



COMMUNIQUÉ

for the Construction Industry

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AMENDMENT TO THE ALBERTA BUILDERS' LIEN ACT AFFECTING WORK ON "OIL OR GAS WELLS" AND "OIL OR GAS WELL SITES"

Introduction

The *Builders' Lien Amendment Act, 2001*, was passed by the Alberta legislature on November 19, 2001 and it came into force on April 1, 2002.

The amendment implements a 90 day holdback period for work performed in relation to "oil and gas wells" and "oil and gas well sites". This amendment was sponsored by the honourable member for Bonnyville–Cold Lake, Mr. Ducharme. Alberta Hansard for November 14, 2001 provides some insight as to the reason that this amendment was passed:

Mr. Ducharme:

... For some years now we have been hearing from members of the oil and gas industry that the Builders' Lien Act is not working well for them in certain areas. The Canadian Association of Oilwell Drilling Contractors and Petroleum Services Association of Canada have told us that typically payments for certain work in the oil and gas sector are not made within 45 days of the completion date. ... The industry has requested that we extend the present 45-day filing period to 90 days. ...

Note:

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... However, it also specifies that this extension only applies to contractors that drill oil and gas wells or service oil and gas well sites as they are the only ones that are affected by the unique industry payment practices I have just described.

The major proponents of Bill 22 are the Canadian Association of Oilwell Drilling Contractors and the Petroleum Services Association of Canada. I'm very pleased to note that these two associations worked very hard with the producer organizations – that is, the Small Explorers and Producers Association of Canada and the Canadian Association of Petroleum producers – to reach a consensus. All four of these stakeholders have been consulted on the amendment and have recently written letters supporting this bill. Alberta Energy also supports this amendment.

Particulars of the *Builders' Lien Amendment Act, 2001*

The *Builders' Lien Amendment Act, 2001* amends, among others, sections 18 (major lien fund), 21 (money required to be retained), 23 (minor lien fund) and 27 (payment from the lien fund) of the *Builders' Lien Act*¹. Along with the amendment to section 41 (time for registration), these amendments extend the holdback period and lien registration period for work done on oil or gas well or oil or gas well sites to 90 days from the regular 45 day period. The remaining amendments are consequential to this end.

What will the definition of oil and gas well or oil or gas well site include?

Despite the remark of Mr. Ducharme that the amendment “specifies that this extension only applies to contractors that drill oil and gas wells or service oil and gas well sites”, there is no definition of either “oil or gas wells” or “oil and gas well sites”.

The Builders' Lien Act applies to work in relation to mines and minerals by virtue of subsection 4(2):

- 4(2) When work is done or materials are furnished
 - (a) preparatory to,
 - (b) in connection with, or
 - (c) for an abandonment operation in connection with,the recovery of a minerals ... the lien given by subsection (1) attaches to all estates and interests in the minerals concerned ...

Subsection 4(3) further clarifies the lien interest:

- 4(3) A lien attaching to an estate or interest in mines and minerals also attaches to the minerals when severed from the land.

Subsections 4(2) and 4(3) remain unchanged by the amendment.

Prior to the amendment², there was only one reference to an “oil or gas well”. That reference appeared in subsection 34(4):³

- 34(4) In the case of a lien arising in connection with an oil or gas well, it is not necessary to set out in the statement of lien the name of the owner or alleged owner of the oil or gas well.

There appears to be no judicial consideration of this subsection or the reference to “oil or gas well”.

As stated above, the amendment did not introduce a definition of either “oil or gas well” or “oil or gas well site”, so we are left with a common usage interpretation until such time as the legislation is amended further or there is judicial consideration of the new sections.

Companies must determine in each situation whether the work is being done in relation to a “well” or “well site”. In some cases, this may include the construction of laterals and gathering systems related to a well or well site. Where there is any doubt, the period for holdback should be 90 days to ensure that holdback funds are not paid out before the lien period expires.

¹ See sections 4 to 8 and 11 of the *Builders' Lien Amendment Act, 2001*

² Which came into force April 1, 2002

³ Section 34(4) was repealed and replaced by the amendments brought in by the *Builders' Lien Amendment Act, 2001*, so that it now makes reference to work on both “oil or gas wells” and “oil and gas well sites”.

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