

THE ENERGY STATUTES AMENDMENT ACT - EXPANSION OF LIABILITY FOR OFFICERS AND DIRECTORS IN ENERGY SECTOR

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As discussed in our earlier [bulletin](#), British Columbia's *Energy Statutes Amendment Act* (the "**ESAA**") makes sweeping changes to the regulation of energy in British Columbia. Among the primary changes, the revised *Energy Resource Activities Act* expands the potential liabilities for oil and gas or storage activities and for prescribed energy resource activities beyond the applicable permit holder to "principals" and "responsible persons."^[1]

The *Energy Resource Activities Act* defines "principal" to include directors and officers of a corporation as well as individuals who control, directly or indirectly, the corporation.^[2]

The term "responsible person" is defined exceptionally broadly to include people who (i) hold, or have a legal or beneficial interest in, the petroleum or natural gas rights, or the location for the applicable permit, and/or (ii) have a legal or beneficial interest in production or profits resulting from an energy resource activity authorized by the applicable permit.^[3] Additionally, if a person has ceased to be a responsible person for a permit the *Energy Resources Activities Act* now gives the British Columbia Energy Regulator (the "**Regulator**") the power to designate the person as still being a responsible person if the Regulator is satisfied that the person intended to evade responsibility.^[4]

Further, the Regulator may establish a responsible persons register and any people listed in such register are "conclusively deemed" to be a responsible person.^[5] If a responsible person is listed in the Regulator's register and wants to be removed, they must satisfy the Regulator that they are not a responsible person, and they may also be required to provide the Regulator information or records to assist with identifying other responsible persons for the permit.^[6]

Following the enactment of the ESAA, the Regulator has been given increased power and has the authority to take action in various instances including, but not limited to, the following:

- if the permit holder or former permit holder has ceased to exist or fails to comply with a specified provision, the Regulator can make an order compelling a responsible person or principal to (i) provide security to the Regulator to ensure performance of an obligation, (ii) to carry out actions for the

restoration or protection of public safety, and (iii) reimburse the Regulator for costs and expenses incurred in certain circumstances^[7];

- in relation to an orphan site for which the permit is cancelled or expired, the Regulator can make an order requiring a principal or responsible person to: (i) perform each obligation imposed under the *Energy Resource Activities Act* or applicable permit; (ii) comply with prescribed requirements; and (iii) carry out actions for restoration or protection of public safety^[8];
- the Regulator can transfer a permit in relation to an orphan site to a responsible person or a principal of the current or former permit holder^[9]; and
- in certain instances, the Regulator can transfer an authorization to conduct activities related to an energy resource activity to a third person, including a principal or related person.^[10]

The revised *Energy Resource Activities Act*, however, does provide some safeguards for principals and responsible persons. For instance, the Regulator must give a principal an opportunity to be heard prior to making an order against the principal, and upon application by a responsible person who has restored an orphan site the Regulator may compensate the responsible person for a portion of their costs.^{[11][12]} It should be noted though, that that legislators have made an effort to protect orders made by the Regulator against persons other than principals even when the burden imposed is disproportionate to that person's interest in, control over, or benefit from the relevant energy resource activity, by including a statutory protection against such orders being considered unreasonable, and therefore vulnerable to court challenge.^[13]

Companies, individuals, and other corporate entities operating in the natural resource space in British Columbia should review the amendments made by the ESAA and consider whether they fall within the definition of "principal" or "responsible person" as the Regulator now has increased authority to make severe orders against such persons.

Please contact the authors to assist should you have any questions or concerns regarding the interpretation or application of the ESAA.

[1] *Energy Statutes Amendment Act*, section 14; *Oil and Gas Activities Act* (to be renamed *Energy Resource Activities Act*), section 43.01.

[2] *Ibid.*

[3] *Energy Statutes Amendment Act*, section 14; *Oil and Gas Activities Act* (to be renamed *Energy Resource Activities Act*), section 43.02.

[4] *Energy Statutes Amendment Act*, section 14; *Oil and Gas Activities Act* (to be renamed *Energy Resource Activities Act*), section 43.06.

[5] *Energy Statutes Amendment Act*, section 14; *Oil and Gas Activities Act* (to be renamed *Energy Resource*

Activities Act), section 43.05(1).

[6] [Energy Statutes Amendment Act](#), section 14; [Oil and Gas Activities Act](#) (to be renamed *Energy Resource Activities Act*), section 43.05(2).

[7] [Energy Statutes Amendment Act](#), section 14; [Oil and Gas Activities Act](#) (to be renamed *Energy Resource Activities Act*), section 43.07.

[8] [Energy Statutes Amendment Act](#), section 14; [Oil and Gas Activities Act](#) (to be renamed *Energy Resource Activities Act*), section 43.08.

[9] [Energy Statutes Amendment Act](#), section 14; [Oil and Gas Activities Act](#) (to be renamed *Energy Resource Activities Act*), section 43.09.

[10] [Energy Statutes Amendment Act](#), section 14; [Oil and Gas Activities Act](#) (to be renamed *Energy Resource Activities Act*), section 43.10.

[11] [Energy Statutes Amendment Act](#), section 14; [Oil and Gas Activities Act](#) (to be renamed *Energy Resource Activities Act*), section 43.11(2).

[12] [Energy Statutes Amendment Act](#), section 14; [Oil and Gas Activities Act](#) (to be renamed *Energy Resource Activities Act*), section 43.12.

[13] [Energy Statutes Amendment Act](#), section 14; [Oil and Gas Activities Act](#) (to be renamed *Energy Resource Activities Act*), section 43.11(3).

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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