



Annual Legal Update – Legislative Changes

Presented to: Environmental Managers Association of BC

January 18, 2023

Outline – New/Amended Legislation

- 1) Regulation of the Hydrogen Industry (primarily production) in BC – *Energy Statutes Amendment Act, 2022*
- 2) Regulation of Agrologists and Applied Biologists in BC – new requirements in force under the *Professional Governance Act*
- 3) Canada’s new *Single-Use Plastics Prohibition Regulations* under the *Canadian Environmental Protection Act, 1999*

Regulating the Hydrogen Industry in British Columbia

Context

- BC is known internationally as a global leader in hydrogen and fuel cell R&D
- Hydrogen is a source of energy that, when burned or used in a fuel cell, produces no carbon emissions
- Some types of Hydrogen production involve low or no carbon emissions
- The provincial government's CleanBC Roadmap to 2030 identifies low carbon hydrogen as an important strategy to decarbonize the economy
- The B.C. Hydrogen Strategy was released in July 2021
- The BC Hydrogen Office was established in March 2022 to facilitate the role of hydrogen in BC – priorities include H₂ production, distribution, storage, end-uses and export, as well as setting policies and regulatory frameworks
- There is no cohesive regulatory framework in force for Hydrogen in BC

BC Hydrogen Strategy (2021)

- Includes 60+ actions the provincial government plans to undertake over the short, medium and long term, including several related to regulation.
- Focuses on low-carbon hydrogen production using 1) clean electricity to produce hydrogen via electrolysis (“green hydrogen”) and 2) fossil fuels in combination with carbon capture and storage (“blue hydrogen”).
- Includes establishing carbon-intensity targets for hydrogen production pathways, and encouraging continued reduction in carbon intensity over time
- Intends to rely on existing agencies for regulation (e.g., the Oil and Gas Commission).

Energy Statutes Amendment Act, 2022

(ESAA)

- Aims to support the province's transition to clean energy, in line with the Clean BC Roadmap to 2030.
- Received Royal Assent on November 24, 2022, but most provisions related to hydrogen regulation will only come into force on dates to be set by regulation.
- Introduces significant amendments to the *Oil and Gas Activities Act* (**OGAA**) and the *Petroleum and Natural Gas Act* (**PNGA**), as well as minor amendments to other related legislation for consistency.
- Modernizes the purpose and composition of the Oil and Gas Commission.

ESAA: Key Amendments related to Hydrogen

- The scope of regulation under *OGAA* will expand to include hydrogen, ammonia and methanol production, and carbon dioxide storage. (not in force)
- *OGAA* will become the *Energy Resource Activities Act*. (not in force)
- The Oil and Gas Commission will become the “BC Energy Regulator” and its composition will change. (not in force)
- The Purpose of the BC Energy Regulator is updated (not in force):
 - “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”
- Alters the regulation of underground storage reservoirs to include carbon dioxide storage under *PNGA*. (in force)

Amended/New Definitions

- Once the amendments to OGAA are in force:
 - An “energy resource” will be: petroleum, natural gas, hydrogen, methanol or ammonia;
 - The term “energy resource activity” will replace “oil and gas activity” and include:
 - (c) the exploration for or development or use of a storage reservoir ... (ii) for the purposes of storing or disposing of carbon dioxide or a prescribed substance, whether or not in relation to another energy resource activity;
 - (e) the construction or operation of ... (i) a facility for manufacturing hydrogen, ammonia or methanol from petroleum, natural gas, water or another substance ...;
 - Definition of “pipeline” will include piping through which is conveyed any of: (a) an energy resource; (a.1) carbon dioxide; (b) water used for, or produced in the course of, an energy resource activity ...

Anticipated Authorization Requirements

- The section setting out permit requirements will refer to permits for “energy resource activities” (rather than “oil and gas activities”)
- **Hydrogen Production:** a permit will be required to carry out the construction or operation of a hydrogen manufacturing facility.
- There may also be new permitting requirements for pipelines associated with energy resource activities.
- Environmental professionals familiar with environmental requirements for oil and gas activities can expect to see similar/analogous requirements for energy resource activities.
- The *Environmental Protection and Management Regulation* under OGAA prescribes the “government’s environmental objectives” for various oil and gas activities. Expecting this will be updated when “oil and gas activities” are replaced with “energy resource activities”.

Anticipated Authorization Requirements

- **Carbon Storage (e.g., for blue hydrogen):**
 - a permit will be required under OGAA, as the exploration for and use of a storage reservoir for the purposes of storing or disposing of carbon dioxide will be an “energy resource activity” under the amended legislation; and
 - a licence is now required under PNGA to use a storage reservoir for storing or disposing of carbon dioxide.
- Application requirements for a PNGA licence may be prescribed by regulation, however there are no pertinent regulations in force at this time.
- **PNGA Licence Exception:** does not apply on treaty lands of a treaty first nation, Nisga’a lands, Nisga’a Fee Simple Lands, or Tsilhqot’in title lands.

New BC Energy Regulator

- The BC Energy Regulator will be the single-window regulator for low-carbon hydrogen development in BC.
- As is currently the case for oil and gas activities, the BC Energy Regulator will be responsible for issuing “authorizations” for energy resource activities under the specified provisions of the “specified enactments”: *Environmental Management Act, Forest Act, Heritage Conservation Act, Land Act and Water Sustainability Act*.
- The BC Energy Regulator will have a streamlined purpose, with a stronger mandate to focus on the transition to low-carbon energy.
- The number of directors of the BC Energy Regulator will increase from 3 to a range of 5 - 7, and at least one of the directors must be an Indigenous person.

BC Utilities Commission (BCUC) - Inquiry into the Regulation of Hydrogen Energy Services

- On November 21, 2022, the BCUC established an Inquiry into the regulation of the provision of hydrogen energy services in BC.
- The *Utilities Commission Act* definition of “public utility” includes a person ... who owns or operates in British Columbia, equipment or facilities for
 - (a) the production, generation, storage, transmission, sale, delivery or provision of electricity, natural gas, steam or any other agent for the production of light, heat, cold or power to or for the public or a corporation for compensation, ...
 - But subject to certain exclusions.
- This definition includes hydrogen as “any other agent” for the production of light, heat, cold or power. Someone who provides hydrogen to the public or a corporation for compensation would fall within the meaning of “public utility”, absent some applicable exclusion.

BCUC Inquiry – Overview of Anticipated Process

- The BCUC's Inquiry will initially involve an intake information phase (now)
- BCUC may then refine the inquiry into how different segments of the hydrogen industry should be regulated
- The BCUC will consider whether the existing regulatory framework is appropriate
- The BCUC will provide a report and likely make recommendations to the Minister, possibly including various class exemptions
- Then the Minister will make a decision, and the BCUC will implement the decision

BC Utilities Commission - Inquiry Workshop

- Inquiry Workshop scheduled for January 20, 2023
- **Registered Speakers:** include Hydrogen Naturally, Hydra Energy Corporation, HTEC, Pacific Northern Gas, FortisBC Energy, Canadian Hydrogen and Fuel Cell Association, BC Hydro/PowerTech Labs.
- **Presentation topics:**
 - Status and anticipated development of the Hydrogen Energy Services (HES) industry in BC.
 - Whether HES industry sectors are or are anticipated to be competitive markets.
 - Nature and scope of BCUC regulation that would be appropriate for each of the HES industry sectors.

Final Remarks on Hydrogen Regulation

- The regulatory landscape for hydrogen is still in development in BC:
 - many of the proposed amendments under the *ESAA* are not yet in force;
 - we expect to see further amendments to existing legislation (e.g., the *Water Sustainability Act* – to include hydrogen production as an industrial water use purpose); and
 - hydrogen production is just one aspect of the hydrogen industry – other sectors and regulatory bodies may be involved as the regulatory framework develops.



Professional Governance Act (PGA):
Reserved Practices for Agrologists and
Applied Biologists

Professional Governance Act (PGA)

- Previously, professions such as agrology, applied biology, forestry, engineering and geoscience were governed under separate statutes.
- The PGA aims to provide a consistent governance framework for self-regulating professions that incorporates best practices for professional governance.
- The PGA applies, or will apply, to:
 - **British Columbia Institute of Agrologists**
 - Applied Science Technologists and Technicians of British Columbia
 - **College of Applied Biology**
 - Professional Engineers and Geoscientists of BC
 - BC Forest Professionals
 - Architectural Institute of BC (anticipated)

Professional Governance Act

- The PGA came into force on February 5, 2021.
- Regulations for each individual regulatory body also came into effect on February 5, 2021.
- The original Forest Professionals Regulation and the Engineers and Geoscientists Regulation provided for both reserved titles and reserved practices.
- The original Agrologists Regulation and the Applied Biologists Regulation included reserved titles, but were only amended to include reserved practices effective September 1, 2022.
- The Agrologists Regulation and Applied Biologists Regulation were further amended, effective October 1, 2022, to include limited licence agrologists and applied biology limited licensees, respectively.

Reserved Titles and Practices

- The PGA prohibits the use of “reserved titles” to describe a person’s work and the provision of “reserved practices” except by a registrant of the appropriate regulatory body.
- Reserved titles and practices for each regulated profession are defined in their respective regulations.
- Exception from the reserved practices prohibition where a person is exercising the rights of an Indigenous people (s. 55.1).
- Compliance and enforcement by regulatory bodies starts with education and information, but if non-compliance continues, violations are punishable by fine of up to \$200,000 or up to two years imprisonment (individuals) or a fine of up to \$500,000 (firms).

Applied Biologists Reserved Titles

- Reserved Titles:
 - Professional biologist
 - Biologist in training
 - Registered biology technologist
 - Registered biology technologist in training
 - Applied biology technician
 - Applied biology technician in training
 - Applied biology limited licensee
- College of Applied Biology's compliance plan includes annual pro-active searches for infringement of reserved titles starting in March 2023.

Applied Biologists Reserved Practices

- **“reserved practice”**: the practice of applied biology (as defined) ...if the practice relates to providing advice or another service for a biology objective (as defined) that, having regard to the protective purposes, requires the experience or technical knowledge of a professional biologist, registered biology technologist or applied biology limited licensee.
- **“protective purpose”**: means the safety, health and welfare of the public, including the protection of the environment and the promotion of health and safety in the workplace.
- **Exception**: the practice of applied biology does not include the reserved practices of another regulatory body
- College of Applied Biology’s compliance plan uses a phased approach, including enforcement of reserved practices starting September 1, 2023.

Agrologists Reserved Titles

- Reserved Titles:
 - Professional agrologist
 - Articling agrologist
 - Technical agrologist
 - Articling technical agrologist
 - Limited license agrologist

Agrologists Reserved Practice

- **“reserved practice”**: means the practice of agrology...if the practice relates to providing advice or another service that, having regard to the protective purposes, requires the experience or technical knowledge of an agrologist or a limited license agrologist.
- **Exception**: does not include the reserved practices of another regulatory body or a normal farm practice (as defined in the *Farm Practices Protection (Right to Farm) Act*).
- **Restriction**: in the case of advice or services that relate to restoration, reclamation or remediation of aquatic, terrestrial or atmospheric ecosystems, the reserved practice is limited to the state or quality of soil, water or air, for an agrology purpose.
- **Compliance plan**: phased approach. After **March 1, 2023** the BC Institute of Agrologists will actively search for non-registrants practicing reserved practices and/or presenting themselves as registrants, and plans to pursue enforcement against any individual who refuses to become a registrant after receiving the pertinent information.

Registration and Maintenance Requirements

Applied Biologists

- Registration
 - Proof of Education/Training
 - Work Experience
 - Professional Practice Competencies
 - Professional Work Products*
 - Code of Ethics & Professional Conduct Course
- Maintenance of Status
 - Professional Development (reported annually)
 - Annual Fees

Agrologists

- Registration
 - Proof of Education/Training
 - Work Experience
 - Self-Declaration of Practice Area
 - BCIA Ethics for Professionals course
- Maintenance of Status
 - Professional Development (reported annually)
 - Annual Fees

Canada's *Single Use Plastics Prohibition Regulations* (SUPPR)

SUPPR: Overview

- The *Canadian Environmental Protection Act, 1999 (CEPA)* s. 93(1) allows regulations to be established for Toxic Substances.
- Plastic microbeads & manufactured items are Toxic Substances under CEPA Sch. 1
- SUPPR is a step towards Canada's target of zero plastic waste by 2030.
- SUPPR prohibits certain single use plastic (SUP) items, most of which are used in the food and beverage industry.
- Some exceptions for certain types of straws in specified circumstances (e.g., for accessibility reasons), business-to-business sales, and limited off-display retail sales (i.e. customer requires assistance from an employee to purchase).
- Includes requirements for recording permitted exports of the regulated SUP items.
- Phased approach - the sections of SUPPR are being brought into force in several phases over three years. The **first phase** came into force on **December 20, 2022**. The other phases will come into force on staggered dates between 2023 and 2025.

SUPPR: Application

- **Applies to:**
 - any person who manufactures, imports, sells (including transferring free of charge – s. 93(2) of CEPA) any of the prohibited items, e.g. distributors, restaurants and other food vendors, healthcare facilities and other care facilities; and
 - Testing/accreditation requirements apply to plastic testing labs.
- **Does not apply to:**
 - SUP items in transit through Canada.
 - SUP items that are waste.
- **Limited application to:**
 - SUP items manufactured, imported or sold for the purpose of export (there are record-keeping provisions, and records must be kept for at least 5 years) – this exception to the prohibitions is scheduled for repeal December 20, 2025.

SUPPR: Prohibited Items – 6 categories

- **1. SUP checkout bags:** made at least in part from plastic, formed in the shape of a bag, and designed to carry purchased goods from a business (exceptions for bags made of plastic that is fabric under the *Textile Labeling Act* unless the plastic does not meet certain physical criteria for durability).
- **2. SUP cutlery:** forks, knives, spoons, sporks, or chopsticks containing polystyrene or polyethylene or that change their physical properties after being run through an electrically operated household dishwasher 100 times.
- **3. SUP foodservice ware:** (i) clamshell containers, lidded containers, boxes, cups, plates or bowls (ii) designed for serving or transporting food or beverage that is ready to be consumed, and (iii) containing expanded polystyrene foam, extruded polystyrene foam, polyvinyl chloride, carbon black, or an oxo-degradable plastic.

SUPPR: Prohibited Items – 6 categories

- **4. SUP ring carriers:** made at least in part from plastic, formed in the shape of a series of deformable rings or bands that are designed to surround beverage containers in order to carry them together.
- **5. SUP stir sticks:** made at least in part from plastic, designed to stir or mix beverages or to prevent a beverage from spilling from the lid of its container.
- **6. SUP straws:** made at least in part from plastic, formed in the shape of a drinking straw, and that contains polystyrene or polyethylene or changes its physical properties after being run through an electrically operated household dishwasher 100 times. (Note, the prohibitions have limited exceptions for SUP flexible straws.)

SUPPR: Analysis of Plastic

- “plastic” is not defined, but certain prohibited items are defined by their component material.
- Some SUP items are defined by performance standards based on physical characteristics.
- Any analysis of physical characteristics must be performed by a laboratory that, at the time of analysis:
 - Is accredited under ISO/IEC 17025 (*General requirements for the competence of testing and calibration laboratories*) or the *Environmental Quality Act* (Quebec); and
 - The scope of accreditation includes the analysis of the physical characteristics of SUP.

SUPPR: Staggered Implementation

| Item | Manufacture and import for sale in Canada | Sale (includes transfer of physical possession) | Manufacture, import and sale for export |
|--|--|--|--|
| Checkout bags, cutlery, foodservice ware, stir sticks, straws* (subject to several exceptions for flexible straws) | December 20, 2022 | December 20, 2023 | December 20, 2025 |
| Ring carriers | June 20, 2023 | June 20, 2024 | December 20, 2025 |
| Flexible straws packaged with beverage containers (initially, can be sold by retail stores if packaged elsewhere) | N/A | June 20, 2024 | December 20, 2025 |

Conclusion

- This concludes our presentation on:
 1. Regulation of Hydrogen in BC
 2. New regulatory requirements for Agrologists and Applied Biologists in BC
 3. Canada's *Single Use Plastics Prohibition Regulations* under CEPA

- Questions?



THANK YOU FOR LISTENING



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