

Possible Costs from Spills and Debris: Discussion Paper

INTRODUCTION AND PURPOSE

Oil and gas activities include drilling and completing wells, and building and maintaining pipelines, facilities and other oil and gas infrastructure. These activities may result in spills and debris.

The Office of the Regulator of Oil and Gas Operations (OROGO) works to reduce the potential for spills and debris by requiring operators to have appropriate systems and practices, including Environmental Protection Plans. OROGO regularly inspects operators to make sure they are operating safely and meeting their commitments, based on its Compliance and Enforcement Policy.

Spill: An unauthorized release of petroleum.

Operators are responsible for cleaning up any spills or debris they cause. However, in a small number of cases, spills and debris may cause loss or damage, or costs to individuals or governments. Oil and gas laws in the Northwest Territories provide a way for the Oil and Gas Regulator to ensure that these amounts are paid for.

Debris:

- Material that broke off or was deliberately removed during the activity, or
- Any buildings or other structures left behind without the permission of the Regulator after the activity is finished.

OROGO is developing an approach to better manage the possible costs from spills and debris. This approach will use the tools provided by existing oil and gas laws.

As a first step, OROGO is talking with the public, governments, operators and other stakeholders to find out what they think should be included in the approach. What are their concerns? How do they think these concerns can be addressed?

This discussion paper:

- Provides background information on the law and the land tenure system in the area OROGO regulates;
- Suggests some basic principles for discussion with stakeholders; and
- Asks a series of questions about how OROGO should manage possible costs from spills and debris.

This discussion paper uses plain language definitions. The legal definitions are found in the legislation.

OROGO will be contacting Aboriginal and public governments, and other regulators and companies active in its jurisdiction directly to offer in-person meetings about this discussion paper.

If you want to talk about this discussion paper with OROGO, you can:

- Call 867-767-9097 or email OROGO@gov.nt.ca to arrange a meeting, or
- Send your comments in writing to OROGO@gov.nt.ca.

BACKGROUND

The Law

The *Oil and Gas Operations Act* (OGOA) discusses Proof of Financial Responsibility (PFR). It says that:

- A work or activity cannot be approved by the Regulator unless the operator provides PFR.
- The operator must maintain the PFR until the work or activity is complete.
- The Regulator decides the amount and type of PFR an operator must provide.
- The PFR is to pay compensation to someone who:
 - Experienced loss or damage from the spills or debris, or
 - Paid to help clean up the spills or debris (including the GNWT or an Aboriginal government).
- The PFR can be used to pay compensation without having to go to court and prove that the spills or debris were the operator's fault.

The operator is responsible for all loss, damage or clean-up costs that result from spills or debris that are the operator's fault, even if the costs are greater than the PFR. This includes loss or damage from failed well abandonments or facility decommissionings.

Regulations under OGOA limit the amount of PFR that the Regulator can hold for a single work or activity:

- \$25 million for a work or activity in an area covered by or within 200 metres of a river, stream, lake or other body of inland water, or
- \$10 million for a work or activity in any other area.

Loss or Damage:

- Loss of income or future income.
- Includes loss of hunting, fishing and gathering opportunities by Aboriginal people.

Land Tenure

In OROGO's jurisdiction, the land on which oil and gas activities take place is generally owned by the GNWT and Aboriginal governments.

Aboriginal governments may own the surface rights to the land or both the surface and the subsurface (mineral) rights.

Operators obtain permission from the land owner(s) for work or activity on the land. If an operator is no longer able to look after its wells, pipelines and other facilities (for example, if an operator goes bankrupt), the land owner could be responsible for cleaning up the site and remediating the area.

BASIC PRINCIPLES

OROGO suggests that the basic principles for managing possible costs associated with spills and debris should include:

- Operators are financially responsible for oil and gas activities through their full life cycle.
- There should not be “orphaned” oil and gas infrastructure in the NWT that results in costs to the public, Aboriginal governments and other land owners.
- Responsibility for spills or debris associated with oil and gas activities stays with the company that conducted the work or activity, or any successors to that company.
- The Regulator should always hold PFR if there is a risk of spills or debris from a work or activity.
- Operators should:
 - Adequately plan and account for the full lifecycle costs of oil and gas activities from the beginning.
 - Have the financial resources to manage the full lifecycle costs of their oil and gas activities.
 - Abandon or decommission wells and facilities that will no longer be used.
- Decisions about managing potential costs from spills and debris should:
 - Be based on objective information about the operator, the work or activity, the associated risk and the potential costs.
 - Take into account the scale and risk of the oil and gas activity.
 - Take into account a company’s existing liabilities and track record.
- Decisions about managing potential costs from spills or debris should be reviewed at regular intervals throughout the lifecycle of the work or activity to consider changes in the risks associated with the project and the financial health of the operator.

QUESTIONS FOR DISCUSSION

- What concerns do you have about the management of possible costs from spills or debris in OROGO’s jurisdiction?
- What information do you think the Regulator should consider when assessing an applicant’s financial health?
- What information do you think the Regulator should consider when assessing the risk of a work or activity?
- What information do you think the Regulator should consider when deciding on the amount and type of PFR required from an operator?
- Is the list of basic principles complete? What would you add? What would you remove or change?
- Are there other ways of managing possible costs from spills or debris that OROGO should consider?

If you would like this information in another official language, contact us at (867) 767-9097.