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New energy regulator will weaken environmental protection, say critics

BY SHEILA PRATT, EDMONTON JOURNAL MARCH 17, 2013



Alberta pumpjack

Photograph by: Bruce Edwards Bruce Edwards , Edmonton Journal

EDMONTON - Some critics are worried the Alberta government's new regulatory body for oil, gas and coal could result in weaker, less transparent application of environmental protection laws.

Energy Minister Ken Hughes is trying to soothe those concerns, saying a new government branch, the Policy Management Office, will monitor the Alberta Energy Regulator to make sure that doesn't happen.

Hughes said the government has built in checks to ensure the new regulator applies the laws evenly when it takes over the job of issuing water permits and other environmental permits — a job currently done by Environment and Sustainable Resource Development.

Both the energy minister and the Policy Management Office can give directions to the regulator if necessary, Hughes said, adding there will be regular discussions between the parties, though the regulator operates at arm's length from government.

MLA Rachel Notley, the New Democrat's environment critic, is worried Environment's ability to do its job may be severely curtailed, especially when it comes to ensuring water quality, when it loses jurisdiction over energy sector permits.

Under the old system, Environment issued permits under three provincial laws, the Water Act, the Public Lands Act, and the Environmental Protection and Enhancement Act, for all industries.

Under the new system, energy sector permits are removed from Environment — in effect, putting outside government the job of administering three key environmental laws for one major sector of the economy, Notley said.

This move may “decimate” the ministry's ability to protect the environment, she said.

She wondered if Environment will be hamstrung, asking how the department can develop coherent water policy when a major sector of the economy is outside its jurisdiction.

“I think the future of the ministry is in great jeopardy and their ability to enforce laws in other areas is very compromised if the new act takes away all the decisions relating to oil, gas and coal development.”

Under Bill 2, the Responsible Energy Development Act, the new regulator starts in June.

For oil companies, the change is welcome, as it means there's one window for all permits under those laws, said Greg Stringham of the Canadian Association of Petroleum Producers, or CAPP.

“At the end of the day it will be better to deal with one body, rather than three.”

But more importantly, Environment can concentrate on policy work, while the regulator administers the laws and permits, which makes for a clearer division of labour, Stringham said.

Cindy Chiasson from the Environmental Law Centre said using one regulator to issue all permits isn't necessarily bad for the administration of

environmental laws.

But the new body will need a lot of expertise and new mechanisms so the public can monitor its work to be sure it is being as tough on the energy industry as it should be, she said.

“For the new ERCB (Energy Resources Conservation Board) to make good environmental decisions, it needs the expertise,” Chiasson said.

“The next question — will the energy industry get a break on environmental permits because it has its own regulator? You need a mechanism to make sure the new regulator is not going easy on the energy industry ”

The Environment Department declined to say if any of its experts are moving over to the new regulator.

They are free to apply for those jobs when they are posted, spokeswoman Nikki Booth said.

But there will still be plenty of work for the department in devising land-use plans for each watershed in the province. The Lower Athabasca Land Use Plan in the northeast is still being worked on.

Wade Clark is the boss of the of the new 12-person Policy Management Office. He’s confident the energy industry won’t be getting any breaks when it comes to applying environmental laws.

“There are good checks and balances in the system.”

For instance, if the regulator wants to make technical changes to water permits for oil companies only, it has to give the government 120 days notice, he said.

“So the government has time to decide whether it needs to step in and develop a new policy, or adopt the new one proposed by the new regulator.”

Clark’s office has a second job — to take the lead in developing new environmental policy, which means lots of public engagement.

In the old world, the government often dragged its feet on environmental

policy for the fast-moving energy industry, so the ERCB stepped into the gap. For example, it came up with new regulations on tailings ponds when there was no sign the Environment Department would do so.

“Now those policy discussions will go directly to the new policy management office, and that gives everyone the right forum to have a policy discussion,” Energy Minister Hughes said.

Clark’s office resides in the Energy Department, but Environment is closely involved, he said.

“We’ll make sure the heavy lifting in making policy stays with AESRD (Alberta Environment and Sustainable Resource Development) and other departments.”

CAPP is pleased with that new division of labour, which it says provides “much needed clarity.”

By default, public hearings on specific projects became the only forum to discuss issues such as air pollution and habitat destruction — not the appropriate place.

“Now we’ll have a clear distinction — it’s the government that sets the policy and that’s separate from the regulator,” Stringham said.

When necessary, “the regulator will ask government for policy — and it should be more efficient.

Chris Severson Baker of the Pembina Institute, an environmental research group, said environmentalists like the idea of a better forum to raise their issues, but will closely watch the Policy Management Office to see if it measures up.

“If there is intent for government to be more proactive on policy, that’s good,” he said.

But so far, no rules are set about who can initiate a policy discussion or how environmental groups can bring ideas forward to the new office, he said.

“People are optimistic about this, with reservations. They want to know how

their issue will be raised.”

Notley, meanwhile, said she’s skeptical about the government’s message that there will be plenty of consultation on new policy.

“The message is, it is more important for Albertans to be at the front end on policy development,” she said.

But in the approval process, there is less room for public hearings on contentious projects and tighter restrictions who can appear at public hearings, she said.

The new regulator is not obliged to hold a hearing when requested and that decision is harder to appeal, Notley added.

If a hearing is denied, a person can appeal to officials within the board, and any legal challenge must go to the Alberta Court of Appeal, not the lower Court of Queen’s Bench.

The appeal court only has the power to send the decision back to the regulator for reconsideration, so “it sends up a never-ending loop,” she said.

“This is exactly the opposite direction it should go.”

St. Albert lawyer Keith Wilson said rural landowners are worried about the lack of an outside appeal process and the narrower definition of intervener status.

Only those who are negatively and adversely affected are eligible for a hearing, narrower wording than in the old act, said Chiasson of the Environmental Law Centre.

“That’s too narrow, I’d put in ‘demonstrable and genuine interest.’ ”

Hughes said he has opened the system so people can “self-identify” as someone with an interest. But the board does not have to accept them as interveners.

Unlike the ERCB, the new regulatory agency will have a small board of governors and those governors, or commissioners, will not sit on the panels

for public hearings. The minister of energy will appoint the board.

Various experts will be hired for the public hearing panels, depending on the expertise needed, such as land issues or pipelines, Hughes said.

This article can be found on website: AlbertaLandownersCouncil.com