the contrary, municipalities retain substantial control over the issuance of development permits and the rules under which the project must be constructed. In this case, since a number of land-use matters had not been resolved by the EUB, all of the following were local concerns that the municipality could properly address in a land-use bylaw amendment: traffic impacts; access and construction of access roads; construction management; dust and noise control; chemical storage and waste disposal; landscaping; storm and water management; and reclamation. For example, it was held that the municipality could set minimum setback requirements for transmission and cooling towers from any roads, as well as maximum facility capacity limits and restrictions on the height of buildings and structures. The municipality could also place conditions on the issuance of a development permit, such as requiring the preparation of a satisfactory construction management plan and a traffic impact analysis.

### **General bylaw-making powers**

Along with planning and development powers, the general bylaw-making powers granted to Alberta municipalities in Part 2 of the MGA may also be relevant in the context of oil and gas development. Oil and gas wells and pipelines are not exempted from the application of Part 2 of the Act; nor are there any provisions giving precedence to EUB licences and approvals. Two general bylaw-making powers are particularly relevant. Subsection 7(a) of the MGA empowers municipalities to pass bylaws respecting the safety, health and welfare of people and the protection of people and property, and subsection 7(c) grants bylaw-making power in regard to nuisances.

Any bylaw passed under either provision cannot, however, be inconsistent with any federal or provincial enactment. The MGA defines a provincial enactment as an Act of the Alberta Legislature and a regulation made under any such Act. Where inconsistent, section 13 of the MGA says the municipal bylaw is of no effect. Thus, where there are specific statutory provisions or regulations that deal with a matter relating to oil and gas development, a municipality could not introduce an inconsistent bylaw. Where, however,

the matter is not covered by an enactment (for example, policies, directives and guidelines that are not incorporated in legislation or in regulations), section 13 would have no application.<sup>18</sup>

Moreover, a bylaw is not inconsistent simply because another law deals with the same subject matter. Rather, courts have held that a municipal bylaw is inconsistent with a provincial enactment only when they both deal with similar subject matters, *and* when obeying one law necessarily means disobeying the other. Thus, a bylaw is invalid only if following it requires non-compliance with a provincial or federal statute or regulation. If it is possible to follow both the bylaw and the other law, the bylaw is valid.<sup>19</sup>

As noted, subsection 7(a) of the MGA grants Alberta municipalities the power to pass bylaws for the safety, health and welfare of people. This is a power that has been granted in one form or another to municipalities across the country. In 2001, the Supreme Court of Canada considered this type of provision in Quebec municipal legislation in the case of *Hudson*. In response to residents' health and safety concerns, the Town of Hudson had passed a bylaw banning the aesthetic use of pesticides for landscaping and lawn care. A landscaping company challenged the bylaw as being outside the town's jurisdiction.

Since there was no specific legislative power in regard to pesticides, the court focused on whether the health and safety general bylaw-making power provided the municipality with the requisite jurisdiction. The court held that it did. In its view, the purpose of the bylaw was to limit the use of possibly harmful pesticides to promote the health of the town's citizens. This purpose fell squarely within the health component of the town's general bylaw-making power. The court cautioned, however, that such open-ended health and safety provisions do not confer unlimited powers on municipalities. They allow for the enactment of bylaws that are genuinely aimed at furthering goals of public health and safety, but not for some ulterior purpose.

Based on the case of *Hudson*, municipalities in Alberta should have the power to regulate for genuine health and safety purposes in the context of oil and gas development. Any such bylaw must not, however, be inconsistent (as outlined above) with any provincial law or regulation that deals with the same subject matter.

Along with the general bylaw-making power in relation to health and safety, the power in relation to nuisances granted by subsection 7(c) of the MGA is also relevant in the oil and gas context. The nuisances of concern could include smoke, flaring, emissions, odours and noise. Although primarily regulated by the EUB, subsection 7(c) empowers municipalities to regulate as well, as long as any adopted bylaws are not inconsistent with provincial regulations.



As discussed above, this means that following the bylaw would require non-compliance with EUB requirements. If so, the bylaw would be invalid. In terms of augmenting or adding to requirements, however, this likely would not lead to inconsistency. For example, in the case of setback distances from gas wells to residences, there are examples of municipalities having required larger setback distances than those mandated by the EUB.<sup>20</sup> The EUB has acknowledged the jurisdiction of municipalities in regard to nuisance impacts, and it tells industry that its setback distances are minimum requirements that may be augmented by the particular municipality involved.<sup>21</sup>

### *Emergency response planning*

Along with the possibility of directly imposing requirements on oil and gas development through planning and development powers or general bylaw-making powers, in the case of sour gas wells and facilities, municipalities have another avenue available through which to ensure that local concerns are properly addressed. As part of the approval process, companies are required to submit a site-specific emergency response plan (ERP) for a number of more risky sour gas wells and facilities. To develop their ERPs, companies must consult with the municipalities affected by the proposed development. EUB Directive 071 notes that:

“Clear identification of the roles and responsibilities to be carried out during an emergency is essential to public safety. The local municipal authorities (rural and urban) have a mandated responsibility to protect the public within their area of jurisdiction and play a key role in the licensee’s emergency response.

Therefore, coordination of roles and responsibilities with the local municipal authorities, including the director(s) of Disaster Services of all municipalities within and adjacent to the [ERP], the medical officer of health (or designate) and/or the director of Environmental Health services of affected regional health authorities must take place, be well understood, and agreed to prior to conducting the public involvement program. If changes are required as a result of public consultation, further discussions must take place with the appropriate local government authority.”<sup>22</sup>

The cooperation of municipalities is thus critical for emergency response planning. As a result, municipalities can ensure that their concerns about public health and safety are dealt with adequately through these plans. As the Compton case highlighted, failure to reach agreement on these matters could significantly impact the outcome of a particular project.

### *Summary*

From this brief review, it is clear that, although the EUB is the primary regulator of oil and gas development in Alberta and has the ultimate initial say over whether a particular project will proceed or not, municipalities have a number of options available for imposing conditions on how a project will proceed. Doing so may allow municipalities to respond to local concerns in regard to environmental, health and quality of life impacts.

### **Regional Health Authorities**

Along with municipalities, regional health authorities represent a local constituency that might have its own views about whether and how oil and gas development should proceed in the province. Although in the past it was generally unusual for a health authority to take an interest in oil and gas matters, the current state of knowledge about health risks and effects has required some regional health authorities in the province to become increasingly involved in oil and gas development.

### *Regional Health Authorities Act*

In Alberta, each health region is administered by a regional health authority pursuant to the *Regional Health Authorities Act*, R.S.A. 2000, c. R-10 (the “RHAA”). The responsibilities of a regional health authority include promoting and protecting the health of the population in the health region and working towards the prevention of disease and injury. Regional health authorities are also required to assess on an ongoing basis the health needs of the health region under its administration. Section 5 of the RHAA grants the health authority the “final authority” in the health region in respect of these matters.

The RHAA also directs the regional health authority to set up community health councils, whose duties may include “gathering information and public input respecting health, health needs and health services” as well as “providing advice to the regional health authority about health issues, health needs and priorities, access to health services, and the promotion of health.”<sup>23</sup>

Despite the broad mandate, the role of regional health authorities in the context of health risks and effects from oil and gas operations has been more limited. Regional health authorities are, like municipalities, potential interveners in the EUB’s process. They are entitled to notice of an application and may present their views to the Board in a public hearing, but the ultimate decision on health risks and effects is that of the EUB alone. The Board has said, however, that it takes the views of health authorities seriously. In an application for a natural gas-





fired power plant to be built just east of Calgary, the EUB stated that it was not alone in deciding whether the plant could be operated in a safe and efficient manner without compromising the environment or the health and safety of the citizens of Alberta. The Board said that other agencies, including the Calgary Regional Health Authority (CRHA), would also have to endorse the project before it could be built. The EUB stated as follows:

“The Board is also aware that the [CRHA] has the mandate to protect the health of the citizens of Calgary and area. For projects in and around the Calgary area that could have health impacts, it is the responsibility of the CRHA to carefully review and consider these projects with a view to public health issues.”<sup>24</sup>

Despite this recognition, at the end of the day, it appears the EUB does not have to defer to the relevant health authority on health matters. Similar to the Compton case, in 1999 the EUB approved an application to drill a critical sour gas well just northwest of Calgary in the face of strong opposition from the CRHA. After a review of the evidence, the Board concluded that, in its view, the public safety risks associated with the proposed well were similar to those of existing facilities and representative of normal industrial risks accepted by society.<sup>25</sup> On a leave to appeal application to the Alberta Court of Appeal, the CRHA argued that the EUB had erred by granting the well licence “... without giving due or any consideration to the health and safety concerns set out by the CRHA, the governing entity charged with the sole duty and mandate to protect the health of those persons affected.”<sup>26</sup> In particular, the CRHA referred to those provisions of the RHA that require the health authority to promote and protect the health of the population in its region, and to the provision that gives it the “final authority” in this regard. In short, the CRHA argued that greater weight should have been given to its views on health risks.

In denying the CRHA’s request for leave, Hunt J.A. confirmed that a regional health authority holds the same status as any other intervener before the EUB. To her mind, although some of the CRHA’s statutory responsibilities may overlap with those of the Board, the EUB would not be able to fulfill its obligation to determine whether a project is in the public interest (having regard to its social, economic and environmental effects) if it had to pay special attention to the arguments of other entities having their own statutory mandates. In her view, the impact of such an approach would be the creation of different categories of interveners in EUB hearings, those who have to be listened to and those who really have to be listened to. She concluded that there is nothing in the EUB’s legislation to suggest that such a category of “super-intervener” was ever contemplated by the Legislature.<sup>27</sup>

Thus, although regional health authorities are mandated to protect the health of Albertans and have the expertise to do so, it appears that the EUB has the final say in terms of the approval of a particular oil and gas application. Nonetheless, along with expressing its concerns to the EUB, a regional health authority also has powers under the *Public Health Act*, R.S.A. 2000, c. P-37 (the “PHA”) that it might be able to draw upon in the right circumstances.

#### *Public health legislation*

Under the PHA, a regional health authority may declare a local state of public health emergency where it is satisfied that a public health emergency (which includes the occurrence or threat of the presence of a chemical agent or radioactive material that poses significant risk to public health) exists or may exist, *and* where prompt coordination of action or special regulation of persons or property is required in order to protect the public health.<sup>28</sup> In the context of oil and gas operations, it is possible that these two conditions could be met in certain circumstances, but this would likely be rare. One could perhaps envision a situation of a well blow-out having occurred (or a significant release of some toxic substance) where either no emergency response plan was in place, or where the plan was not producing the appropriate level of response. In other words, there would need to be a reason why prompt coordination of action by a regional health authority would be required.

Another power granted to regional health authorities under the PHA may have broader application. Executive officers of a regional health authority are empowered to inspect public and private places where, on reasonable and probable grounds, it is believed that a nuisance exists. The Act defines a nuisance as “a condition that is or that *might become* injurious or dangerous to the public health”.<sup>29</sup> Section 62 of the PHA then authorizes executive officers to issue an order which could include various abatement measures, including requiring the closure of the place inspected or any part of it. The “might become” part of the nuisance definition in the PHA suggests that a regional health authority could issue such an order in the case of, for example, a *threat* of a release of sour gas. But what the effect of this order would be in the face of a valid EUB licence allowing the facility to operate is unclear. On the one hand, the EUB clearly has been given overriding jurisdiction over oil and gas development in the province. On the other hand, section 75 of the PHA says that its provisions prevail over any other enactment (except for the *Alberta Bill of Rights*) that it conflicts with or is inconsistent with.

#### *Emergency response planning*

As with municipalities, regional health authorities are critical to the drafting of a proper emergency response plan in the case of certain sour gas wells, facilities and pipelines. EUB



Directive 071 requires operators to consult and coordinate with regional health authorities in the plan's preparation. Thus, regional health authorities have an important avenue available through which to have their concerns addressed. As the outcome of the Compton application demonstrated, a failure to deal adequately with these concerns through the ERP could lead to significant delays, or even to indefinite postponement of a project.

## Conclusion

There is no doubt that the EUB has broad and all-encompassing jurisdiction over oil and gas development in Alberta. This is especially true in terms of the initial decision over whether a particular project will proceed or not. Nonetheless, both municipalities and regional health authorities in the province have potential powers that could be invoked in the right circumstances. Some of these, like the mandate of municipalities to deal with nuisances have already been used, and have been acknowledged by the EUB. Others, like the power of regional health authorities to shut down facilities where a nuisance exists, remain in the realm of conjecture.

Ultimately, however, what the outcome in Compton highlighted is that the cooperation of municipalities and regional health authorities has become key to responsible oil and gas development in Alberta. For its part, the EUB has recently acknowledged this in the context of sour gas development. In response to a 2000 recommendation by a multi-stakeholder advisory group on public safety and sour gas, the EUB has adopted two protocols to help increase and improve its relations with local health and municipal authorities across the province. In effect for an initial two-year trial period, the protocols are intended to provide for the involvement of both entities in EUB policy-making and, where applicable, for their early and effective involvement in the review of applications dealing with sour gas and public health and safety.<sup>30</sup> It remains to be seen how well these protocols will work in practice, and whether they will be enough to adequately address the local and regional concerns of municipalities and regional health authorities in oil and gas development in Alberta.

◆ Nickie Vlavianos is a Research Associate at the Canadian Institute of Resources Law. Research for this article was funded by the Alberta Law Foundation.

## Notes:

1. EUB, *News Release: EUB Closes Compton Critical Sour Gas Well Applications* (January 4, 2006).
2. *Compton Petroleum Corporation, Applications for Licences to Drill Six Critical Sour Natural Gas Wells, Reduced Emergency Planning Zone, Special Well Spacing and Production Facilities, Okotoks Field (Southeast Calgary Area)*, EUB Decision 2005-060, 22 June 2005.

3. See R. D'Aliesio, "The Compton Factor", *Calgary Herald* (8 January 2006) and R. D'Aliesio, "Regulator refuses Compton delay", *Calgary Herald* (22 December 2005).
4. "Energy Exploration Committee Established", *News Release of Strathcona County, Alberta*, October 2003.
5. See Strathcona County, *The Strathcona County Protocol for Seismic Surveying, Drilling, Construction and Operation of Oil and Gas Facilities in Strathcona County* (Sherwood Park, AB: Strathcona County, 2004).
6. See M. Lang, "Compton granted gas well delay", *Calgary Herald* (16 August 2005).
7. *Energy Development Applications and Schedules*, EUB Directive 056 (September 2005).
8. Apparently municipalities will not always be granted standing for a hearing by the EUB. In a recent decision, the Board denied standing to a municipality with respect to a proposed gas well to be located within the municipality's boundaries: see *Decision on Requests for Consideration of Standing Respecting a Well Licence Application by Compton Petroleum Corporation (Eastern Slopes Area)*, EUB Decision 2006-052 (8 June 2006).
9. See the *Energy Resources Conservation Act*, R.S.A. 2000, c. E-10 and the *Oil and Gas Conservation Act*, R.S.A. 2000, c. O-6.
10. See F. Laux, *Planning Law and Practice in Alberta* (Edmonton: Juriliber, 2005) at 4-36 to 4-38.
11. See, for example, *Canadian 88 Energy Corp. Application to Drill a Level 4 Critical Sour Gas Well in the Lochend Field*, EUB Decision 99-16 plus Decision Summary (7 July 1999).
12. *Re AES Calgary ULC*, [2002] A.M.G.B.O. No. 110 (2 July 2002).
13. *Shell Canada Ltd. Cogeneration Plant and Hydrogen Pipeline, Fort Saskatchewan Area*, EUB Addendum to Decision 2000-30 (25 July 2000).
14. *AES Calgary ULC 525-MW Natural Gas-Fired Power Plant Application No. 2001113*, EUB Decision 2001-101 (December 2001) at 4.
15. *Prehearing Meeting, EPCOR Power Development Corporation and EPCOR Generation Inc., ATCO Pipelines*, EUB Memorandum of Decision (May 2000).
16. *Supra* note 13 at 10.
17. *Supra* note 12 at para. 89.
18. See, for example, *Bell Canada v. CTEA* (2003), 227 D.L.R. (4th) 193 (S.C.C.).
19. See *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, [2001] S.C.R. 241 [hereinafter *Hudson*].
20. In the Saddle Ridge area of Calgary, for example, the city required larger setback distances from gas wells to residential development: see T. Brown, *An Overview of Initiatives Taken in the Calgary Area to Coordinate the Recovery of Sour Gas Reserves with Surface Development*, Background Report prepared for the Provincial Task Force Investigating Improved Coordination between Subsurface and Surface Development (Calgary, 26 June 2003), online: <http://www.eub.ca/docs/public/sourgas/PSSGRec5-OverviewofInitiatives.pdf>.
21. See, for example, *EUB General Bulletin GB 99-4* (12 March 1999).
22. *Emergency Preparedness and Response Requirements for the Upstream Petroleum Industry*, EUB Directive 071 (June 2003), incorporating errata to April 2005, at 8.
23. *Community Health Councils Regulation*, A.R. 202/97, ss. 3(1)(c)(i) and (ii).
24. *Supra* note 14 at 5.
25. *Supra* note 11.
26. *Calgary North H<sub>2</sub>S Action Committee v. Alberta (Energy and Utilities Board)*, [1999] A.J. No. 1284 (C.A.) at para. 7.
27. *Ibid.*
28. PHA, s. 52.2.
29. PHA, s. 1(ee) [emphasis added].
30. See EUB, "EUB Reaches out to Municipalities and Health Authorities", *Across the Board* (May 2005) at 3.



## NEW PUBLICATIONS

### ***Environmental Agreements in Canada: Aboriginal Participation, EIA Follow-Up and Environmental Management of Major Projects***

by Ciaran O'Faircheallaigh. 2006. 216 pp. ISBN 0-919269-50-8 \$35.00 (softcover)

There is increasing recognition both in academic and policy debates of the need for specific initiatives to ensure effective follow-up to Environmental Impact Assessment (EIA) and to achieve meaningful Aboriginal participation in environmental management of major resource projects. This book examines the potential of a novel policy instrument, Environmental Agreements involving industry, government and Aboriginal peoples, to promote these goals.

### ***Enforcing Wildlife Law***

by Arlene Kwasniak. 2006. 19 pp. Wildlife Law Paper #2. \$10.00 (softcover)

This publication is the second in a series of papers on Canadian Wildlife Law being published by the Canadian Institute of Resources Law. Most would readily assert that without enforcement, wildlife laws would not have significant impact. Yet it is not always clear what enforcement is and how it is carried out. This paper explains components of enforcement.

### ***Albertans' Concerns about Health Impacts and Oil and Gas Development: A Summary***

by Nickie Vlavianos. 2006. 16 pp. Human Rights Paper #3. \$10.00 (softcover)

This paper is the third publication to come from the Human Rights and Resource Development Project, the purpose of which is to explore the relationship between two important areas of law: human rights, as they are protected by law in Alberta, and the legal regime pursuant to which natural resources, such as oil and gas, are developed in the Province.

#### **How to Order:**

Postage & Handling within Canada: \$5.00 first book, \$2.00 each add'l book.  
Postage & Handling outside Canada: \$10.00 first book, \$4.00 each add'l book.  
All Canadian orders are subject to the 7% Goods and Services Tax.

To order publications, please send a numbered authorized purchase order or a cheque payable to the "University of Calgary". MasterCard and VISA will also be accepted. Please send orders to: Canadian Institute of Resources Law, MFH 3330, University of Calgary, Calgary, Alberta, Canada T2N 1N4.

Subscribe electronically to *Resources*  
Please provide your e-mail address to [cirl@ucalgary.ca](mailto:cirl@ucalgary.ca)

**Canadian Institute of Resources Law  
Institut canadien du droit des ressources**

MFH 3330, University of Calgary, 2500 University Drive N.W., Calgary, AB T2N 1N4  
Telephone: 403.220.3200 Facsimile: 403.282.6182 E-mail: [cirl@ucalgary.ca](mailto:cirl@ucalgary.ca)  
Website: [www.cirl.ca](http://www.cirl.ca)



## RESOURCES

NUMBER 94 – SPRING 2006

*Resources* is the newsletter of the Canadian Institute of Resources Law. Published quarterly, the newsletter's purpose is to provide timely comments on current issues in resources law and policy. The opinions presented are those of the authors and do not necessarily reflect the views of the Institute. *Resources* is e-mailed free of charge to subscribers. (ISSN 0714-5918)

**Editors:** Nancy Money and Sue Parsons

**Canadian Institute of Resources Law  
Institut canadien du droit des ressources**

THE INSTITUTE

The Canadian Institute of Resources Law was incorporated in September 1979 to undertake and promote research, education and publication on the law relating to Canada's renewable and non-renewable natural resources.

The Institute was incorporated on the basis of a proposal prepared by a study team convened by the Faculty of Law at the University of Calgary. The Institute continues to work in close association with the Faculty of Law. It is managed by its own national Board of Directors and has a separate affiliation agreement with the University of Calgary.

#### **Executive Director**

J. Owen Saunders

#### **Research Associates**

Janet Keeping, Steven Kennett,  
Monique Passelac-Ross,  
Nickie Vlavianos, Mike Wenig

#### **Director of Administration**

Nancy Money

#### **Assistant to the Executive Director**

Pat Albrecht

#### **Information Resources Officer**

Sue Parsons

#### **Board of Directors**

Nigel Banks, James Frideres,  
Patricia Hughes, Clifford D. Johnson,  
Arlene Kwasniak, KayLynn Litton,  
Richard Neufeld, F. Van Penick,  
David R. Percy, J. Owen Saunders,  
Alan Scott, Brian Wallace

THE BOARD

