

ALBERTA RESIDENCY REQUIREMENTS FOR OIL AND GAS COMPANIES

V. Huntington: Only in B.C. can a team of officials audit your office, interrogate your staff and order you to pack up and get out of town — or else. But that is exactly what happens to B.C. companies involved in the oil and gas play.

If you work in B.C. and Alberta, as all the players do, and Alberta finds your office is in B.C., your licence to operate is revoked. They call it a residency audit, and the result is that all financial, technical and operational decisions must be made in Alberta, or you are out of business. Alberta is ruthless in enforcing residency, which makes it all but impossible for companies to have head offices in British Columbia.

In spite of the fact that Alberta is in violation of both TILMA and the new west partnership agreement, B.C. still hasn't forced Alberta to resolve this trade dispute. A year ago the minister assured me in this House that B.C. was dealing with the situation. Well, it has been nearly 12 years since B.C. started dealing with the situation. Meanwhile, all the jobs, the taxes, the purchasing power, the insurance business and the payroll are Alberta's. Until it ends, B.C. is little more than an oil and gas colony.

Could the Minister of Jobs, Tourism and Skills Training tell this House just how many jobs in the oil and gas sector B.C. has lost over the years and how much we have lost in tax revenue, in talent, in spinoff businesses? What is the total cost to B.C. of a decade-plus failure to resolve this trade dispute with Alberta?

Hon. P. Bell: Thanks to the member opposite for the question. I believe the member opposite knows that we've been in a dispute resolution process under the new west partnership agreement with Alberta for some time. That actually reached conclusion recently, and Alberta has now agreed to comply to the requirements under the new west partnership. In fact, my colleague the minister responsible for petroleum resources has recently advised me that we're starting to see head offices being set up in British Columbia as a result of that partnership.

Mr. Speaker: The member has a supplemental.

V. Huntington: Well, maybe the minister has more current information than I do, but as of this morning, we were advised that both governments were continuing to point the finger at each other, waiting for the other to act. So I don't think there is yet an agreement.

You know, my office learned more in a single phone call to Alberta than we did in making numerous fruitless inquiries of the B.C. government. We also learned from Alberta just how many B.C. companies have been snared by recent residency audits: 17 companies in the last four years alone — 17 companies forced to comply with Alberta's residency requirements, 17 B.C. entrepreneurs deserted by their own government. One company was owned by a constituent of mine and was headquartered in Richmond. He moved the company and its jobs, taxes and talent back to Alberta.

This is more than a trade disagreement. This is a regulatory imbalance that is the Achilles heel of B.C.'s oil and gas economy.

I ask the minister: why hasn't he enforced TILMA? When does he think it's appropriate to tell Alberta there will be consequences to a protectionist policy? In five years, in ten years, in 20? When will he decide to protect B.C. businesses and B.C. jobs?

[1415]

Hon. P. Bell: Thanks, again, to the member opposite for the question. I can assure the member opposite that in the new west partnership there is a dispute resolution mechanism to deal with issues where provinces don't adhere to the spirit of the document. In fact, we were in that

MINISTRY OF ENERGY, MINES AND NATURAL GAS

BRIEFING NOTE FOR DECISION

I PREPARED FOR: Steve Carr, Deputy Minister

II ISSUE: TILMA and the removal of Alberta's discriminatory local presence requirements for British Columbia oil, gas and coal companies.

III BACKGROUND:

- Under the Trade, Investment and Labour Mobility Agreement (TILMA), Alberta committed to remove its regulatory measures that effectively require British Columbia oil, gas and coal companies to maintain an office in Alberta. That commitment was a significant condition to British Columbia entering into the Agreement.
- The TILMA Agreement came into force on April 1, 2007 and the transitional period expired on October 31, 2008. Alberta was to have removed its local presence requirements by the end of the transitional period.
- Since the fall of 2008, and without success, the two provinces have been working to finalize a mutual recognition agreement (MRA) which would waive the residency requirements for British Columbia companies.
- On October 5, 2011, British Columbia requested formal dispute resolution consultations under the TILMA with Alberta. The matter has not been resolved through these consultations and the dispute with Alberta remains open pending further negotiations between the two provinces.
- Alberta passed new regulations in December 2012 to address, in part, its residency requirements for oil and gas companies. Alberta made changes to its *Oil and Gas Conservation Regulations* and *Pipeline Regulations* (Regulations) but Alberta has not made changes to its coal or oil sands regulations which are also a key part of its TILMA commitment.
- Under Alberta's new Regulations, a British Columbia company may obtain an exemption from Alberta's residency and agency requirements if: (i) an MRA on substantial regulatory equivalency is in place between British Columbia and Alberta; and, (ii) the company meets a number of additional conditions.
- The two Provinces continue to discuss a resolution to this issue, including the negotiation of the MRA.

IV DISCUSSION:

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- British Columbia has communicated to Alberta that the issue is important due to fairness and that British Columbia is interesting in building oil and gas head office capacity over the long term.

V OPTIONS:

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VI RECOMMENDATION s.13, s.16, s.17

Approved / Not Approved

Steve Carr, Deputy Minister
Ministry of Energy, Mines and Natural Gas

DRAFTED BY:
Guy Gensey, CIB
(250) 952-0283

APPROVED BY:
Karen Koncohrada, ED, CIB
Steve Carr, DM

MINISTRY OF ENERGY, MINES AND NATURAL GAS

BRIEFING NOTE FOR INFORMATION

I PREPARED FOR: Steve Carr, Deputy Minister

II ISSUE: Meeting Friday, June 7, 2013, 10 a.m., with Dave Byng, Deputy Minister of Jobs, Tourism and Skills Training (JTST), to discuss the Trade, Investment and Labour Mobility Agreement (TILMA) and Alberta's local presence requirements for oil, gas and coal companies.

III BACKGROUND:

- Under the TILMA, Alberta committed to remove its regulatory measures that effectively require British Columbia (BC) oil, gas and coal companies to maintain an office in Alberta.
- The TILMA came into force on April 1, 2007. The transitional period expired on October 31, 2008, by which date Alberta was to have removed its local presence requirements.
- Since the fall of 2008, and without success, the two provinces have been working to finalize a mutual recognition agreement (MRA) that could effectively waive the residency requirements for BC companies.
- On October 5, 2011, BC requested formal dispute resolution under the TILMA with Alberta to formally consult on the matter.
- Alberta passed new regulations in December 2012 to address, in part, its residency requirements for oil and gas companies. Alberta made changes to its *Oil and Gas Conservation Regulation* and *Pipeline Regulation* (Regulations), but not to its coal or oil sands regulations, which are also part of its TILMA commitment.
- Under Alberta's new Regulations, a BC company may obtain an exemption from Alberta's residency and agency requirements if:
 1. an MRA on substantial regulatory equivalency is in place between BC and Alberta; and,
 2. the company meets a number of additional conditions.

IV DISCUSSION:

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V CONCLUSION:

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DRAFTED BY:
Guy Gensey, CIB
250-952-0283

APPROVED BY:
Karen Koncohrada, ED, CIB

**MINISTRY OF ENERGY AND MINES
CORPORATE INITIATIVES BRANCH
ESTIMATES BRIEFING NOTE 2013/14**

ISSUE: Trade, Investment and Labour Mobility Agreement (TILMA)
between British Columbia and Alberta

KEY MESSAGES:

- Under the TILMA, Alberta committed to remove residency and agency requirements from its oil, gas and coal regulations that require BC companies undertaking these activities in Alberta to maintain an office or agent in Alberta.
- These requirements were to have been removed by October 1, 2008, but that has not occurred.
- Officials continue to negotiate how this commitment will be met.

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BACKGROUND:

- The TILMA is an agreement between British Columbia and Alberta to remove economic barriers between the two provinces.
- TILMA was approved at a British Columbia and Alberta joint Cabinet meeting on April 28, 2006. The agreement came into force on April 1, 2007 and was fully implemented by British Columbia before April 1, 2009.
- On July 1, 2010, TILMA was expanded to include Saskatchewan under the New West Partnership Trade Agreement (NWPTA). TILMA will continue to be in force alongside the NWPTA until Alberta fully complies with its TILMA obligations relating to residency and agency in its oil, gas and coal regulations.
- Part V of TILMA lists the exceptions to the Agreement. With respect to energy and minerals, measures related to tenuring, exploration, development, management or conservation of energy or mineral resources are excepted from TILMA as long as they are non-discriminatory.
- Part VI of TILMA identifies transitional measures which must be addressed by one or both of the parties. Alberta's residency and agency requirements in the *Coal*

Conservation Act, Oil and Gas Conservation Act, Oil Sands Conservation Act and Pipeline Act and the supporting regulations were required to be TILMA-compliant by October 1, 2008.

- British Columbia does not have similar residency or agency requirements in any of its energy or mineral statutes.

MINISTRY OF INTERNATIONAL TRADE
AND MINISTER RESPONSIBLE FOR THE ASIA PACIFIC STRATEGY AND MULTICULTURALISM
INFORMATION NOTE

Cliff #: 98475

Date: July 8, 2013

PREPARED FOR: Honourable Teresa Wat, Minister, **for INFORMATION**

ISSUE:

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BACKGROUND:

- Under the Trade, Investment and Labour Mobility Agreement (TILMA), Alberta committed to remove its measures that require oil, gas, pipeline and coal enterprises to establish or maintain a representative office or to be resident in Alberta in order to carry on business in that province.
- The Strong Economy and Secure Tomorrow document includes a commitment to “ensure BC companies are not ignored by ensuring Alberta lives up to their Trade, Investment and Labour Mobility Agreement obligations not to discriminate against companies wishing to set up head offices in British Columbia from accessing Alberta.”

DISCUSSION:

- After long negotiations and considerable pressure by BC to have Alberta change its regulations to comply with TILMA, BC launched formal consultations under TILMA’s dispute resolution provisions.
- On December 7, 2012, Alberta finally made regulatory changes that allow it to waive its residency and agency requirements for jurisdictions with which it has concluded a mutual recognition agreement (MRA).

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- BC’s efforts to attract head office operations of energy companies will be hindered as long as Alberta’s market remains closed.

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s.13, s.16, s.17 The company has advised it has also contacted officials in the Ministry of Energy and Mines.

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KEY MESSAGING:

- At British Columbia’s insistence, Alberta has amended its oil, gas and pipeline regulations to waive its residency and agency requirements for jurisdictions with which it has concluded a mutual recognition agreement that recognizes “substantial regulatory equivalency”.
- Through the Ministry of Energy and Mines, and my Ministry, the Province is working to conclude such an MRA with Alberta.

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Summary:

- Failure to open the Alberta market in the near term will continue to compromise the Province’s efforts to attract head offices of natural gas and pipeline companies.

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Prepared by: Robert Musgrave and Don White

Telephone: 250 952-0711; 250 952-0708

Reviewed by:			
Dir: RM	ED: DW	ADM: SS	DM:

MINISTRY OF INTERNATIONAL TRADE
AND MINISTER RESPONSIBLE FOR ASIA PACIFIC STRATEGY AND MULTICULTURALISM
MINISTRY OF NATURAL GAS DEVELOPMENT
MINISTRY OF ENERGY AND MINES
JOINT DECISION NOTE

Cliff #: 10630
Date: August 23, 2013

PREPARED FOR: Sandra Carroll, Deputy Minister, Ministry of International Trade,
Steve Carr, Deputy Minister, Ministry of Natural Gas Development, and
Dave Nikolejsin, Deputy Minister, Ministry of Energy and Mines

ISSUE: Trade, Investment and Labour Mobility Agreement (TILMA) dispute with Alberta
regarding residency and agency requirements for oil, gas and coal companies

BACKGROUND:

Under the TILMA, Alberta committed to remove its legislative measures that require oil, gas and coal companies based outside of Alberta to appoint an agent who resides in Alberta. These measures are a strong disincentive for companies that work in both provinces to locate their head offices in British Columbia, as evidenced by their almost complete absence from this province. Recently, some oil and gas companies have located local offices in British Columbia in support of their LNG projects, but their Canadian head offices remain in Calgary.

Companies find it more cost effective and efficient to set up a head office in Alberta rather than nav for both a head office in British Columbia and an agent in Alberta. s.13, s.16, s.17

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British Columbia launched consultations under TILMA's dispute resolution process on October 5, 2011. Taking the next step in the dispute resolution process of requesting a formal arbitration panel to hear the matter remains an option for British Columbia at any time.

In December 2012, Alberta made changes to its oil and gas regulations, ostensibly to bring itself into compliance with its TILMA obligations. Alberta has still not made changes to its coal regulations, despite committing to do so.

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Under Alberta's new regulations, a company may be exempt from the agency requirement if the company is located in a jurisdiction whose energy regulator has signed a Mutual Recognition Agreement (MRA) with Alberta, recognizing substantial regulatory equivalency. To implement this exemption provision for British Columbia oil and gas companies, the two provincial oil and gas regulators (the Commissioner of the British Columbia Oil and Gas Commission (OGC) and the Alberta Minister of Energy) would need to sign an MRA recognizing substantial regulatory equivalency.

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DISCUSSION:

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OPTIONS:

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RECOMMENDED:

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Prepared by: Trevor Paul and Guy Gensey
Telephone: 250 356-8206 and 250 952-0283

Reviewed by:			
Dir: RM	ED: DW, KK	ADM:	DM:

Pages 16 through 20 redacted for the following reasons:

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APPENDIX
Oil and Gas Conservation Act
OIL AND GAS CONSERVATION
AMENDMENT REGULATION

1 The *Oil and Gas Conservation Regulations (AR 151/71)* are amended by this Regulation.

2 Section 1.020(2) is amended

(a) by adding the following after definition 26.1:

26.2 “regulatory authority” means an entity having lawful authority respecting the regulation of oil and gas exploration, development and operations and the abandonment of wells and facilities in a jurisdiction other than Alberta;

(b) by repealing subsection (2.1) and substituting the following:

(2.1) For the purposes of section 91 of the Act and these Regulations,

- (a) a licensee or approval holder who is an individual is resident in a jurisdiction if the individual makes his or her home in and is ordinarily present in that jurisdiction, and
- (b) a licensee or approval holder that is a corporation is resident in a jurisdiction if a director or officer of the corporation or a person employed or retained to provide services to the corporation makes his or her home in that jurisdiction, is ordinarily present in that jurisdiction and is authorized to
 - (i) make decisions respecting a licence for a well or facility issued by
 - (A) the regulatory authority in that jurisdiction,
or
 - (B) in the case of Alberta, the Board,

- (ii) operate the well or facility, and
- (iii) implement directions from the regulatory authority or in the case of Alberta, the Board, relating to the well or facility.

3 Section 1.030 is repealed and the following is substituted:

Exemption — agents

1.030(1) In this section, “mutual recognition agreement” means a valid and subsisting agreement made between the Minister and a regulatory authority of another jurisdiction for the purpose of recognizing substantial regulatory equivalency and enabling reciprocity between Alberta and that jurisdiction.

(2) The Board, on application, may grant an exemption from the requirement under section 91(2) of the Act to appoint an agent if the licensee or approval holder applying for the exemption

- (a) is resident in a jurisdiction outside Alberta that is a party to a mutual recognition agreement and is subject to the authority of the regulatory authority in that jurisdiction,
- (b) is in compliance with all applicable legislation in Alberta and in the jurisdiction in which the licensee or approval holder is resident and all applicable directives, orders, decisions, directions and other instruments of the regulatory authority referred to in clause (a) and of the Board,
- (c) provides evidence satisfactory to the Board that the licensee or approval holder meets, and during the time the licence or approval is in effect will continue to meet, the requirements set out in subsection (3), and
- (d) agrees to attorn to the jurisdiction of Alberta with respect to all matters, obligations and liabilities pertaining to licences and approvals issued by the Board.

(3) An exemption under subsection (2) is subject to the condition that, in substitution for the requirements of section 91(2)(a), (b) and (c) of the Act, the licensee or approval holder must have

- (a) sufficient numbers of individuals who are trained and competent to
 - (i) carry out operations relating to a well or facility, as the case may be, in compliance with the requirements of all applicable legislation and all applicable directives, orders, decisions, directions and other instruments of the Board, and
 - (ii) respond sufficiently to incidents and emergencies,and
- (b) representatives at a well site during any drilling, completion, stimulation, servicing and abandonment operations at the well site who are authorized to make decisions respecting all aspects of those operations.

(4) An exemption under subsection (2) ceases to have effect immediately on

- (a) the licensee or approval holder ceasing to meet a requirement referred to in subsection (2)(a), (b) or (d), or
- (b) the Board determining that it is no longer satisfied that the licensee or approval holder meets or will continue to meet the requirements set out in subsection (3).

4 Section 3.012(e) is repealed and the following is substituted:

- (e) if the licensee is not or ceases to be a working interest participant in the well or facility,
- (e.1) if the licensee
 - (i) is not or ceases to be resident in Alberta,
 - (ii) has not appointed an agent in accordance with section 91 of the Act, and
 - (iii) does not hold a subsisting exemption under section 1.030 from the requirement to appoint an agent,

APPENDIX

Oil and Gas Conservation Act

OIL AND GAS CONSERVATION AMENDMENT REGULATION

1 The *Oil and Gas Conservation Regulations* (AR 151/71) are amended by this Regulation.

2 Section 1.020(2) is amended

(a) by adding the following after definition 26.1:

26.2 “regulatory authority” means an entity having lawful authority respecting the regulation of oil and gas exploration, development and operations and the abandonment of wells and facilities in a jurisdiction other than Alberta;

(b) by repealing subsection (2.1) and substituting the following:

(2.1) For the purposes of section 91 of the Act and these Regulations,

- (a) a licensee or approval holder who is an individual is resident in a jurisdiction if the individual makes his or her home in and is ordinarily present in that jurisdiction, and
- (b) a licensee or approval holder that is a corporation is resident in a jurisdiction if a director or officer of the corporation or a person employed or retained to provide services to the corporation makes his or her home in that jurisdiction, is ordinarily present in that jurisdiction and is authorized to
 - (i) make decisions respecting a licence for a well or facility issued by
 - (A) the regulatory authority in that jurisdiction,
 - or
 - (B) in the case of Alberta, the Board,

- (ii) operate the well or facility, and
- (iii) implement directions from the regulatory authority or in the case of Alberta, the Board, relating to the well or facility.

3 Section 1.030 is repealed and the following is substituted:

Exemption — agents

1.030(1) In this section, “mutual recognition agreement” means a valid and subsisting agreement made between the Minister and a regulatory authority of another jurisdiction for the purpose of recognizing substantial regulatory equivalency and enabling reciprocity between Alberta and that jurisdiction.

(2) The Board, on application, may grant an exemption from the requirement under section 91(2) of the Act to appoint an agent if the licensee or approval holder applying for the exemption

- (a) is resident in a jurisdiction outside Alberta that is a party to a mutual recognition agreement and is subject to the authority of the regulatory authority in that jurisdiction,
- (b) is in compliance with all applicable legislation in Alberta and in the jurisdiction in which the licensee or approval holder is resident and all applicable directives, orders, decisions, directions and other instruments of the regulatory authority referred to in clause (a) and of the Board,
- (c) provides evidence satisfactory to the Board that the licensee or approval holder meets, and during the time the licence or approval is in effect will continue to meet, the requirements set out in subsection (3), and
- (d) agrees to attorn to the jurisdiction of Alberta with respect to all matters, obligations and liabilities pertaining to licences and approvals issued by the Board.

(3) An exemption under subsection (2) is subject to the condition that, in substitution for the requirements of section 91(2)(a), (b) and (c) of the Act, the licensee or approval holder must have

- (a) sufficient numbers of individuals who are trained and competent to
 - (i) carry out operations relating to a well or facility, as the case may be, in compliance with the requirements of all applicable legislation and all applicable directives, orders, decisions, directions and other instruments of the Board, and
 - (ii) respond sufficiently to incidents and emergencies,and
- (b) representatives at a well site during any drilling, completion, stimulation, servicing and abandonment operations at the well site who are authorized to make decisions respecting all aspects of those operations.

(4) An exemption under subsection (2) ceases to have effect immediately on

- (a) the licensee or approval holder ceasing to meet a requirement referred to in subsection (2)(a), (b) or (d), or
- (b) the Board determining that it is no longer satisfied that the licensee or approval holder meets or will continue to meet the requirements set out in subsection (3).

4 Section 3.012(e) is repealed and the following is substituted:

- (e) if the licensee is not or ceases to be a working interest participant in the well or facility,
 - (e.1) if the licensee
 - (i) is not or ceases to be resident in Alberta,
 - (ii) has not appointed an agent in accordance with section 91 of the Act, and
 - (iii) does not hold a subsisting exemption under section 1.030 from the requirement to appoint an agent,

APPENDIX
Pipeline Act
PIPELINE AMENDMENT REGULATION

1 The *Pipeline Regulation* (AR 91/2005) is amended by this Regulation.

2 Section 1 is amended

(a) in subsection (1) by adding the following after clause (v):

(v.1) “regulatory authority” means an entity having lawful authority respecting the regulation of pipelines in a jurisdiction other than Alberta;

(b) by repealing subsection (6) and substituting the following:

(6) For the purposes of section 19 of the Act and this Regulation,

(a) a licensee who is an individual is resident in a jurisdiction if the individual makes his or her home in and is ordinarily present in that jurisdiction, and

(b) a licensee that is a corporation is resident in a jurisdiction if a director or officer of the corporation or a person employed or retained to provide services to the corporation makes his or her home in that jurisdiction, is ordinarily present in that jurisdiction and is authorized to

(i) make decisions respecting a licence for a pipeline issued by

(A) the regulatory authority in that jurisdiction,
or

(B) in the case of Alberta, the Board,

(ii) operate the pipeline, and

- (iii) implement directions from the regulatory authority, or in the case of Alberta, the Board, relating to the pipeline.

3 Section 1.1 is repealed and the following is substituted:

Exemption — agents

1.1(1) In this section, “mutual recognition agreement” means a valid and subsisting agreement made between the Minister and a regulatory authority of another jurisdiction for the purpose of recognizing substantial regulatory equivalency and enabling reciprocity between Alberta and that jurisdiction.

(2) The Board may, on application, grant an exemption from the requirement under section 19 of the Act to appoint an agent if the licensee applying for the exemption

- (a) is resident in a jurisdiction outside Alberta that is a party to a mutual recognition agreement and is subject to the authority of the regulatory authority in that jurisdiction,
- (b) is in compliance with all applicable legislation in Alberta and in the jurisdiction in which the licensee is resident and all applicable directives, orders, decisions, directions and other instruments of the regulatory authority referred to in clause (a) and of the Board,
- (c) provides evidence satisfactory to the Board that the licensee meets, and during the time the licence is in effect will continue to meet, the requirements set out in subsection (3), and
- (d) agrees to attorn to the jurisdiction of Alberta with respect to all matters, obligations and liabilities pertaining to licences issued by the Board.

(3) An exemption under subsection (2) is subject to the condition that, in substitution for the requirements of section 19(2)(a), (b) and (c) of the Act, the licensee must have

- (a) sufficient numbers of individuals who are trained and competent to
 - (i) carry out work relating to the pipelines for which the licensee has been granted a licence in compliance

with the requirements of all applicable legislation and all applicable directives, orders, decisions, directions and other instruments of the Board, and

- (ii) respond sufficiently to incidents and emergencies, including, without limitation, leaks and breaks,

and

- (b) representatives at a pipeline site during any construction, testing, maintenance, repair, ground disturbance and abandonment activities at the pipeline site who are authorized to make decisions respecting all aspects of those activities.

(4) An exemption under subsection (2) ceases to have effect immediately on

- (a) the licensee ceasing to meet a requirement referred to in subsection (2)(a), (b) or (d), or
- (b) the Board determining that it is no longer satisfied that the licensee or approval holder meets or will continue to meet the requirements set out in subsection (3).

4 Section 82(9)(c) is repealed and the following is substituted:

- (c) if the licensee
 - (i) is not or ceases to be resident in Alberta,
 - (ii) has not appointed an agent in accordance with section 19 of the Act, and
 - (iii) does not hold a subsisting exemption under section 1.1 from the requirement to appoint an agent,

Page 30 redacted for the following reason:

s.13