

Bankrupt companies can't avoid oil well cleanups, top court says

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Canada's top court has ruled that companies can't walk away from their obligations to clean up oil wells, with those environmental responsibilities trumping payment to creditors if they go bankrupt.

The 5-2 decision Thursday by the Supreme Court also deals a blow to banks that could threaten financing to smaller resource players. The court said Alberta's rules compelling oil and gas companies to remediate spent wells are in the public interest and do not conflict with banks' rights to collect on debts in bankruptcy cases.

The judgment overturned lower-court rulings that effectively enabled a bankrupt energy company called Redwater Energy Corp. to hive off and sell its most profitable wells and discard the rest, forcing the wider industry to cover costs of cleaning them up.

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"Bankruptcy is not a licence to ignore rules," the majority wrote in the court's decision.

The ruling is a major victory for the oil-rich province and its Alberta Energy Regulator (AER) but could also have knock-on effects in resource industries across the country.

Last year, a Globe investigation reported that 20 per cent of all oil and gas wells in the three Western provinces are inactive, and that there are 54,147 more inactive wells today than there were in 2005. Such wells no longer produce oil and gas, but have not been plugged. Some have languished for decades.

The AER launched the appeal amid fears that the case would prompt others to shed unprofitable oil and gas wells and their associated cleanup costs through corporate restructurings.

Landowner advocates and environmental groups applauded Thursday's decision but said Alberta and other Western provinces still face soaring financial liabilities tied to tens of thousands of inactive and defunct oil and gas wells.

Several U.S. states impose timelines on companies to clean up unproductive wells, but British Columbia is the only Canadian province that has committed to establish similar measures. Alberta and Saskatchewan are reviewing current policies but have been reluctant to introduce more stringent regulations.

Keith Wilson, an Edmonton lawyer who represents landowners in disputes with energy companies, said the court's decision reinforces the long-standing principle that polluters pay in bankruptcy cases.

"But we have a policy and laws that allow companies to postpone indefinitely cleaning up messes, and that just causes the problems to get worse from an environmental point of view," he said in an interview.

Alberta Premier Rachel Notley's NDP government has extended \$235-million in loans to the industry to accelerate cleanup of wells with no solvent operator, known as orphans. Their number in Alberta alone has swelled to 4,349, up from 545 in 2014, after a string of corporate bankruptcies.

The province's Energy Minister on Thursday would not say when or how the government would overhaul rules to ensure that provincial taxpayers are not exposed to further risks. "Most companies follow the rules," Margaret McCuaig-Boyd said.

"This ruling today gives us more emphasis on, 'you need to take care of your responsibilities. You can't walk away from poor assets and sell the good ones,'" she told reporters in Calgary.

Calgary-based Redwater Energy owed ATB Financial Corp. about \$5.1-million when the lender forced it into receivership. The receiver appointed to liquidate the company's assets sought to sell only a fraction of its wells and related facilities.

The AER objected, but the Alberta Court of Appeal upheld a 2016 decision in the Alberta Court of Queen's Bench that gave ATB priority over provincial regulations to collect on the bad loan.

The case ultimately triggered interventions at the top court from major oil companies, environmental and landowner groups as well as attorneys-general across Canada.

Several financial analysts on Thursday said the judgment could reduce the availability of credit for smaller resource companies carrying hefty liabilities on their books as banks reassess risks, although others said those fears were overblown.

"On balance, the greater public interest is to make sure that these environmental messes get dealt with," said David Ullmann, a partner at Blaney McMurtry LLP in Toronto.

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