Canadian energy oil and gas: Top 20 of 2020 - Legislative developments

February 19, 2021

Part 3

Without question, the top story over the last year has been the COVID-19 pandemic and its tremendous ongoing effects felt across Canada and the world.

This time has had a significant impact on Canada's energy industry and many of the changes and developments that took place in 2020 will continue to influence trends, business decisions and the future growth of Canada's energy industry in 2021.

As we look back at 2020, we have highlighted the Top 20 industry developments and decisions made throughout the year in four key areas: Judicial decisions, regulatory decisions, legislative and policy developments, and transactions and trends.

In this article, we analyze the **top five legislative and policy developments** of the last year and how these decisions may affect your business in 2021.

Top Five legislative and policy developments of 2020

A number of key energy policies were released in 2020 with a clear emphasis on alternative energy, low carbon intensity and renewables. This includes the long awaited Federal Hydrogen Strategy aiming to make Canada a top three global producer of clean hydrogen, the Alberta Governments Natural Gas strategy with Alberta's plans related to Hydrogen as well as plans to make Alberta a centre of excellence for plastic recycling, and Alberta's framework for geothermal development. On the legislative front, the Federal government released its proposed Clean Fuel Regulations while B.C. introduced amendments to its contaminated sites regime.

1. Federal Hydrogen Strategy finally released

After months of speculation and the publication of various provincial hydrogen programs, including the Alberta government's *Natural Gas Vision and Strategy*, and Ontario's *Low Carbon Hydrogen Strategy* the Government of Canada released the *Hydrogen Strategy for Canada: Seizing the Opportunities for Hydrogen* on Dec.16,

2020. The Federal Hydrogen Strategy aligns with provincial initiatives, including Alberta's natural gas-derived "blue hydrogen" in aiming to stimulate Canadian production, domestic use and export of low carbon intensity hydrogen, as part of enhancing Canada's position in global energy markets.

The commitments in the Federal Hydrogen Strategy include:

- Projecting a 30 per cent share of Canada's energy for hydrogen by 2050, reducing up to 190 Mt CO2 equivalent per year, as part of Canada's broader environmental plan "A Healthy Environment and a Healthy Economy";
- Making Canada a top three producer of clean hydrogen globally;
- Developing an export industry for Canada's hydrogen; and
- Creating regional hydrogen hubs within Canada and adapting to regional advantages in hydrogen production and deployment.

While many of the Federal Hydrogen Strategy commitments are pinned to 2050, in the near term Canada intends to develop regional and provincial hydrogen "roadmaps", identify promising hydrogen hub opportunities, plan and develop new infrastructure for hydrogen supply and distribution, as well as create pilot or demonstration projects using emerging applications of hydrogen. A majority of the federal funding initiatives supporting these commitments have yet to be finalized. For further analysis and commentary, see our publications Canada's National Hydrogen Strategy and Federal Hydrogen Strategy to energize Canada's industries.

2. Alberta releases its natural gas vision

On Oct. 6, 2020, the Government of Alberta (GOA) released its strategy for natural gas titled Alberta's Natural Gas Vision and Strategy (the Vision). The Vision has five main pillars: Hydrogen, Petrochemical manufacturing, liquefied natural gas, plastics recycling and industrial demand.

The Vision aims to export hydrogen to other parts of Canada and around the World by 2040. The Vision recognizes that segments of Alberta's energy sector are already deploying or piloting hydrogen technology and forecasts that Alberta will be a leader in domestic heavy transport decarbonization (*i.e.* conversion from diesel), as well as clean hydrogen production for industrial, electricity and residential heating demands. Further, increased hydrogen production will create jobs, including for highly skilled energy workers, and support innovation across the province.

The Vision aims to grow the petrochemical sector by more than $30 Billion by 2030. The Vision sees Alberta becoming a global top 10 producer of petrochemicals while diversifying the portfolio of products manufactured. The Vision aspires to obtain access for Alberta's natural gas to foreign markets through additional large-scale LNG projects by 2030. The GOA also plans to establish Alberta as the centre of excellence for plastics recycling in North America, while supporting Canada's commitment to 100 per cent reusable, recyclable plastics by 2030. The Vison also aims to grow industrial demand in Alberta's natural gas sector and to increase investment in natural gas processing infrastructure.

The Vision is part of the solution to encourage and attract new investments. This is crucial to the diversification of Alberta's energy sector in light of the impact of depressed

prices, policy uncertainty, low export capacity and delays in infrastructure development on the natural gas industry. The Vision promises a legal and policy framework that would support a coherent, investor-friendly, world-class natural gas sector. More information about the Natural Gas Vision can be found here.

3. Federal Clean Fuel Standard

Following through on its carbon reduction objectives, on Dec. 18, 2020, Environment and Climate Change Canada (ECCC) released a full draft of its proposed Clean Fuel Standard Regulations for review and comment. The proposed Regulations would require "primary suppliers" (large producers, refiners, and importers) of liquid fossil fuels to reduce the carbon intensity of their fuels – namely, the amount of carbon consumed over the life cycle of the fuel, including its extraction, transportation, and ultimate use of the fuel itself – yearly for the next 20 years. The Regulations would also introduce a credit creation and trading system for primary suppliers to meet their reduction obligations, and, as a last resort, would establish a compliance fund that primary suppliers could pay into in order to satisfy a portion of their obligations.

Release of the draft Regulations was delayed because of industry concerns surrounding their ability to meet the reduction levels and timeline set out in an earlier policy report and about the impact of COVID-19. In response to those concerns, the draft Regulations now have less aggressive reduction targets in the initial years, however, ramp up to a higher level in the later years than originally proposed.

The 75-day public comment period for the draft Regulations remains open; however, primary suppliers have expressed concerns in the past about the limited options and lack of flexibility for meeting the reduction requirements, as well as a lack of available low-carbon biofuels, which are expected to see a surge in demand as a result of the Regulations. Primary suppliers will need to pivot their businesses to find ways to generate reduction credits by the time the Regulations are proposed to be implemented in 2022. Read more on Clean Fuel Standard credit opportunities here and Clean Fuel Standard Regulations here.

4. Amendments to the British Columbia contaminated sites regime

British Columbia recently brought new obligations for identifying and addressing contaminated sites into force (through amendments to the *Environmental Management Act* (EMA) and the Contaminated Sites Regulation). According to the B.C. government, these amendments were necessary to address weaknesses and gaps in the Site Profile process and to ensure that contaminated sites are identified, investigated and remediated following shutdown, or before reuse or redevelopment. However, these changes impose a number of additional burdens on owners and operators of commercial and industrial properties in B.C. BLG's has provided an overview of these amendments here.

As of Feb. 1, 2021, an owner or operator of lands that have been used for a specified commercial and industrial use (as set out in the revised Schedule 2 of the Regulation) is subject to additional reporting requirements. A number of activities including decommissioning or ceasing operations, development or building permits, subdivision and rezoning approvals, or creditor or bankruptcy protection require the submittal of a Site Disclosure Statement (replacing the previous Site Profile). In almost all instances,

this will result in a mandatory Preliminary Site Investigation. If that investigation identifies contamination at the site, a Detailed Site Investigation is also required. Previously, the need for any site investigation was at the discretion of the Director.

There is a demand for oil and gas sites. Recognizing that the B.C. Oil and Gas Commission is responsible for the management of oil and gas activities, including the remediation of those sites, consequential amendments to the *Oil and Gas Activities Act* remove the requirement that the provisions of the EMA must be met prior to the issuance of a Certificate of Restoration. Instead, an oil and gas permit holder is subject to *Oil and Gas Activities Act* and Dormancy and Shutdown Regulation. BLG discussed the Dormancy and Shutdown Regulation in last year's update.

Anyone subject to these requirements is reminded that B.C. has stringent cost recovery legislation, which, to the extent the contamination was caused by another party, can be used to seek recovery of these (and other investigation/remediation) costs from "responsible persons".

5. Alberta's geothermal energy framework

On Oct. 7, 2020, the Government of Alberta (GOA) announced its plan for geothermal energy development in the province (Plan). Developing a strong geothermal sector has the potential to create jobs in the oil and gas industry and to create economic opportunity for Indigenous and rural remote communities; all while lowering greenhouse gas emissions.

Alberta has a number of advantages to develop geothermal energy including: a natural geological advantage, the opportunity to repurpose inactive oil and gas wells and infrastructure, leadership and expertise in drilling technology and a well-established service sector. Various pilot projects are currently underway in the province.

The GOA is currently working towards drafting and establishing a clear legislative framework for geothermal development. There has been uncertainty over whether geothermal is properly characterized as akin to a mineral, whether a royalty will be payable and how its exploitation in commercial quantities will be regulated. Currently, Alberta assesses geothermal project applications on a case-by-case basis. Given increased interest, the GOA hopes to provide a stable and predictable regulatory environment to encourage and attract investors in the sector. This Plan is particularly important to the oil and gas industry as part of the Government blueprint to diversify the province's energy sector (see the Natural Gas Vision above), while integrating renewable resources into the existing energy industry. For more information, see our article on Alberta's framework for geothermal energy development.

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