BC hydrogen legislation: New regulator for hydrogen and other energy resources

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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 the regulation of carbon capture and storage.

British Columbia has passed legislation that will streamline the regulation of hydrogen and other energy resources in the province. Called the *Energy Statutes Amendment Act, 2022*, it introduces changes to the *Oil and Gas Activities Act* and the *Petroleum and Natural Gas Act*.

With this new B.C. hydrogen legislation, the Oil and Gas Commission will be renamed the British Columbia Energy Regulator, with jurisdiction over oil, gas, hydrogen, ammonia and methanol. A single-window regulator gives businesses investing in hydrogen in British Columbia a clearer legal framework.

The *Energy Statutes Amendment Act, 2022* passed third reading and has received Royal Assent. However, many of the amendments that affect hydrogen will come into force through subsequent regulations, which we will monitor.

Changes to the regulatory framework for energy resources

Under the *Energy Statutes Amendment Act, 2022*, the name of the *Oil and Gas Activities Act* is changing to the *Energy Resource Activities Act*, signalling the province's intent to expand the existing regulatory framework to include hydrogen, ammonia and methanol. Including ammonia and methanol supports the regulation of hydrogen in British Columbia, as these compounds are crucial in the storage and transportation of hydrogen.

Under the amendments, there will be a new purpose for the British Columbia Energy Regulator:

> *…to regulate energy resource activities in a manner that protects public safety and the environment, supports reconciliation with Indigenous peoples and the*

> *transition to low-carbon energy, conserves energy resources and fosters a sound economy and social well-being.*

We will need to see how the courts and the new British Columbia Energy Regulator interpret this purpose, but the language here indicates a shift in focus towards public protection and a transition to low-carbon energy. Further, the new purpose shows clear support for reconciliation with Indigenous Peoples, in line with the British Columbia *Declaration on the Rights of Indigenous Peoples Act*.

Under the new legislation, the Oil and Gas Appeal Tribunal will continue as the Energy Resource Appeal Tribunal, with powers to hear appeals of certain determinations made by the British Columbia Energy Regulator and designated officials, as well as appeals of other prescribed decisions made under the new legislation.

By introducing an expanded concept of "energy resources," a comprehensive regulatory framework for hydrogen production in British Columbia and a single regulator, this new legislation aligns with the British Columbia Hydrogen Strategy and CleanBC Roadmap to 2030, both of which identify hydrogen as a key component of a transition towards a low-carbon economy.

With the inclusion of hydrogen, ammonia and methanol facilities into its jurisdiction, the Oil and Gas Commission (soon to be the British Columbia Energy Regulator) is seeking input on changes to the *Fee, Levy and Security Regulation*. The Oil and Gas Commission is currently funded through levies charged on oil and gas production and infrastructure, in addition to fees for service. There will soon be fees for facilities involved in manufacturing hydrogen, ammonia and methanol. The Oil and Gas Commission is seeking public feedback on their new proposed fee structure. The deadline for comments is Jan. 31, 2023.

We can expect further changes to B.C. legislation to encourage hydrogen development in the province. The B.C. hydrogen strategy, for example, contemplates amendments to regulations and regulatory frameworks related to the *Water Sustainability Act* to facilitate the use of hydrogen energy in B.C.

Other changes in the *Energy Statutes Amendment Act, 2022*

While hydrogen may headline the new legislation, the *Energy Statutes Amendment Act*, 2022 introduces important changes to other aspects of resource development. The new legislation expands liability for individuals, including directors and officers, for permit obligations. Also, the legislation clarifies the regulatory framework for carbon capture and storage and expands the rights of the provincial government to explore for, access, develop and use storage reservoirs.

For information on how new B.C. hydrogen legislation could affect your business, or for further analysis of the regulatory landscape for energy in British Columbia, please contact the authors below or any member of BLG's Environmental or Energy groups.

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