

B.C. Introduces Legislation in Response to Redwater

14 mai 2018

On April 25, 2018, the government of B.C. approved new legislation that aims to strengthen B.C.'s orphaned well restoration and prevention regime. Once it receives **royal assent**, **Bill 15, the Energy, Mines and Petroleum Resources Statutes Amendment Act, 2018**, will result in additional requirements for those seeking to develop oil and gas in B.C. through amendments to the Oil and Gas Activities Act ("OGAA") and the Petroleum and Natural Gas Act.

Overview

The main feature of the Bill is the replacement of the current orphaned site restoration tax under the OGAA with a levy to be paid by permit holders to B.C.'s Orphan Site Reclamation Fund (the "OSRF"), which the province uses to pay the cost of restoring sites that have been abandoned by unviable operators. Currently, producers must make monthly payments of \$0.03 per 1,000 cubic metres of marketable gas produced and \$0.06 per cubic metre of petroleum produced. In place of this fixed tax, the B.C. Oil and Gas Commission (the "Commission") will determine the total amount that is to be raised by the levy and is permitted to impose the levy more than once in a calendar year, giving the Commission flexibility to ensure the OSRF is adequately funded at all times.

The Commission will determine which classes of permit holders must pay the levy. Calculation of the amount of each permit holder's levy will be determined by dividing the permit holder's liability by the total amount of liabilities of all permit holders who are required to pay the levy. The Bill defines "liabilities" as the Commission's estimate of the total cost of each permit holder's "shutdown obligations," i.e., the amount the Commission estimates it would cost to fully restore and reclaim a site.

The Bill will also result in greater scrutiny of permit applicants. Applications may now be rejected based on past non-compliance or questionable conduct by an applicant's "associate", which includes its officers, directors, agents, shareholders, or any person who the Commission believes has an influence over the applicant or permit holder.

The Commission has gained additional powers to order restoration of inactive sites as a result of the Bill. Whereas the OGAA currently allows orders to be made against a person carrying out oil and gas or related activities, the Commission may now also

make orders against former permit holders and former authorization holders. The Bill also provides that permits will be automatically cancelled if a site remains dormant for longer than the prescribed period of time as set out in the regulations.

The Bill also expands the Commission's authority to take action in response to emergencies and in order to protect public safety, as well as adds various cost-recovery provisions. Notably, in the event that anyone fails to pay an amount owing under the OGAA, the Commission will be able to file a certificate with the court, particularizing the amount owed, which has the same force and effect as a judgment, including allowing enforcement proceedings to be commenced to recover the outstanding amount.

Commentary

The Bill can be seen as a response by the B.C. government to the Redwater decision from Alberta, which we have discussed in previous posts, including the lower court's decision, the decision from the Court of Appeal, and the effect of the decision in B.C. Redwater confirmed that receivers and trustees may disclaim uneconomic assets, including those subject to environmental restoration obligations. As a result, taxpayers will ultimately bear the cost of these environmental obligations.

While the Bill does not change the effect of that decision (which is currently on appeal before the Supreme Court of Canada), it does give the Commission additional tools to refuse to issue permits to risky applicants, encourage the timely restoration of sites, and pursue the recovery of costs associated with enforcement and restoration efforts before insolvency, all of which ought to curb the number of orphan wells left to the province to restore.

The Bill will likely affect producers by increasing their costs as a result of the levy. The orphaned site restoration tax was calculated according to a set percentage of total marketable product, which is predictable and constant. In contrast, the Bill allows to the Commission to vary the levy amount as necessary to ensure the cost of restoring orphaned wells is borne by industry.

The Bill may also impact operators' access to financing since lenders will include the levy and reclamation obligations in their assessment of an operator's ability to meet their loan obligations. This impact may be reflected in a producer's ability to obtain financing or the terms on which it is offered.

Par

[Lisa Hiebert, Auke Visser](#)

Services

[Environnement, Énergie – Pétrole et gaz, Énergie – Réglementation du pétrole et du gaz](#)

BLG | Vos avocats au Canada

Borden Ladner Gervais S.E.N.C.R.L., S.R.L. (BLG) est le plus grand cabinet d'avocats canadien véritablement multiservices. À ce titre, il offre des conseils juridiques pratiques à des clients d'ici et d'ailleurs dans plus de domaines et de secteurs que tout autre cabinet canadien. Comptant plus de 725 avocats, agents de propriété intellectuelle et autres professionnels, BLG répond aux besoins juridiques d'entreprises et d'institutions au pays comme à l'étranger pour ce qui touche les fusions et acquisitions, les marchés financiers, les différends et le financement ou encore l'enregistrement de brevets et de marques de commerce.

blg.com

Bureaux BLG

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, rue De La Gauchetière Ouest
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

Les présents renseignements sont de nature générale et ne sauraient constituer un avis juridique, ni un énoncé complet de la législation pertinente, ni un avis sur un quelconque sujet. Personne ne devrait agir ou s'abstenir d'agir sur la foi de ceux-ci sans procéder à un examen approfondi du droit après avoir sopesé les faits d'une situation précise. Nous vous recommandons de consulter votre conseiller juridique si vous avez des questions ou des préoccupations particulières. BLG ne garantit aucunement que la teneur de cette publication est exacte, à jour ou complète. Aucune partie de cette publication ne peut être reproduite sans l'autorisation écrite de Borden Ladner Gervais S.E.N.C.R.L., S.R.L. Si BLG vous a envoyé cette publication et que vous ne souhaitez plus la recevoir, vous pouvez demander à faire supprimer vos coordonnées de nos listes d'envoi en communiquant avec nous par courriel à desabonnement@blg.com ou en modifiant vos préférences d'abonnement dans blg.com/fr/about-us/subscribe. Si vous pensez avoir reçu le présent message par erreur, veuillez nous écrire à communications@blg.com. Pour consulter la politique de confidentialité de BLG relativement aux publications, rendez-vous sur blg.com/fr/ProtectionDesRenseignementsPersonnels.

© 2025 Borden Ladner Gervais S.E.N.C.R.L., S.R.L. Borden Ladner Gervais est une société à responsabilité limitée de l'Ontario.