

This letter and declaration was amended as a result of a decision issued July 13, 2017 ([http://aer.ca/documents/decisions/Participatory\\_Procedural/1893772\\_20170725.pdf](http://aer.ca/documents/decisions/Participatory_Procedural/1893772_20170725.pdf)).



January 19, 2017

**Calgary Head Office**  
Suite 1000, 250 – 5 Street SW  
Calgary, Alberta T2P 0R4  
Canada

By email and registered mail

[www.aer.ca](http://www.aer.ca)

To: Jasmina Cezek  
Michael J. Smith and Rob Jennings

**Declaration naming Michael J. Smith, Jasmina Cezek, and Rob Jennings under section 106 of the *Oil and Gas Conservation Act***

Dear Messrs. Smith and Jennings and Ms. Cezek:

On November 10, 2016, the Alberta Energy Regulator (AER) sent a letter by registered mail to Lexin Resources Ltd. (Lexin) and its directors, Michael J. Smith, Jasmina Cezek, and Rob Jennings, notifying them of its of intention to name them in a declaration pursuant to section 106 of the *Oil and Gas Conservation Act (OGCA)*. In accordance with section 106, time was provided to permit the directors to show cause as to why a declaration should not be made. Upon request from two of the directors, the AER provided two extensions to provide a submission; no request was received for the third director, Ms. Cezek. The AER notes that it has not received any response from Ms. Cezek on this matter. The AER feels it made reasonable attempts to contact her and does not consider a lack of response a reason for not pursuing this matter further.

The AER has had an opportunity to review submissions and has determined that the directors have failed to satisfy the AER that a declaration should not be made. The AER hereby issues a declaration under section 106(1) of the *OGCA* naming Michael J. Smith, Jasmina Cezek, and Rob Jennings as persons in direct or indirect control of Lexin, a company that contravened or failed to comply with orders of the AER and has a debt to the AER. The declaration, with its terms and conditions, is found in attachment 2.

Section 106 of the *OGCA* applies where the AER considers it in the public interest to make a declaration naming one or more directors, officers, agents, or other persons who, in the AER's opinion, were directly or indirectly in control of a licensee, approval holder, or working interest participant that has (i) contravened or failed to comply with an order of the AER or (ii) has an outstanding debt to the AER, or to the AER to the account of the orphan fund, in respect of suspension, abandonment, or reclamation costs.

The AER is of the opinion that as directors of Lexin at the time of the company's noncompliances and its failure to pay the levies issued by the AER, the named individuals were and are persons in control of

Lexin. As previously found by the AER in *Decision 2015 ABAER 005*, the specific reference to directors, officers, and agents in section 106 indicates that the legislature intended that individuals in those positions are presumed to be in direct or indirect control for the purposes of that section.

Lexin is in noncompliance with several orders issued by the AER (see attachment 1) and has not paid its debt to the AER arising from the issuance of two orphan fund levies, the 2016 AER administration fee, and their associated penalties for nonpayment, totalling \$1 188 910.66.<sup>1</sup> Notices of these noncompliances were mailed to Lexin at the address provided to the AER. The November 10 letter was sent to the same address, as well as addresses from British Columbia's corporate registry record for Lexin.

These noncompliances include a failure to remove bags of spent catalyst, failure to remedy a hydrocarbon spill, failure to fully address an order issued in relation to operations at the Mazeppa facility, and failure to comply with closure and abandonment orders. The ongoing failures to comply put the public and the environment at risk and demonstrate a disregard for AER requirements. Further, the failure to pay amounts owing to the AER poses a financial risk.

The AER has previously held in past section 106 decisions that the purpose of a section 106 declaration is to prevent a licensee or person in control from continuing to breach requirements or incurring new breaches or debts, thereby safeguarding the public interest. The AER has also previously held that continued confidence in the regulatory system is best assured when licensees comply with AER requirements. The AER finds that on the facts before it, the issuance of a declaration is in the public interest and necessary to deter future noncompliance and uphold the credibility of the regulatory system and AER enforcement processes.

Section 106 is a reverse onus provision. The burden is on the directors to show why the declaration and associated order should not be made. They are in the best position to respond to the notice as they are the ones with the best information regarding why they failed to comply with AER orders or pay outstanding amounts. The directors have provided no evidence to show cause why a declaration should not be made, despite the fact that they have been given ample time. A submission provided to the AER alleged concerns with the validity of the levies issued. These concerns were raised outside of the appeal periods associated with those levies and without any evidence or clear basis for the same. A hearing was requested to determine whether the declarations should be made, but the AER is not required to hold a hearing in these instances, and, given the failure to provide evidence as to why a declaration should not be made, a hearing would not be a good use of AER resources.

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<sup>1</sup> The AER has collected some of the outstanding amount owing as a result of collection activities, resulting in collection from third parties in the amount of \$112 659.48 to date.

The terms of the declaration set out in attachment 2 are intended to incent the named individuals to address the noncompliances and outstanding debt. Further, the terms enable the AER to better manage the risk posed by the named individuals being in control of an entity regulated by the AER. Lexin alone holds over 1500 well licences, 80 facility licences, and 200 pipeline licences. This does not include any other entities with which the named individuals are involved. Practically speaking, the issuance of this declaration permits the AER, in addition to any other requirements that it has, to suspend any operations and refuse to consider an application for an identification code, licence, approval, or licence transfer of an entity regulated by the AER that the named individuals are in direct or indirect control of. It also requires the named individuals to disclose certain information, as outlined in the declaration.

Note that submission of a sworn declaration in accordance with clause 4 of the attached declaration must be provided by each of the named directors by **February 19, 2017**. Failure to respond appropriately may result in an additional regulatory response from the AER.

Should the named individuals wish to discuss how Lexin will correct its noncompliances, please contact Helene de Beer ([Helene.deBeer@aer.ca](mailto:Helene.deBeer@aer.ca)).

Be advised that under the *Responsible Energy Development Act*, an eligible person may appeal decisions that meet certain criteria. Eligible persons and appealable decisions are defined in section 36 of the *Responsible Energy Development Act* and section 3.1 of the *Responsible Energy Development Act General Regulation*. Requests for regulatory appeal must be submitted in accordance with the AER's requirements. Filing requirements and forms are available on the AER website, [www.aer.ca](http://www.aer.ca), under Applications & Notices > Appeals.

Sincerely,

<original signed by>

Kirk Bailey,  
Executive Vice President, Operations Division

## **Attachment 1 – Debt to the AER and Notices Regarding Noncompliances**

### First 2016 Orphan Fund Levy

- March 23, 2016 – Invoice
- May 3, 2016 – Notice of Noncompliance and application of 20% penalty

### 2016 Administration Fees

- May 18, 2016 – Invoice
- June 3, 2016 – Reminder of payment owing
- July 5, 2016 – Notice of Noncompliance and application of 20% penalty

### Second 2016 Orphan Fund Levy

- August 8, 2016 – Invoice
- September 21, 2016 – Notice of Noncompliance and application of 20% penalty

### Surface Rights Expiry

- June 13 and June 27, 2016 – Notification of Right to Surface Access
- August 4, 2016 – Closure/Abandonment Order No. AD 2016-21

### Mineral Rights Expiry

- October 7, 2015, and January 7, May 4, May 11, June 1, June 8, June 29, and July 19, 2016 – Petroleum and Natural Gas Mineral Rights Expirations
- August 10, 2016 – Closure/Abandonment Order No. AD 2016-22

### Orders

- June 15, 2016 – Order No. 201606-02
- August 9, 2016 – Order No. 201608-01

## **Attachment 2 – Declaration Naming Michael J. Smith, Jasmina Cezek, and [REDACTED] Pursuant to Section 106 of the *Oil and Gas Conservation Act***

For the reasons set out in the accompanying letter, the Alberta Energy Regulator (the “AER”) has determined that (i) Michael J. Smith, Jasmina Cezek, and [REDACTED] (each an “individual”) were persons directly or indirectly in control of Lexin Resources Ltd. (the “licensee”); (ii) the licensee has contravened AER requirements or failed to comply with certain orders of the AER (the “AER orders”) or is indebted to the AER; (iii) the individuals have been in control of the licensee at all material times; and (iv) it is in the public interest to make a declaration naming the individuals under section 106(1) of the *Oil and Gas Conservation Act*, RSA 2000, c O-6 (the “OGCA”).

The AER’s legislated mandate under section 2 of the *Responsible Energy Development Act*, SA 2012, c R-17.3, includes a requirement to provide for the efficient, safe, orderly and responsible development of energy resources in Alberta. In accordance with this mandate, the AER hereby names the individuals under section 106(1) of the *OGCA* and places the following restrictions on them:

1. The applicable individual and any licensee or approval holder directly or indirectly controlled<sup>1</sup> by him or her must inform the AER that a declaration under section 106(1) of the *OGCA* is in effect against that individual and that the individual has direct or indirect control of such licensee or approval holder upon the licensee or approval holders applying to the AER for any identification code, licence, or approval or transfer of a licence or approval under the *OGCA* or the *Pipeline Act*, RSA 2000, c P-15 (the “*Pipeline Act*”).
2. The AER may refuse to consider any application from the licensee, an individual, or any other licensee or approval holder over which an individual has direct or indirect control, for an identification code, licence, or approval or transfer of a licence or approval under *Directive 067: Applying for Approval to Hold EUB Licences*, the *OGCA*, or the *Pipeline Act*.
3. Where the AER is to consider an application from an individual or any other licensee or approval holder over which an individual has direct or indirect control, the AER will consider and process the application as nonroutine and may exercise its discretion to require the submission of abandonment and reclamation deposits in an amount to be determined by the AER prior to granting any licence or approval or transfer of a licence or approval under the *OGCA*.

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<sup>1</sup> For purposes of the *OGCA* “control” means real, effective, and practical control over a company’s business affairs. Such control may exist in a wide variety of settings and arrangements. Control is ultimately the power to direct the business of the company and make decisions that will be complied with and acted upon by the company.

4. Each individual must submit a sworn declaration by **February 19, 2017**, declaring whether he or she is in direct or indirect control of any licensee or approval holder, other than the licensee, that is an applicant to the AER, a licensee, or an approval holder under the *OGCA* or the *Pipeline Act* or, if he or she is, a declaration stating the name of any such licensee or approval holder and specifying the applications each has before the AER and the AER licences and approvals such licensee or approval holder holds.
5. This declaration is in force at the date hereof and will remain in force until the licensee has complied with the AER orders, rectified its contraventions, and paid any and all debts owed to the AER and to the AER on account of the orphan fund or until the AER orders otherwise.

Dated: January 19, 2017

Alberta Energy Regulator Signed: \_\_\_\_\_

<original signed by>

Kirk Bailey  
Executive Vice President, Operations Division