Funding the transfer of liability: the Alberta model

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The questions (assuming liability transferred)

- Normative\descriptive
- What liabilities are transferred?
- What is the trigger to the transfer?
- How is the transfer of liability effected?
- What costs of assuming the transfer of liability are recovered from the operator in advance?
  - How? And how determined?

What liabilities are transferred?

- Transferred
  - Any statutory liabilities for re-abandonment downhole or surface reclamation etc
  - Third party tort liabilities
  - Any continuing MMV responsibilities
- Not transferred
  - Carbon accounting liability for avoided emissions for which credit received
  - RFA proposal

What is the trigger to the transfer?

- Issuance of a closure certificate
  - All wells abandoned
  - Surface reclamation completed
  - Plume is “behaving in a stable and predictable manner, with no significant risk of future leakage”
  - After a prescribed period
  - RFA, minimum of ten years + additional factors

How is the transfer effected?

- Statutory responsibilities
  - The Crown becomes the relevant person under the various statutes
    - E.g. well licensee; “person responsible”, “operator”
- Tort liabilities
  - Crown provides an indemnity
  - Assumes ownership of the injected CO2
- Monitoring
  - See statutory responsibilities
  - Not otherwise expressly transferred
  - PCSF monies can be used to pay for MMV

What liability costs are recovered?

- Legislation (MMA) provides for a Fund (PCSF)
- Fund may be used for
  - Any continuing MMV
  - The statutory liabilities assumed by the Crown
  - Suspension, abandonment, reclamation, remediation associated with an orphan facility
- Fund may not be used for
  - Any tort liability assumed by the Crown
  - Carbon accounting liabilities (but see RFA)

The orphan issue

- When does a facility become an orphan?
  - Only where the facility licensee and all WIPs have no remaining assets in the jurisdiction that can be used to satisfy any liability
  - No closure certificate issued
- Proposal to protect against orphaning (RFA)
  - Require licensee to post adequate security for abandonment, reclamation costs etc at outset

Fund issues

- Lessees must contribute to the Fund
- What is the contribution rate? How is it assessed?
  - Must be assessed on the basis of the Fund's liability and not the Crown's potential liability
    - Monitoring costs
    - Statutory re-abandonment etc liabilities
    - Orphan liabilities
    - Administration costs

Fund issues

- RFA
  - Fund contributions should be risk based and project specific
  - Level of contributions should be subject to regular review (but not retroactive)
  - Fund monies available to meet the prescribed liabilities of any project
    - i.e. rate is individual but monies pooled

Fund issues

- GoA working group on the PCSF
  - Retained DNV to advise
  - Work ongoing
  - The challenges?
    - Keep a focus on the Fund's exposure and not the universe of liabilities
    - Accept the premise that a closure certificate has been issued; risk is accordingly very, very low

In sum

- There is a universe of potential liabilities
- The Crown accepts a transfer of a (large) subset of those liabilities
- The Fund is responsible for a subset of the Crown's liabilities
- The Fund is financed by contributions from the industry
- The tort liability that the Crown assumes is unfunded