

Energy and Environmental Law Bulletin

April 2008

Fasken Martineau DuMoulin LLP

Bill 20: The *Oil and Gas Activities Act*

Matthew Ghikas and David Curtis, Vancouver

Bill 20, the *Oil and Gas Activities Act*, gives effect to key policy actions identified by government in the 2007 Energy Plan relating to the oil and gas industry. Specifically, it repeals two statutes and consolidates the powers and duties of the Oil and Gas Commission (OGC) and the rights and obligations of persons carrying out an oil and gas activity in British Columbia within a single Act. Bill 20 is of interest to stakeholders involved in the oil and gas production industry, as well as owners and operators of provincially-regulated oil pipelines.

Bill 20's 206 sections cover a wide range of industry issues. This Bulletin highlights some of the more significant developments.

Provincially-Regulated Pipelines

Legislative Framework

Currently, the OGC regulates the operational requirements for provincially-regulated pipelines (essentially, those located wholly within British Columbia). The OGC obtains its jurisdiction over such operational matters largely from two statutes: the *Pipeline Act* and the *Oil and Gas*

Commission Act. These statutes have been repealed and replaced by the *Oil and Gas Activities Act*.

Issues relating to the terms and conditions of service on provincially-regulated pipelines will remain with the British Columbia Utilities Commission (the "BCUC") by virtue of sections 117 and 203 of Bill 20 and Part 4 of the *Utilities Commission Act* governing common carriers. The Bill also confers express jurisdiction to the BCUC (in parallel to the similar jurisdiction of the OGC) over extensions, improvements or abandonment of service, which was not expressly addressed in the *Pipeline Act*.

Expansion of Lieutenant Governor in Council Powers Over Pipelines

Section 74 confers upon the Lieutenant Governor in Council (LGIC) the jurisdiction to order a pipeline permit holder, if it considers it to be necessary or in the public interest, to do any of the following:

- a) to extend or improve its pipeline for the junction with a pipeline of a person or local authority distributing or authorized to distribute gas to the public;

Vancouver

Calgary

Toronto

Ottawa

Montréal

Québec City

London

Johannesburg

www.fasken.com

- b) to sell gas to the person or local authority if to do so would not impair the pipeline permit holder's ability to render adequate service to its existing customers; and
- c) for the purposes in paragraph (a), to construct pipelines to communities immediately adjacent to its pipeline if the LGIC considers that the construction would not place an undue burden on the pipeline permit holder.

Section 74 also provides that the LGIC may (though not required to) order that a person other than a pipeline permit holder pay, in whole or in part, the costs incurred in carrying out the order. The LGIC may (though not required to) approve the payment of any of those costs from the consolidated revenue fund.

Federally Regulated Pipelines

Section 9 permits the LGIC of British Columbia to issue an authorization with respect to a pipeline that is subject to the *National Energy Board Act*. This provision may have Constitutional implications, as there is no provision in the *National Energy Board Act* that permits such an authorization by the LGIC of a province for pipelines (unlike the case of international power lines, for which such a provision exists).

Grandfathered Permits

Specified existing approvals under the *Petroleum and Natural Gas Act* and the *Pipeline Act* are grandfathered (sections 116 and 117). Section 118 allows the OGC to consolidate any or all permits held by a permit holder by operation of sections 116 and 117 into a single permit.

Oil and Gas Production

Issuance, Suspension, Cancellation and Amendment of Permits

In determining whether to refuse to issue, suspend, cancel or amend a permit, the OGC is allowed to consider a number of factors identified in section 26, including whether the party has:

- d) contravened the Act, regulations, a permit, or an authorization;
- e) engaged in a pattern of conduct that shows - in the commissioner's opinion - that the party is unfit to have a permit; and
- f) initiated an activity allowable by a permit but then fails to carry out or continue that oil and gas activity.

Transfer of Permit and Authorizations

Bill 20 contemplates a written application to the OGC in order to transfer a permit. The application is to be signed by both a permit holder and a party to whom the permit holder wants the permit to be transferred (section 29). The OGC is permitted to consider the factors identified in section 26, including those noted above.

"Orphan Site" Restoration Tax

Section 47 provides a mechanism for raising revenue for the orphan site fund continued from the former Act. Under this section, a producer must pay to the government:

- a) \$0.03 per 1,000 cubic metres of marketable gas produced by the producer in a production month; and

- b) \$0.06 per cubic metre of petroleum produced by the producer in a production month.

The OGC is required to provide a producer with a notice of the tax payable under the section. The producer must pay the tax by the date specified in the regulations or pay a penalty.

Environmental

Section 35 requires that a permit holder minimize damage, disturbance and related waste at sites of oil and gas activities.

Sections 103 and 104 authorize the LGIC to make regulations for the purposes of environmental protection and management respecting actions that a permit holder carrying out an oil and gas activity must take or refrain from taking.

Sections 40-43 require various restoration activities whenever a permit or authorization expires, is cancelled, or spent. Specifically, the holder must perform all obligations imposed under the permit or authorization, comply with the prescribed requirements, and institute any other actions for the purposes of restoration and public safety that the OGC orders.

Regulatory Procedures and Penalties

Administrative Reviews and Appeals

Bill 20 provides for an informal administrative review of determinations made under the Act by an OGC-designated review official. A request for a review must be made within 30 days of the determination at issue. The review official has the discretion to conduct a written, electronic or oral review process - whichever is deemed most appropriate. The review official has the power to confirm, vary, or rescind the determination. Bill 20 creates an appeal tribunal called the Oil and Gas

Appeal Tribunal to hear appeals from decisions made by the OGC under the new Act. The review applicant may appeal a decision to the Oil and Gas Appeal Tribunal. In addition, a person otherwise entitled to apply for a review, but who does not do so within the 30 day time limit, may appeal a determination directly to the Oil and Gas Appeal Tribunal. An appeal will involve a more formal quasi-judicial procedure and is subject to most of the provisions of the *Administrative Tribunals Act* governing process.

Administrative Penalties and Offences

Bill 20 contains provision for the imposition of administrative penalties for contraventions of the *Oil and Gas Activities Act*. The Act allows a person alleged to have contravened the Act to raise a defence of due diligence or mistake of fact. At the time of writing, there are no regulations that specify the amounts for administrative penalties under the Act though the amount shall not exceed the prescribed amount.

Bill 20 also provides that specific contraventions of the Act can be prosecuted as offences. For example, a person found liable for a contravention of section 21, which states that a person must not carry out an oil and gas activity without a permit, can receive a fine of up to \$.1.5M, three years imprisonment, or both. Lesser offences under the Act are punishable by fine alone in lesser amounts. The prosecution of an offence, as opposed to the imposition of an administrative penalty, is carried out in the courts.

Timing of Implementation

Bill 20 will come into force by regulation of the Lieutenant Governor in Council. Bill 20 received First Reading on April 8, 2008, and Second Reading on April 15, 2008. It is expected that Bill 20 will be brought into force in the very near future.

For the full text of Bill 20, see
http://www.leg.bc.ca/38th4th/1st_read/gov20-1.htm

For more information on the subject of this bulletin,
please contact the authors:

Matthew Ghikas
604 631 3191
mghikas@fasken.com

David Curtis
604 631 4827
dcurtis@fasken.com

This publication is intended to provide information to clients on recent developments in provincial, national and international law. Articles in this bulletin are not legal opinions and readers should not act on the basis of these articles without first consulting a lawyer who will provide analysis and advice on a specific matter. Fasken Martineau DuMoulin LLP is a limited liability partnership and includes law corporations.

© 2008 Fasken Martineau DuMoulin LLP

Vancouver
604 631 3131
info@van.fasken.com

Calgary
403 261 5350
info@cg.fasken.com

Toronto
416 366 8381
info@tor.fasken.com

Ottawa
613 236 3882
info@ott.fasken.com

Montréal
514 397 7400
info@mtl.fasken.com

Québec City
418 640 2000
info@qc.fasken.com

London
44 20 7382 6020
info@lon.fasken.com

Johannesburg
27 11 685 0800
info@jnb.fasken.com