Comments from the Ontario Petroleum Institute (OPI) on the Proposed Amendments to Schedule 23 - *Oil, Gas and Salt Resources Act (the "Act")*

May 15, 2023

Submitted on behalf of the Ontario Petroleum Institute.

SUBMISSION 1

Section 11 Special projects

OPI Comments:

OPI would like to clarify and confirm that any subsurface rights or designations given by the Minister under the proposed Section 11 Special Projects:

1. are subordinate to the rights pertaining to petroleum and natural gas exploration and production and the leases that exist on the subject lands; and
2. may not adversely affect oil and gas resources or production.

Evidence:

OPI has reviewed existing legislation pertaining to CCUS in other jurisdictions and have found the following:

USA

Report - https://www.wyoleg.gov/Interimcommittee/2017/09-0629appendixg-1.pdf

Excerpt:

"Mineral Rights Primacy establishes which subsurface rights are dominant. At least five states including Montana, Oklahoma, Texas, West Virginia and Wyoming have enacted legislation regarding primacy of rights with regards to CCS. **All states with legislation have established that mineral rights have primacy over CCS.**" [emphasis added]

More recently, the State of Indiana enacted legislation in 2022 that stipulated the rights and requirements of carbon sequestration projects are subordinate to the rights pertaining to oil, gas and coal resources (House Enrolled Act No. 1209, Chapter 2, Section 1 (d))

Alberta

Where mineral rights are owned by the Crown, we look to Alberta as a comparable jurisdiction:

According to the Alberta Energy Regulator, "The *Carbon Sequestration Tenure Regulation* enables the Government of Alberta to issue evaluation permits, agreements, and leases for carbon sequestration in Alberta. The *Oil and Gas Conservation Act (OGCA)* permits the AER to approve CO_2 schemes if CO_2 injection will not interfere with

- the recovery or conservation of oil and gas, or

- an existing use of the underground formation for storing oil and gas."

SUBMISSION 2

Section 7.0.1.1 "If an inspector has reasonable grounds to believe that work is about to become a hazard to the public or the environment, the inspector may, in writing, order the operator of the work, the supervisor or foreperson of an operator, or any of them, to do any of the following with respect to the work:" [highlights added]

OPI Comments:

- The sections in red highlighted above from Schedule 23 of the Oil, Gas and Salt Resources Act cause OPI concern as they are very subjective and not well defined.
- It seems as though they will be subject only to inspectors' opinions and interpretation and don't give criteria to be adhered to by inspectors when making decisions about what is "reasonable grounds" and what is "about to become a hazard".
- OPI is concerned that these proposed changes will result in more regulation that may not be required or prudent based on inspectors' opinions with no criteria to ensure that operators are able to avoid these types of situations, or know what types of situations meet these criteria. In OPI's opinion, it gives the inspectors more autonomy and power in an industry where active operators are already facing increased regulation which increases costs for existing operations.
- At a minimum, there should be a warning and cure period prior to having orders but it would be much more clear and helpful to our operators to have criteria to define which work may be subject to this section.
- OPI suggests that there should be a clear definition as to what would establish "reasonable grounds" and when work may be "about to become a hazard".

SUBMISSION 3

9 (1) Convictions and non-compliance

13.1 (1) In making a decision with respect to a person under section 10.1 or 13, the Minister may consider whether the person has been convicted of an offence under this Act or has failed to comply with this Act or the regulations or any orders made under this Act.

OPI Comments:

- The OPI feels that the legislation should be more clear as to what constitutes a failure to comply with the Act or the regulations.
- The OPI fears that there is ambiguity here which gives subjective power to the Minister in making a decision with respect to a person under section 10.1 or 13.
- The OPI submits that the Minister should only consider convictions, not failure to comply with the Act, when making decisions with respect to a person under section 10.1 or 13. The OPI believes that the burden of proof should lay with the MNRF for non-compliance.
- Suggested wording for this section is found below. The same comments apply to sections 13.1(2) and 13.1(3).

OPI Proposed Wording:

13.1 (1) In making a decision with respect to a person under section 10.1 or 13, the Minister may consider whether the person has been convicted of an offence under this Act.

13.1 (2) **Same, corporations -** If the person is a corporation, the Minister may also consider whether any of the officers and directors of the corporation have been convicted of an offence under this Act.

13.1 (3) – **Same, individuals -** If the person is an individual, the Minister may also consider whether the individual was a director or officer of a corporation at the time the corporation was convicted of an offence under this Act.

SUBMISSION 4

The Act – Provincial Operating Standards V2 January 24, 2002

13.3 Emergency Notification (page 72)

"The operator of a work shall report to the Ministry immediately and shall report further

in writing any:

(a) well flowing uncontrolled;

(b) spill from a work;

(c) well blowout; and

(d) fire or explosion involving works."

OPI Comments:

- These comments do not relate specifically to proposed wording in Schedule 23 but OPI feel that amendments are needed to the Act to provide for minimum spill reporting requirements, as these minimum requirements appear to be present in other industries but not in the Act.
- As there is currently no minimum requirement in the Provincial Operating Standards, any drop of cement, oil, etc. should be reported and some inspectors have been enforcing reporting of very minimal spills, which are unavoidable in many instances (small cement spill when plugging wells is an example that has been challenged by current inspectors recently with one of our member firms). The lack of minimum spill volumes results in over-regulation and does not exercise and reasonableness or common sense.
- Section 13.3 (b) above should have a minimum spill volume for the Emergency Notification to be required.
- OPI would suggest that this volume should be aligned with the Ministry of the Environment minimum spill volumes[1] (100 litres for areas restricted from public access or 25 litres in areas with public access).

---

[1] O. Reg. 675/98: Classification and Exemption of Spills and Reporting of Discharges under the Environmental Protection Act, R.S.O. 1990 c.E. 19

- The majority (if not all) of our operators' sites are restricted from public access so we would suggest a minimum of 100 litres be required for spill emergency reporting to be required.

Please direct your response to Scott Lewis, Chair of OPI at 519-871-0876 or slewis@lagasco.ca.