

OIL AND GAS ACTIVITIES ACT AND REGULATIONS

FREQUENTLY ASKED QUESTIONS

[Oil and Gas Activities Act](#)

[Environmental Protection and Management](#)

[Pipelines](#)

[Roads](#)

[Consultation and Notification](#)

[Geophysical](#)

[Drilling and Production](#)

[Emergency Management](#)

[Administrative Penalties](#)

[Compliance and Enforcement](#)

[Appeals](#)

OIL AND GAS ACTIVITIES ACT (OGAA)

Why is this legislation necessary?

- Dramatic growth of industry over the past decade has increased pressures on regulatory system largely designed over 40 years ago.
- New technological developments over the past several decades have been significant and new developments are expected to accelerate in the future.
- Significant changes in societal norms and standards, particularly in respect of the environment.
- Future developments in the interior basins and of unconventional resources such as tight gas, shale gas and coalbed gas.

The new legislation has a heavy compliance and enforcement component. Why?

Industrial activity has increased significantly over the past decade. Good governance requires the regulatory structure to keep pace. The new legislation modernizes the existing compliance and enforcement mechanisms to meet the increasing challenge from this sector. Compliance in the industry is high. However, government believes in continuous improvement and the new legislation will enable government to impose high expectations on industry as it continues to expand.

How does this legislation improve regulation? Why are improvements necessary?

- Improves compliance and enforcement authorities of the Oil and Gas Commission (OGC) and enables the OGC to link past behaviour and compliance of a company to current and future operations.
- Improves opportunities for landowner and stakeholder input into decision making process before the decisions are made.
- Enables government to establish clear and consistent environmental requirements to ensure that oil and gas activities are conducted in an environmentally responsible manner.

How will the Act enable innovation?

Section 25 of the new Act outlines how innovative new technologies or methodologies, following detailed review by the OGC, may qualify for designation as an innovative or “Special Project”. The Special Project or Innovation section of the new Act will enable the OGC to review, undertake trial and adopt those new and beneficial technologies.

How will this legislation help with the new “unconventional” plays?

The challenge with unconventional gas plays is to get the gas out of the ground economically. The regulatory powers given to the Lieutenant Governor in Council and the OGC in the new Act enable specific regulations to be developed for special projects such as shale gas. These regulatory powers will enable government to manage these projects differently from otherwise “normal” operations to enable the gas to be extracted while still ensuring that all safety and environmental goals are met.

How are landowner concerns/interests covered by this legislation? What role do landowners/other public have, if any?

Comprehensive and coordinated applications with stronger and enforceable consultation and notification requirements will provide the OGC, stakeholders and First Nations with a better understanding about the project being proposed and focus on discussions informing the decision process. Landowners and the public are able to make submissions to the OGC on an application and the OGC is required to consider the submissions in its assessment of the application.

What is the timeframe for OGAA and Regulations to be in place?

The OGAA is already law—passed in May 2008. It is anticipated that the regulations will go into effect on April 30, 2010. Training will be delivered prior to the regulations coming online.

Who issues a company a Master License to Cut?

OGC will issue it, as a specified enactment.

Who tracks the data on Timber Harvesting?

The Ministry of Forests and Range.

ENVIRONMENTAL PROTECTION AND MANAGEMENT (EPM)

How is government going to ensure that oil and gas activities will not harm the environment?

The Lieutenant Governor in Council has extensive powers to set requirements to protect the environment. In the past, environmental regulation of the industry was split over three Acts depending upon the activity being undertaken. The regulatory power and the requirements under the three Acts was generally weaker than under OGAA and inconsistent across the Acts.

Where does the term Riparian Management Area come from?

This term is lifted from the Forest and Range Practices Act (FRPA). These are areas near streams, lakes and wetlands that require additional management measures to protect their contribution to biological diversity and habitat value. The Riparian Management Guidebook is available on the Ministry of Forests and Range website at

<http://www.for.gov.bc.ca/tasb/legsregs/fpc/fpcguide/riparian/rip-toc.htm>.

Who will look after fish and fish habitat concerns under OGAA?

The B.C. Ministry of Environment's Conservation Officers Services in consultation with fisheries biologists in the Environmental Stewardship Division address potential infractions under Canada's Fisheries Act.

How will streams be protected for all important uses including fish, drinking water, First Nations uses, etc.?

There are numerous measures in the regulations that will regulate industry's potential impact on water quality. In addition to the Environmental Protection and Management Regulation, licensed water withdrawal is protected in the Water Act and, Drinking Water Protection Act, and Water Act regulations.

Under FRPA there are measures to protect wildlife. Will the OGC follow these?

No, FRPA measures apply to forest activities. OGAA contains measures and other requirements in regulation that apply to oil and gas activities in B.C. Some of the measures and requirements will be similar to FRPA while others will be specific to oil and gas activities.

How can oil and gas activities go into some areas while forestry activities cannot? Some environmental considerations (e.g., wildlife such as Caribou) and cumulative impacts must be considered for all activities in an area.

The oil and gas footprint is generally smaller and substantively different than forestry. Government has sold an exploration right to industry to explore and develop oil and gas resources. Government will work with other interests to develop and implement mitigative

measures to apply to oil and gas activities that will occur in areas of important habitat or ecosystem value. Government policy around cumulative impacts is in the earliest stages of discussion—outside the scope of the OGAA implementation.

What wildlife are managed or protected under OGAA?

The Ministry of Environment (MoE) and the Integrated Land Management Branch (ILMB) of the Ministry of Agriculture and Lands (MAL) have identified and mapped areas of important habitat or ecosystem values. “Identified wildlife” and species at risk are the focus. A more general habitat management attribute will also be included in the Environmental Protection and Management regulation. There are opportunities for First Nations, etc., to identify important wildlife values and features (e.g., calving areas, timing windows, setbacks and buffers) and accompanying habitat areas during the permit review process. There is also the opportunity to identify wildlife values and features during habitat value identification and formalization exercises (e.g., establishing Wildlife Habitat Areas (WHA) and Ungulate Winter Range (UWR) areas) and related processes led by the MoE.

Will these changes affect the current Ministry of Energy, Mines and Petroleum Resource’s (MEMPR) tenure caveats? Who will be involved in the development of new caveats?

The MEMPR is currently reviewing options for improving the petroleum and natural gas tenure referral process, which includes tenure caveats as part of the OGAA and the Long Term Oil and Gas Agreement process. It is anticipated that some caveats may become redundant and new ones that reflect new identified values may need to be developed in consultation with First Nations, industry and other agencies to ensure consistency with the OGAA and associated Regulations.

What is an invasive plant?

The OGAA Environment Protection and Management Regulation allows for the MAL to designate invasive plants through an Order. The information is publicly available and accessible. Training is available to assist industry and others in identifying and preventing the transfer of invasive species.

What does “reasonable efforts to not transfer invasive plants” mean?

A degree of care which ordinarily prudent and competent persons engaged in similar lines of business would exercise.

What is the penalty for knocking a wildlife tree down?

The Administrative Penalties Regulation under OGAA defines the administrative penalty regime. Penalties under the Act start at \$25,000 and can go up to \$1.5 million. The maximum penalties set out in section 86 of the Act apply on conviction (in a court of law) of contravention of the specific provision listed in each subsection.

What does the term “known” mean?

In order for industry, and others, to plan and manage/protect environmental values, they need to know where the values are. Private land owners, First Nations and other stakeholders need to bring values and features forward during the referral process to ensure that industry knows of it. If spiritual sites, burial grounds, berry patches, etc., are to be protected, they need to be known and documented so industry can plan and conduct their operations accordingly.

How can industry and others find out about “known” water values such as aquifers that might exist in their area of operations?

The “Guide to Using the BC Aquifer Classification Maps”, Berardinucci and Ronseth, June 2002 assists in identifying “known” aquifers. The Guide is available on the MoE’s web-site. Mapped aquifers exist in B.C. For example, the federal Prairie Farm Rehabilitation Administration has completed some coarse aquifer mapping in the Peace for the Peace River Regional District (PRRD) – dated 1998.

[Top of Page](#)

PIPELINES

Does industry have to restore the land after a pipeline is laid?

OGAA imposes an obligation to restore the land after a pipeline has been laid. The Pipelines and Facilities Regulation will provide detail on what steps the pipeline permit holder must take to protect the integrity of the soil layers during construction and the productivity of the soil after restoration.

Are there requirements for companies to replace old pipelines?

Companies are required to prepare pipeline integrity management plans which include monitoring and maintenance processes and procedures to ensure that pipelines remain fit for service. Pipelines which demonstrate an unacceptable risk to public safety or the environment may be forced to be repaired, replaced or shut down and abandoned.

Do operators have to remove a pipeline when it is abandoned?

No, more damage will be done in the way of surface disturbance if it is removed.

There is currently a requirement for companies to notify schools, etc., in the case of a pipeline break. What about Trapper’s cabins?

The existing requirements for emergency response planning will be continued. When a company initiates their Emergency Response Plan in response to a hazard or danger to other people in the area, a search of the area must be conducted in order to identify and notify people that are transient in the area. This would include trappers.

ROADS

When does OGAA allow road users to be released?

Road users are released when another company or user group takes over operation and maintenance of the road or the road is permanently deactivated.

Will First Nations, private land owners or others be able to request a gate on a road to protect a cabin or special site from vandalism?

If necessary to prevent or limit damage to the road or the environment or endangerment to human life or property, both the permit holder and the OGC will have the authority to temporarily close a road or restrict persons from using the road.

The new Oil and Gas Roads Regulation only applies to oil and gas roads. Industry uses other roads. How does this Regulation apply to roads that were never designed to handle oil and gas traffic?

Maintenance and operation of oil and gas roads will have to meet the new standard in the Oil and Gas Roads Regulation.

Can OGAA put limits on the amount of roads constructed and/or have roads decommissioned when they are no longer needed.

Companies will be urged to upgrade and use the roads that are already in existence. Other measures are beyond the scope of the Act.

CONSULTATION AND NOTIFICATION

Is there a definition of “residence”? Could it include camps and seasonal dwellings?

Landowners under OGAA only include fee simple ownership or those with a disposition under the Land Act (e.g., grazing or agricultural lease holder). Residence does not include camps or seasonal dwellings. The key to protecting different types of residences is to make them known.

Under the Act, why are landowners mentioned but not First Nations?

Landowners acquire certain rights from the Province under provincial statutes. First Nations rights flow from the Constitution Act of Canada which cannot be affected by provincial laws and therefore have to be addressed through other government to government processes.

DRILLING AND PRODUCTION

What about the regulation of NORMS?

The OGC does not regulate NORMs. They are regulated under the Environmental Management Act.

How will the fencing of sumps be addressed in the new regulations? Is there a minimum default standard for fences?

The company must design, construct and maintain a system suitable for keeping out domestic livestock and wildlife. If animals are getting in, the company may be found to be in noncompliance and may be subject to orders and other sanctions including an administrative penalty defined in the Administrative Penalties Regulation.

Could there be some monitoring from First Nations to see if the fences are working?

If a member of a First Nation see a fenced site that they feel is not working, they can file a complaint with the OGC through their Lands Office. The OGC would investigate to determine if further actions are necessary, and report back to the First Nation Lands Office.

Who would deal with migratory birds in a sump? Would it be Environment Canada?

It is unlikely that migratory birds would use a sump, especially if the sump contains gelchem. Migratory birds are managed under the Migratory Bird Act and Regulations; the BC Conservation Officer Service enforces the Act and Regulations in B.C. along with Environment Canada Officers. Regulations with respect to “sumps” are in the OGAA Drilling and Production Regulation. OGAA Regulations will address the management of wastes produced by oil and gas activity.

After the snow melts there is always a lot of garbage left on job sites. What can be done to ensure this is cleaned up?

If you find this in the field, please report it to the OGC. The OGC will investigate and ensure it is cleaned up. Under the OGAA, there are tools to encourage industry, or others, to clean up (e.g., an administrative penalty can be levied for not doing so).

Can monitors be included on all phases of projects, not just the construction phase, to help identify wildlife features and ensure the sites are cleaned of garbage?

Companies are responsible to ensure they are compliant with requirements in the OGAA including removing garbage. There may be a good business case for monitors to assist companies in staying compliant. The Act and Regulations do not contemplate directing

companies to hire specific individuals. If the companies do not clean up after themselves the administrative penalty will apply, as well as, in some cases the Commissioner can deem a company unfit to work in B.C. and can refuse to accept their applications to work in this province.

Could First Nations give input on companies they feel are unfit to operate in B.C.?

This is the decision of the Commissioner and is subject to the applicant or permit holder first being convicted of an offense by a Court. First Nation communities can use the “First Nation Complaint/Incident Reporting Form” to make the OGC aware of what you see going on in the field.

How will the OGC get information regarding a company’s operational problems in other provinces or countries?

The only information relevant to the Commissioner’s decision would be that related to a conviction of an offence, which would be available through the judicial records of the province or country.

Who responds to spills?

OGC responds to spills on leases. The MoE is responsible for spills “off lease” (i.e., on a public road way) and are government’s lead for responding to large contaminated sites.

Can First Nations, private landowners and others have access to information regarding compliance? Is OGC considering putting out lists such as Ministry of Environment’s “Top 100 Polluters”?

First Nations can access information that is routinely available through Freedom of Information. There has been some discussions regarding publishing a list, however no policy decision has been made regarding this at this time.

[Top of Page](#)

EMERGENCY MANAGEMENT

Could OGC’s Aboriginal Relations staff help with the administrative burden of updating contacts for ERPs?

Companies are responsible for updating the contacts in the ERPs, the administrative work is extracting one page and replacing it with the new page. There maybe some value with working with OGC staff to develop an emergency contact list for each community and have it regularly updated. This would be a useful communication tool when industry is discussing ERPs with the communities.

What do we do in the event of an emergency if we are hunting or camping?

Industry and government will collaborate and send out “rovers” to look for transients in the event of an emergency. If there is a strong smell of gas it would be advisable to leave the area and report the incident as soon as possible to the OGC. If the source is known a call should also be made to the operator to let them know there is a problem at one of their sites.

[Top of Page](#)

ADMINISTRATIVE PENALTIES

Will being assessed a penalty hinder a company in getting a permit?

Yes. Compliance history may be considered during the permitting process. An Operator with poor performance could be found to be unfit to be granted a permit.

Who is going to administer these penalties?

The OGC.

Can companies appeal penalties?

Yes companies will have the ability to appeal through the review and appeal provisions in OGAA.

What happens to the money collected through administrative penalties under OGAA?

The money collected goes to the consolidated revenue fund for the B.C. government.

How long can the OGC take before it finds a contravention, imposes an administrative penalty or starts a prosecution after an incident has occurred?

The OGC can always issue an order in relation to a permit or former permit to take action to address a problem. However, a finding of a contravention, an imposition of an administrative penalty or the starting of a prosecution must be started within three years of the date of occurrence (or omission) or three years from the date that the OGC Commissioner first became aware of the occurrence (or omission). These time periods are comparable to other resource legislation.

What are the maximum penalties under the Act?

The maximum penalty a court can impose is \$1.5 million and/or imprisonment of up to three years. The maximum penalty is targeted at serious contraventions (primarily by a permit holder) that have resulted in a threat to the environment or public safety or unauthorized production of the resource (i.e. theft). The Courts can also add additional amounts to cover the costs of

investigation, remediation costs and economic benefit (profit) earned as a result of the contravention.

Could a person receive both an administrative penalty and be prosecuted for the same contravention?

No.

What happens if a company finds it is more profitable to break the rules than comply? What can the OGC do to ensure compliance?

When imposing an administrative penalty, one of the factors to consider is whether the company profited from the contravention. After finding an offence, the Courts can ‘claw’ the benefit back by increasing the fine by an amount equal to the economic benefit. Any practice indicating that the company ignores rules to increase profit will be factors taken into consideration in determining whether (1) permits should be issued in the future, (2) conditions to impose on existing or future permits, and (3) requirements (including security deposits) that the company must meet going forward.

[Top of Page](#)

COMPLIANCE AND ENFORCEMENT

What happens if someone does not have a permit but carries out an oil and gas activity? Does the OGC have the power to stop them? Can any actions be taken to penalize the individual?

In this situation, the person would be in violation of the OGAA. The OGC is able to order immediate suspension of the activity and impose the full range of penalties available under the Act to the individual.

Who is responsible for complying with this Act? Who can be held liable for a contravention?

Any person who is doing an oil and gas activity is responsible for complying with the Act. Any person associated with the permit holder who is directly or indirectly responsible for the contravention, including agents, contractors and employees of the permit holder or their agents, contractors or employees may be held liable, and due diligence, officially induced error or mistake of fact are defences under the Act.

[Top of Page](#)

APPEALS

Appeals – who has a right of appeal under the Act and why?

Two groups of people have a right of appeal – 1) those subject to the regulation: the permit holder, any person who has been issued an order, any person who has been declared to have contravened the Act or been issued an administrative penalty, and (2) landowners on whose land a permit has been issued or amended.

What about other individuals? Why do they not have the right to appeal as well?

Other individuals who do not have a direct interest in the land on which the oil and gas activity is located do not have the right to appeal. Individuals have the opportunity to provide input into the decision making process regarding the permit application through consultations at the start of the process. These individuals also have the ability to file submissions in relation to the application as well which the OGC must consider in its assessment of the application.

How is the landowner's right to appeal protected from being nullified by the permit holder beginning operations under the permit?

If a permit is issued over private property, the permit holder cannot start the activity until the 15 day appeal period has expired (unless the landowner otherwise agrees to the start). At the end of the appeal period, if the landowner has filed an appeal, the landowner has the right to apply to the Appeal Tribunal to request a stay of the decision pending the appeal. The 15 day appeal period also applies to amendments to a permit affecting private land. The 15 day appeal period starts when the permit is issued or amended.

Why is it necessary to create a new Appeal Tribunal especially when the transition provision enables the LGIC to appoint members from the existing Environmental Appeal Board (EAB) and the Forest Appeals Commission (FAC)?

The new Appeal Tribunal is targeted at decisions of the OGC that are both technical to the oil and gas industry and of a broader regulatory compliance, environmental regulation and forest harvesting concern. The EAB and FAC have skilled members with knowledge and experience applicable to the broader roles of the Appeal Tribunal. However, it may also be necessary to add new members with particular expertise in the geotechnical area. The EAB and FAC already rely on cross-appointment between the two boards, the Oil and Gas Appeal Tribunal will make use of these efficiencies as much as possible.

[Top of Page](#)