BC introduces new rules for carbon capture and storage

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This article is part of a series on changes introduced with the passing of the Energy Statutes Amendment Act, 2022, which also covers increased liability of directors and officers and changes to clarify the regulation of hydrogen production in BC.

British Columbia has passed the *Energy Statutes Amendment Act, 2022,* which addresses the regulatory framework for carbon capture and storage in the province. **The Act amends the *Oil and Gas Activities Act* and the *Petroleum and Natural Gas Act* to clarify the licensing requirements for storage reservoirs and expand rights for the provincial government to explore for, access, develop and use storage reservoirs.**

The Energy Statutes Amendment Act, *2022* passed third reading and has received Royal Assent. The provisions relating to the expanded rights of the provincial government with respect to storage reservoirs have already come into force. Below, we highlight some aspects of the provincial government's expanded rights and changes to the licensing regime for storage reservoirs in BC.

Expanded rights for the provincial government regarding storage reservoirs

The *Energy Statutes Amendment Act,* 2022 grants the government more rights to explore for, access, develop and use storage reservoirs. The amendments confirm that the government has the power to grant licences to other people to access, develop or use a storage reservoirs on private land.

Importantly, a new provision states that no compensation will be payable by the government in respect of the government's right to storage reservoirs (s. 125.4 of the *Petroleum and Natural Gas Act*). Also, a transitional provision of the *Energy Statutes Amendment Act, 2022* protects the government and certain leaseholders from trespass claims relating to their prior storage reservoir activities.

Landowners were previously allowed to apply for compensation for the loss of their rights, title or interest in land that the government designated as a storage area. The

amendments to the *Petroleum and Natural Gas Act* repeal these provisions. However, landowners can continue to claim compensation and rent related to surface impacts to their land (under Part 17 of the *Petroleum and Natural Gas Act*).

The provisions in the *Petroleum and Natural Gas Act* for underground storage will not apply to certain First Nations lands, subject to regulations. Other details relating to underground storage reservoirs will be set out in regulations. The proposed amendments may help advance negative emissions technologies, but we will need to see how the amendments and future regulations reconcile the rights of government, First Nations, lease and licence holders, and landowners.

Licenses for storage reservoirs in British Columbia

Currently, the Oil and Gas Commission (soon to be the British Columbia Energy Regulator) approves subsurface storage of carbon dioxide as a special project under s. 75 the *Oil and Gas Activities Act*. Carbon capture and storage projects are subject to similar technical requirements as for acid gas disposal wells. As part of the approval process, the regulator seeks to ensure the integrity of both the wells and the storage reservoir.

Under s. 129.1 of the amended *Petroleum and Natural Gas Act*, a person will need a petroleum and natural gas lease or licence to use a storage reservoir to store or dispose of carbon dioxide, natural gas or water related to the production of petroleum, natural gas or other prescribed substances. Storage reservoir leases that were issued under the former s. 130(3) of the *Petroleum and Natural Gas Act* are deemed to be licences issued under the amended s. 130(3) of the Act, thanks to a transitional provision in the *Energy Statutes Amendment Act, 2022.*

We expect that regulations allowing people to apply for a licence to access, develop or use a storage reservoir will come into force quickly to give industry more certainty on the licencing framework for storage reservoirs.

For further analysis of the regulatory landscape for carbon capture and storage or more information about amendments to the *Petroleum and Natural Gas Act* in BC, please contact the authors below or any other member of BLG's Environmental or Energy groups.

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