

# THE ENERGY STATUTES AMENDMENT ACT - BRITISH COLUMBIA WELCOMES THE HYDROGEN INDUSTRY

Posted on February 1, 2023

Categories: [Insights](#), [Publications](#)

On November 24, 2022, British Columbia's *Energy Statutes Amendment Act* (the "**ESAA**") received Royal Assent. The ESAA makes sweeping changes to the regulation of energy in British Columbia, and renames the "*Oil and Gas Activities Act*" to the "*Energy Resource Activities Act*"<sup>[1]</sup>. Similarly, it replaces the "*Oil and Gas Commission*" with the "*British Columbia Energy Regulator*"<sup>[2]</sup> (the "**Regulator**"). The amendments made by the ESAA expand the scope of the regulatory regime beyond oil and gas to contemplate "energy resources" which include hydrogen, petroleum, natural gas, methanol, and ammonia<sup>[3]</sup>.

## *Hydrogen Regulation*

By expanding the scope of the *Energy Resource Activities Act* to include additional energy resources, the provincial government has established a comprehensive regulatory regime with a single regulator throughout British Columbia. The ESAA does this by repealing the definition and references to "oil and gas activity" and replacing it with "energy resource activity", which explicitly includes the "*construction or operation of... a facility for manufacturing hydrogen, ammonia or methanol from petroleum, natural gas, water or another substance.*"<sup>[4]</sup>

Following the amendments, a person must acquire a permit prior to constructing or operating a facility for manufacturing hydrogen<sup>[5]</sup>. In order to acquire a permit, a person must apply to the Regulator and provide, among other things, a description of the proposed site of the activity and a written report regarding consultations with the owner of the land on which the person intends to carry out the activity<sup>[6]</sup>. Further, the *Energy Resource Activities Act* also delineates the process to transfer a permit related to a hydrogen project<sup>[7]</sup>, the environmental measures that must be complied with<sup>[8]</sup>, what must be done in the event of spillage<sup>[9]</sup>, and when an official may enter land or a premises being used as a hydrogen facility<sup>[10]</sup>.

## *Other Amendments*

- The purpose of the *Energy Resource Activities Act* has been revised to explicitly contemplate supporting reconciliation with Indigenous peoples and the transition to low-carbon energy which conserves energy resources.<sup>[11]</sup>

- The renamed British Columbia Energy Regulator’s board now must consist of between five and seven directors (opposed to three), one of whom must be an Indigenous person.[\[12\]](#)
- The revised *Energy Resource Activities Act* expands the potential liabilities for an oil and gas or storage activity and for prescribed energy resource activities to directors and officers of a corporate permit holder.[\[13\]](#) For instance, the Regulator will have the authority to order a director or officer of a corporate permit holder to pay costs incurred in certain circumstances and to perform certain obligations with respect to an orphan site.[\[14\]](#) Additional details related to the impacts of such amendments and potential implications for officers and directors will be discussed further in a forthcoming bulletin.
- The revised *Energy Resource Activities Act* provides that the Regulator now must publish a list of orphan sites and that if the Regulator disposes of property abandoned at an orphan site the proceeds of the disposition must be paid into the fund used to help pay for the cost of restoration of orphan sites and related purposes.[\[15\]](#)
- The ESAA also revamps the *Petroleum and Natural Gas Act* by giving the provincial government increased rights to explore for, access, develop and use of storage reservoirs for the purpose of storing and disposing of carbon dioxide and other prescribed substances.[\[16\]](#)

### Commentary

The amendments made by the ESAA create a clear framework for the construction and operation for hydrogen manufacturing facilities in British Columbia, and also provide an expanded role for the Regulator that signals the government’s intentions for addressing the expanding scope of the energy industry in British Columbia. While previously, the Oil and Gas Activities Act did expressly include “fostering a healthy environment, a sound economy and social well being”[\[17\]](#) as part of the purpose of the Oil and Gas Commission, the amendments expand this mandate as it applies to the Regulator to “regulate energy resources 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.”[\[18\]](#)

Hydrogen, as a potential alternative energy resource, is gaining interest and attention in Canada as hydrogen can be produced from natural gas (known as “Grey Hydrogen”), an abundant resource in Canada. When combined with carbon capture and storage technology (known as “Blue Hydrogen”), this alternative energy process can provide energy in a manner that helps to reduce Canada’s CO2 emissions and enhance Canada’s ability to meet its CO2 reduction targets. However, the path to the widespread production and use of hydrogen does not come without its challenges which include developing effective methods for distribution, transportation and storage.[\[19\]](#)

Prior to the implementation of the ESAA, Natural Resources Canada released the federal *Hydrogen Strategy for*

Canada<sup>[20]</sup>, which includes eight sector-wide recommendations.<sup>[21]</sup> As for the provinces and territories, British Columbia has taken a lead with revising its laws and regulations to contemplate an evolving energy industry. It should be noted that each of Alberta<sup>[22]</sup>, Ontario<sup>[23]</sup>, and Quebec<sup>[24]</sup> have published hydrogen focused roadmaps and strategies to develop and regulate the industry but it remains to be seen if they take a similar approach to regulation as British Columbia. Stay tuned for further developments and analysis.

[1] [Energy Statutes Amendment Act](#), section 1.

[2] [Energy Statutes Amendment Act](#), section 5.

[3] [Energy Statutes Amendment Act](#), section 2. See new defined term “energy resource”.

[4] [Energy Statutes Amendment Act](#), section 2. See new defined term “energy resource activity”.

[5] [Oil and Gas Activities Act](#) (to be renamed *Energy Resource Activities Act*), section 21, as amended by section 64 of the [Energy Statutes Amendment Act](#).

[6] [Oil and Gas Activities Act](#) (to be renamed *Energy Resource Activities Act*), section 24 and section 22, as amended by section 64 of the [Energy Statutes Amendment Act](#).

[7] [Oil and Gas Activities Act](#) (to be renamed *Energy Resource Activities Act*), section 29.

[8] [Oil and Gas Activities Act](#) (to be renamed *Energy Resource Activities Act*), section 36.

[9] [Oil and Gas Activities Act](#) (to be renamed *Energy Resource Activities Act*), section 39.

[10] [Oil and Gas Activities Act](#) (to be renamed *Energy Resource Activities Act*), section 57.

[11] [Energy Statutes Amendment Act](#), section 6.

[12] [Energy Statutes Amendment Act](#), section 5.

[13] [Energy Statutes Amendment Act](#), section 14.

[14] [Energy Statutes Amendment Act](#), section 14.

[15] [Energy Statutes Amendment Act](#), section 19.

[16] [Energy Statutes Amendment Act](#), section 44.

[17] [Oil and Gas Activities Act](#) (to be renamed *Energy Resource Activities Act*), section 4(a)(i).

[18] [Energy Statutes Amendment Act](#), section 6.

[19] Hague, O. (2021, April 14). *Brunel – Renewable Energy – Blogs*. “[What are the 3 Main Types of Hydrogen?](#)”.

[20] [Hydrogen Strategy for Canada](#).

[21] The eight recommendations have been proposed in eight pillars: (1) Strategic Partnerships; (2) De-Risking of Investments; (3) Innovation; (4) Codes and Standards; (5) Enabling Policies and Regulation; (6) Awareness; (7) Regional Blueprints; and (8) International Markets.

[22] [Alberta Hydrogen Road Map](#).

[23] [Ontario's Low-Carbon Hydrogen Strategy: A Path Forward](#).

[24] [2030 Quebec Green Hydrogen and Bioenergy Strategy](#).

by [Sasa Jarvis](#), [Sean Ralph](#) and [Jordan Ghag](#)

### **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.

© McMillan LLP 2023