

Note: This is an excerpt from the Addendum to the annotations on draft 3 of the Pad Site Sharing Agreement Operating Procedure.

Circumstances in which a Pad Site Sharing Agreement Should and Should Not Be Used

The PSSA has been designed for the typical shared pad site. Attributes of the typical pad site include: (i) a single Site Operator; (ii) a single blended ownership interest based on Well count; and (iii) a sharing, based on blended ownership interests, of Capacity, Operating Costs and any fee income from the use of Surplus Capacity. Users requiring a more complex handling would need to modify the document to deliver their desired outcomes.

One concern that has emerged relates to the expectation in the PSSA that there be a single Site Operator, notwithstanding that the mineral rights being exploited from the wells located on the shared Pad Site are held in differing interests.

The starting point in examining that concern is to consider the circumstances in which a PSSA would be contemplated and those in which the Task Force concluded that it should not be used at all.

One of the major principles in the project is that a PSSA (or any other pad sharing) should not be used in any scenario in which parties that have no natural business relationship try to save some front-end costs by sharing a pad site.

Those parties should probably assess how they can mitigate their environmental footprint through an examination of synergies for roads and pipelines. They should probably also consider collaborating in ways in which their individual pad sites are close to (or even adjacent to) each other. However, the Task Force concluded that they should not share a single pad site because of the complexities this would create for the ongoing management of the pad site.

To illustrate, consider the following scenarios:

1. X and Y hold two sections of joint lands in 75-25% interests under a single JOA and plan four wells.
2. A has a 100% section and a section in which it has a 75-25% interest with B, where A plans to drill four wells to the XYZ formation (two in each interest set).
3. J has a 100% section in which it plans to drill wells to the ABC formation and a section of deep rights held 25-75% with K for which K is the operator and contemplates a technically challenging deep rights target. J proposes a shared pad site with J as operator because J has an interest in all mineral rights being exploited, but K has concerns about J's expertise with the deep play.
4. M has a 100% section and N has a 100% section. Each is drilling: (i) to a different formation; or (ii) to the same formation.

In which scenarios should the applicable parties propose to enter into a PSSA?

The Task Force concluded that a PSSA should only be considered in the second scenario. The JOA could govern the pad site operations in the first scenario. The parties should not attempt to share a pad in the third and fourth scenarios, notwithstanding that other synergies might be exploited for roads, pipelines, etc. in those scenarios. The "prime contractor" requirements of the Regulations further reinforce this conclusion, as examined in the section below.

That being said, there may be circumstances in which things evolve in a way in which a scenario #2 PSSA ends up with Site Operator not being involved in a particular Well because of a non-participation election on an activity on an existing Well or a sale of an interest in selective Wells.

As noted elsewhere in the annotations, the Task Force concluded that it was not appropriate to try to anticipate a multitude of "what if" scenarios in the PSSA. That would create prescriptive outcomes that would be 100% wrong in many scenarios. In addition, it would require significant extra content that would be labour intensive to create and ultimately be a barrier to the review and use of the PSSA.

The better answer for those situations is for the Owners to address their outcomes in the context of their own particular circumstances when preparing their PSSA or at the time an issue arises. For situations involving a producing Well, a contract operating agreement with a Site Operator might be sufficient to mitigate the issue.

OH&S and Prime Contractor Requirements in AB, Sask & BC

Context: One of the foundation principles of the Pad Site Sharing Agreement is that there will be only one Owner that is able to conduct activities with respect to the Pad Site under the PSSA-the Site Operator. This is intuitive to those familiar with CO&O Agreements or Unit Agreements, since there is only one operator under a CO&O Agreement or Unit Agreement, notwithstanding any differences in ownership of the applicable tracts, facility or functional units held thereunder. However, the inclusion of this concept is one with which users with a land background may initially struggle.

The most compelling reason for this approach is the requirement under Occupational Health and Safety Regulations for a single "prime contractor" for any work area.

Other factors that influenced the single Site Operator structure in the PSSA were:

- (a) a belief that this approach will be suitable for the vast majority of circumstances in which the PSSA will be used (i.e., an ongoing commercial synergy between the applicable mineral ownership blocks, such as an Owner with a 100% interest in mineral rights to the east and joint ownership in the mineral rights to the west, versus choosing to create a new commercial relationship with a third party without any shared mineral rights);
- (b) the resultant significant increase in complexity and document length that would be required to accommodate multiple operators on a Pad Site and the significant adverse impact this would have on the ability to complete the PSSA precedent and industry's ultimate willingness to use it;
- (c) a belief that Owners would only require the flexibility to have multiple operators on the Pad Site in a modest number of cases;
- (d) a belief that Owners that required that additional flexibility would best be able to negotiate the required customization in the context of their circumstances and the Regulations then in effect for the applicable jurisdiction (e.g., reason for deviating from the single Site Operator approach, a temporary or permanent change, differences between jurisdictions, changes in the Regulations);

- (e) the safety and logistics challenges in coordinating concurrent operations on the Pad Site by different Owners;
- (f) significant potential challenges in compliance with regulatory obligations for maintenance of an emergency response plan for the Pad Site; and
- (g) a belief that Owners would typically be able to achieve their desired outcomes on this issue by obtaining surface rights adjacent to the initial well pad and exploring potential synergies for sharing of access roads and, possibly, a common work space, as well as a basis for a shared use of facilities.

Given the most likely use of the PSSA in practice, the conclusion of the Task Force was that the potential costs of adding functionality into the PSSA for multiple operators on a Pad Site greatly outweighed the potential benefits to industry as a whole at this particular point in time.

One major consequence of the single Site Operator approach is the limitation in Article VI on a Non-Operating Owner's ability to conduct Land Activities on the Pad Site, notwithstanding rights otherwise existing under any Land Agreement.

That being said, there is nothing in the PSSA that precludes any particular Owner group from modifying their PSSA to allow for multiple operators on a Pad Site. The annotations and this Addendum remind users that this could potentially occur, and alert users to matters that they would need to consider if they were to choose to modify their PSSA to accommodate multiple operators on the Pad Site. In addition to modifications to the PSSA, that approach could also require physical changes to the Pad Site under the Regulations, such as separate fencing and access, for example.

The single Site Operator issue could also arise after completion of the PSSA if no Owner has an interest in all (or substantially all) of the Wells or Site Operator were to dispose of its interest in some Wells. The onus is on the Owners to determine at the time how to address those types of situations as appropriate in their own circumstances. Site Operator, for example, could enter into a contract operating agreement for Wells in which it has no interest, something that would be much easier if no drilling or completion activities are contemplated for the Wells subject to the contract operating agreement. This document does not attempt to address that relationship, though.

Notwithstanding the use of the single Site Operator in this version of the PSSA, this is a topic that could be revisited in due course after the PSSA has obtained a critical mass of industry support, as part of the normal process to update the document based on industry's experiences.

Overview of Western Canadian Regulatory Regimes

There appears to be the legal ability (with some differences as to how, among the three western provinces) for the "prime contractor" managing a Pad Site to hive off to another Owner or third party a portion of the site within the site (in AB) or adjacent to the site (in BC). This "sub-site" could constitute an independent worksite for the purposes of drilling a new well, for example.

From the perspective of the Owners in the Pad Site, there are, of course, major considerations in managing the liability exposure from the activity of the applicable Owner or third party on the sub-site. The contract between the parties would have to set out clearly who is the single ultimate prime contractor for the site, together with an appropriate liability and indemnity regime, and the identity of the prime contractor would need to be clear to those working at the applicable site. In the event a regulatory authority does not recognize two prime contractors, the default position under each applicable Act is that the "Owner" would be regarded as the prime contractor.

It is possible that this can be managed by contract, perhaps by including indemnities and performance bonds. Depending on the Province, this would also require close attention to the specific regulatory requirements in each province for hiving off or keeping two sites completely independent for activities and to the respective responsibilities allocated to the Owner(s), employers and prime contractor, as applicable.

The overview of the legislative and regulatory regimes that follows is current as of June, 2017, and has been provided only as a general overview to users, and may not necessarily represent or reflect the most up-to-date regulatory regime. It is the responsibility of users to review the applicable legislative and regulatory regime at the relevant time in the context of the particular circumstances. Users should also obtain independent legal advice when considering the potential applicability of jurisdictional requirements to their particular fact situation.

Alberta

Prime Contractor: The designation of a prime contractor is required whenever there is a work site with two or more employers. This can be a contractor, an employer or another person who enters into a contract with the applicable Owner(s). If a site is required to have a prime contractor, the prime contractor is responsible for compliance with all OH&S requirements, including the emergency response plan required under the *Occupational Health and Safety Code*. By default, the owner, or majority owners, will be regarded as the prime contractor unless another is named.

Work site: This is defined as a location at which a worker is or is likely to be engaged in any occupation. When work is being performed at more than one location on a work site, a smaller work site can be partitioned off.

Can there be a different work site for the purposes of drilling a well?: Yes. A smaller worksite can be hived off from the main site. The perimeter of the work site should be defined by an "effective barrier", like a fence or a wall, and the two sites should operate completely independently of one another. If there are two or more employers at the small site, a prime contractor is required. If not, the employer is responsible for all OH&S requirements and must appoint a responsible supervisor for the small site. If there are two sites with two prime contractors, they can determine amongst themselves whether there is a possibility of offering joint services to both sites (e.g., toilets). While not prescribed in relevant OH&S rules, the compliance focus is on ensuring that the site as a whole can be demonstrated to comply with the goals and intent of the Regulations and that the potential hazards at the site have been identified and minimized. Clarity would be required about the respective roles, though, particularly with respect to emergency response plans.

That being said, it is also important to recall that the AER currently requires a surface lease and well licence to be in the same name.

For additional detail, see the [Occupational Health and Safety Act](#) (Alberta), the [Occupational Health and Safety Code](#) (Alberta) and the [2009 OHS Code Explanation Guide](#). The related web references to the OHS Bulletin and website are: <http://work.alberta.ca/documents/OHS-Bulletin-Prime-Contractor.pdf> and <https://work.alberta.ca/occupational-health-safety/ohs-laws.html>.

Saskatchewan

Prime Contractor: The designation of a prime contractor is required only if a site is designated as a "required worksite". A work site will meet this definition when: (i) there is a work site with 10 or more workers or self-employed persons under the direction of two or more employers; and (ii) the work site is in the construction, forestry or oil and gas industry. The prime contractor can be a contractor, employer or another person who enters into a contract with the owner. An owner at a required worksite must designate the prime contractor. If the owner does not designate someone through an agreement, the owner remains the prime contractor.

If the owner is not the prime contractor, the owner must provide: policies, procedures and safe work practices for each employer or self-employed person, any required information that is known or reasonably expected to be known by the employer or self-employed person (re hazards, H&S) and any information reasonably required by prime contractor to carry out H&S at the worksite as soon as reasonably possible after designating a prime contractor. Specific duties of the Prime Contractor are prescribed in the *Occupational Health and Safety (Prime Contractor) Regulations* (new in 2015).

Work site: This is defined as a place of employment at which a worker works or is required or permitted to be present and at which the majority of the daily work takes place. It is considered a "required worksite" if a Prime Contractor is required to manage and supervise operations.

Can there be a different work site for the purposes of drilling a well?: There is no express provision for or prohibition limiting the hiving off a smaller space within a large work area. However, if both locations meet the definition of the required worksite, both would require a prime contractor. The requirements are silent on how a smaller site would be self-contained within a larger site.

The distinction in Saskatchewan is that the well-drilling site may or may not require a prime contractor. If it does, this prime contractor (if not the owner of the Pad Site) would still need to receive from the owner the above OH&S information. If there is no requirement for a prime contractor (i.e. if the worksite does not meet the "required worksite" criteria), the employer (or appointed contractor) will be required to take on responsibilities and negotiate with the owner regarding split responsibilities, such as sanitation, toilet facilities, noise reduction, and a fire safety plan.

For additional detail, see the [Saskatchewan Employment Act](#) (Saskatchewan), the [Occupational Health and Safety Regulations](#) (Saskatchewan) and the [Occupational Health and Safety \(Prime Contractor\) Regulations](#) (Saskatchewan).

British Columbia

Prime Contractor: A prime contractor is required in a "multi-employer workplace". That is defined as a workplace at which workers of two or more employers are working at the same time. The prime contractor can be the directing contractor, employer or another person who enters into an agreement with the owner.

The owner has ultimate OH&S responsibility. The owner is responsible for ensuring H&S of persons at or near the work site. The owner must also provide the employer or prime contractor with information necessary to identify, control or eliminate H&S hazards, and the owner must comply with H&S legislation and regulations. The prime contractor is responsible for ensuring that the activities of employers, workers and other persons relating to H&S are coordinated and to do everything reasonably practicable to establish and ensure compliance.

An OH&S program is only required if: (i) an employer has 20 or more workers in a workplace that is assessed to create a moderate to high risk of injury; or (ii) if an employer has more 50 or more workers on one site.

Work site: This is defined as any place at which a worker is or is likely to be engaged in any work.

Can there be a different work site for the purposes of drilling a well?: For the purposes of the legislation, two or more adjacent workplaces do not constitute a "multiple-employer workplace", unless the activities at one workplace are likely to affect the H&S of an adjacent workplace.

The risk in BC is that an owner contracts directly with the prime contractor for the main site and then another employer for the well-drilling site in circumstances in which the regulator eventually considers these sites to be a "multi-employer workplace". This would lead to the contract between the owner and prime contractor becoming null and void and responsibility for OH&S falling on the owner. Given that the requirement hinges on how the activities in one site are likely to affect the OH&S of workers on the adjacent site, this is a significant risk that the applicable parties would need to assess particularly carefully.

There is another important issue that must be assessed by parties considering the creation of a sub-site. If the two sites are independent, but adjacent and/or overlapping, the prime contractor must hire a coordinator to ensure that the activities on both sites are coordinated for OH&S purposes.

For additional detail, see the [Workers Compensation Act](#) (BC) and the [Occupational Health and Safety Regulation](#) (BC).