

Via Email

February 17, 2017

Groia & Company

Attention Bonnie Roberts JonesCalgary Head Office
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4
Canadawww.aer.ca

Dear Ms. Jones:

**RE: Request for Regulatory Appeal
“Inspection Direction” dated February 14, 2017**

The Alberta Energy Regulator (AER) has received your request dated February 16, 2017, made on behalf of Lexin Resources Ltd., for a regulatory appeal of the above-noted letter from the AER’s Director of Oil & Gas. When the AER considers a request for a regulatory appeal, it must decide if the request complies with section 38 of the *Responsible Energy Development Act* (REDA), which states the test for a regulatory appeal as follows:

38(1) An eligible person may request a regulatory appeal of an appealable decision by filing a request for regulatory appeal with the Regulator in accordance with the rules. [emphasis added]

The test has three components, underlined above, all of which must be met in order for the AER to consider granting the request and holding a regulatory appeal hearing. In this case, the issue that arises is whether your client’s request is in relation to an “appealable decision”, which is defined in section 36 of the REDA to include the following:

36 In this Division,

(a) “appealable decision” means

(i) a decision of the Regulator in respect of which a person would otherwise be entitled to submit a notice of appeal under section 91(1) of the *Environmental Protection and Enhancement Act*, if that decision was made without a hearing,

. . . .

(iv) a decision of the Regulator that was made under an energy resource enactment, if that decision was made without a hearing.

The AER has concluded that your client’s regulatory appeal request is not made in relation to an appealable decision, and therefore it will not grant the request or hold a regulatory appeal hearing. The AER’s letter of February 14, 2017 does not result from or constitute a “decision” of the Regulator under the *Environmental Protection and Enhancement Act* (EPEA) or an energy resource enactment. What the letter communicates to your client is that the AER intends to conduct inspections and undertake related activities as set out in the letter and Schedule A thereto. The AER and its inspectors are given the statutory authority to do so under the legislation identified in Schedule A to the letter, in particular sections 93 and 96 of the *Oil and Gas Conservation Act* and section 198 of the *EPEA*. The AER’s authority under those provisions is ongoing and can be exercised by it without notice to or process involving the party whose operations or property is to be inspected. The Inspection Direction, as the regulatory appeal request refers to it, is simply

a notice to your client that the AER intends to exercise its ongoing statutory authority to inspect your client's operations, and it serves as a reminder that your client is required by law to permit the AER's inspectors to do their work. Put another way, the AER could have dispatched its inspectors to your client's premises for the purpose of undertaking the inspections and other activities described in the Inspection Direction without having provided your client with the Inspection Direction or any other form of notice that the inspection work was about to occur.

In summary, the AER has decided that it will not hold a regulatory appeal hearing or further consider your client's request for a regulatory appeal of the Inspection Direction, because the Inspection Direction is not an appealable decision within the meaning of section 38 of the *REDA*.

Sincerely,

[*original signed by:*]

Helen Bowker
Regulatory Appeals Coordinator