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## True Grit: The Ups and Downs of Fracking

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Hydraulic fracking, the process whereby water, sand and a mix of chemicals are used to extract oil and natural gas from shales and other low permeability deposits, continues to be a controversial topic.

A growing and vocal consortium of critics continue to express opposition to the process, which is becoming increasingly dominant in North America's endless search for domestic sources of hydrocarbons, over perceived environmental and public health concerns.

These concerns have led to moratoriums in several jurisdictions as lawmakers and regulators study the issue and seek a workable balance that allows development to continue while safeguarding the environment and public health.

In what is evolving into a race to regulate, many governments across North America have announced plans to review fracking practices and to implement new regulations.

From an operator's perspective, the only certainties respecting fracking regulations are that they will multiply, that they will become more onerous, and that jurisdictions will feed off each other as they try to balance public concerns against the benefits of resource development.

### A balancing of interests

In seeking to understand the patchwork of regulatory approaches being taken to fracking in North America, a number of key considerations should be kept in mind.

The fiscal benefits that accrue to host governments from publicly owned mineral rights vary widely. As this revenue directly funds, among other things, healthcare and education budgets, a more delicate and complex balance must be reached when, for example, the potential public health risks of fracking are to be weighed against the public health benefits of actual resource revenue.

The political dynamic can shift regionally from "industry vs. environment" to a conflict between how the negative consequences of industrial activity on a localized area should be weighed against the benefits resulting from that activity for the larger population.

Another important consideration is the reality that not all rock is created equal and that all resources are not equidistant from market. Some jurisdictions are



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blessed with reservoirs that lend themselves more readily to shale gas or tight oil production, while others are located closer to consumers, refiners or export markets – all of which impact the economics of development.

If additional regulatory compliance equates to an increase in operating costs, it follows that each jurisdiction that directly benefits from resource development through mineral ownership has yet another factor to consider in fine tuning its regulatory regimes.

In seeking to appease environmental and public health concerns by adopting increasingly stringent fracking regulations, a “high cost” jurisdiction may be limited in the extent to which it can compete on a regulatory basis with neighbouring “low cost” jurisdictions.

In the race to regulate, “low cost” jurisdictions may be able to implement stricter fracking regulations with the unintended consequence of eliminating production in a neighbouring “high cost” jurisdiction.

### **What operators can do to prepare for changes in fracking regulations**

In preparing for the coming groundswell of regulatory change, and the increase in operating costs that will accompany those changes, prudent operators should begin to look at the current regulatory regime merely as a starting point for building best operating practices.

As regulation of fracking continues to evolve, and the oversight mechanisms within the various regulatory agencies are forced to respond to increasingly vigilant public and media scrutiny, internal corporate compliance must move away from simple adherence to current regulatory directives and guidelines, toward a proactive, full cycle best practices operating model that accounts for the increased costs that will ultimately reflect the coming political response to the public’s concerns over fracking.

The obvious first step in preparing for impending regulatory change is the recognition at the executive level that regulatory compliance is a complex, frustrating and expensive, but necessary, undertaking.

Appropriate resourcing and staffing of a dedicated regulatory compliance group will be essential to conducting future fracking operations. The initial task of the compliance group is to ensure that the current standard operating practices are compliant with the regulations in each operating jurisdiction, and furthermore that they are standardized across an organization to promote efficiency.

The next step that an operator can take to prepare for the coming regulatory changes is an overview of recent regulatory changes across North America. Except in those jurisdictions where moratoriums persist, the regulation of fracking in the various jurisdictions will largely evolve along parallel tracks – each attempting to appropriately address public concerns in a manner that allows development to continue economically.

It follows that any regulatory element endorsed by a competing jurisdiction that successfully meets those twin concerns will eventually be adopted by every jurisdiction in North America to a greater or lesser degree. A relevant example is the widespread use of online registries where operators are required to post frack fluid composition.

From a Canadian operator’s perspective, any regulatory requirement in North America that makes sense from an operating perspective, and effectively addresses environmental and public health concerns, should form the basis for its future best operating practices regardless of the regulatory regime in place where it currently operates.

As regulation continues to increase, it is important that operators proactively adopt best operating practices from around North America, and embrace effective, internal compliance and oversight mechanisms.

Potential regulatory noncompliance and litigation from adjoining landowners, community stakeholders, and environmental groups represent operational risks that must be identified, assessed, addressed and mitigated in the course of future development plans.

An understanding and appreciation of how the political, environmental and legal climate is influencing the major emerging regulatory and litigation trends in North America will help operators gain a competitive advantage in their fracking operations.

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