

Alberta Energy Regulator Suspends Environmental Monitoring Due To COVID-19



On May 20, 2020, the Alberta Energy Regulator ("AER") announced sweeping temporary suspensions to environmental monitoring requirements across Alberta's energy industry. The suspensions are a follow-up to the Minister of Environment and Parks and Minister of Energy's earlier suspensions to certain environmental reporting requirements. This is a significant development as the previous measures essentially suspended requirements to report routine monitoring information, while this new step actually suspends the underlying requirement to monitor in certain circumstances. The AER states this step is a measured response to public health concerns from the COVID-19 pandemic including legitimate concerns that energy operators will not be able to meet certain monitoring requirements while complying with the COVID-19 public health orders and guidelines.

Scope of the New Suspensions

While the AER caveats the announcement with the comment that "there must be a demonstration that the public health orders pose a challenge in completing the monitoring activity" and "any deferral of monitoring must have a low risk of potential short- and long-term impacts", the scope of the monitoring suspensions is significant. The suspension affects the following monitoring activities:

- Surface water quality testing and analysis with the exception of surface water released to the environment.
- All groundwater sampling under *Water Act* licences and approvals but at least one monitoring event must take place in 2020.
- Soil monitoring and groundwater monitoring under the *Environmental Protection and Enhancement Act* (EPEA) approvals with the exception of any monitoring necessary to protect human health and ecological receptors.
- Lab testing of water released except for domestic wastewater.
- Volatile organic compounds and reduced sulphur compound monitoring, including fugitive emissions surveys carried out by third-party contractors.
- Fugitive emissions leak detection and repair (LDAR) programs carried out by third-party contractors. Methane monitoring requirements must still be met.
- Quality Assurance Plan (QAP) audits and verifications, including third-party audits, under the Continuous Emission Monitoring System (CEMS) Code. Approval holders are still required to maintain CEMS monitoring and report

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- Wildlife monitoring programs but wildlife deterrents and mitigations are to remain in place.
- Wetland monitoring.
- All research requirements under EPEA approvals.
- All reclamation monitoring programs. The mitigation and repair of potential impacts, such as weed infestations and soil erosion, must continue.
- Five-year integrity testing of aboveground storage tanks. Monthly visual inspections for evidence of problems must continue.
- In addition, the AER provided the following regulatory modifications:
- Operators that conduct twice-annual surveys to determine the volumes of fluid tailings and treated fluid tailings in their storage facilities are now required to perform only one of those surveys in 2020.
- Pipeline deactivation – Internal and external corrosion mitigation and monitoring must continue on deactivated pipelines that are susceptible to corrosion.
- Approval holders may apply to the AER to modify the frequency and timing of manual stack testing (stack surveys) and similar activities.

Ongoing Reporting of Emergencies and Documentation of Reporting

The AER advises that operators must continue to report emergencies, including incidents, contraventions, and releases that have or may have the potential to impact the environment or public safety. Further, operators must continue to record and retain complete documentation relating to any reporting.

Interaction with Federal Requirements

Similar to the initial measures implemented by the Province, the federal government has suspended certain requirements to report data due to COVID-19, however the data must still be collected. To date, the federal government has not suspended any monitoring requirements.

Termination

The AER suspensions and modifications will apply for so long as Ministerial Orders 17/2020 and 219/2020 and the public health orders are in effect, which are currently scheduled to last until August 14, 2020. However, the soil monitoring and groundwater under EPEA approvals must resume no later than September 30, 2020, with at least one monitoring event taking place in 2020. All timelines are subject to change as the situation develops.

Effect on Industry

The suspensions and modifications come as a welcome relief to operators currently strained by COVID-19 restrictions on operations. Industry had raised

concerns that the reporting suspensions put in place in March 2020 did not provide sufficient relief as the main challenges during the COVID-19 pandemic relate to attending on site and fulfilling the monitoring requirements, not the reporting of those results.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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