BC expands liability for oil and gas activities to directors, officers and others

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This article is part of a series on changes introduced with the passing of the Energy Statutes Amendment Act, 2022, including changes to clarify the regulation of hydrogen production and carbon capture storage in BC.

British Columbia's *Energy Statutes Amendment Act, 2022* expands liability for directors, officers and beneficial interest holders in relation to energy resource activities. **These changes cast a far wider net for those responsible for the restoration costs associated with orphan sites and energy resource activities (formerly known as oil and gas activities).**

The Act passed third reading and has received Royal Assent. However, many of the amendments relating to expanded responsibility are set to come into force by regulation.

Expanding liability beyond permit holders

The *Energy Statutes Amendment Act, 2022* amends the *Oil and Gas Activities Act* (to be renamed the *Energy Resource Activities Act*) to widen the scope of responsibility for energy resource activities to various persons with an interest in the activity. This is similar to the recent policy changes in Alberta to reduce the number of orphan and inactive wells, prompted in part by the Supreme Court of Canada's decision in *Orphan Well Association v. Grant Thornton Ltd*. (popularly known as Redwater).

As it stands now, liability for cleanup, restoration and management of resource activity sites in British Columbia falls on the permit holder. The *Energy Statutes Amendment Act, 2022* introduces two new categories of individuals the new British Columbia Energy Regulator can hold liable for such costs: "principals" and "responsible persons."

Under the amendments, the regulator can hold a principal of a permit holder or former permit holder directly responsible for the work and costs to restore orphan sites. The definition of "principal" includes a current or former director or officer of a corporate permit holder, or an individual directly or indirectly in control of the corporation.

These changes build on existing provisions in the *Oil and Gas Activities Act* that make directors, agents and officers liable for administrative penalties when they authorize, permit or acquiesce to a corporation's contravention of the legislation, regulations, a permit, an authorization or an order.

The second new category is a “responsible person.” Those familiar with the costs recovery provisions under the *Environmental Management Act* (the EMA) and *Contaminated Sites Regulation* will be familiar with the term. The definition of responsible person under the new legislation is very broad, encompassing those holding a "legal or beneficial interest" in petroleum or natural gas rights, production or profits, or the location for a permit.

In the event of the cancellation, reversion or abandonment of a permit, or if a permit is declared spent or expired, liability may fall on anyone who met the responsible person definition for the permit immediately before the change in status of the permit.

The amendments contemplate the creation of a register of responsible persons and, once registered, apply a reverse onus on those individuals to “satisfy the regulator that the person is not a responsible person.” Again, those familiar with the cost recovery provisions for contaminated sites under the EMA will recognize this reverse onus requirement.

As with the EMA, changes in the *Energy Resource Activities Act* provide that persons may be excluded from the definition of responsible person by regulation. We will need to see whether future regulations clarify the scope of responsible person under the Act.

New mechanisms to identify responsible persons for energy resource activities

Under the new amendments, the British Columbia Energy Regulator will be able to designate someone as a responsible person if the regulator is satisfied that the person intended to evade responsibility. The amendments suggest that there will be prescribed circumstances in which a person has the burden to satisfy the regulator that they did not intend to evade responsibility.

Principals and responsible persons will face expanded responsibility for the work and costs to restore orphan sites. Where the regulator restores an orphan site, the new legislation provides a seven-year limitation period for the regulator to commence a restoration debt proceeding against the permit holder, former permit holder, responsible persons or designated principals. Responsible persons who undertake restoration of an orphan site can apply to the regulator for compensation.

The *Energy Statutes Amendment Act, 2022* will allow the regulator to create a register of responsible persons for every past and present resource activity in the province. This will place an onus on companies with resource activities to identify all of their responsible persons on a project and report them to the government. The amendments also require the regulator to publish a publicly accessible online list of orphan sites.

In light of these changes, people involved in the energy sector need to be aware of the potential for new sources of liability arising from orphan sites and energy resource

activities. To discuss the implications of this increased risk of liability for your organization, or for further analysis of the regulatory landscape for energy in British Columbia, please contact the authors below or any other member of BLG's Environmental or Energy groups.

By

Roark Lewis, Rick Williams

Expertise

Environmental, Climate Change, Indigenous Law, Environmental, Social and Governance (ESG), Energy - Oil & Gas, Renewable Energy

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BLG Offices

Calgary
Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3
T 403.232.9500
F 403.266.1395

Ottawa
World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9
T 613.237.5160
F 613.230.8842

Vancouver
1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2
T 604.687.5744
F 604.687.1415

Montréal
1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4
T 514.954.2555
F 514.879.9015

Toronto
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3
T 416.367.6000
F 416.367.6749

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