

REQUIREMENTS FOR CONSULTATION AND NOTIFICATION REGULATION 50/2021 - Unofficial Copy

Updated To:

[Note: This is an Unofficial Copy. includes B.C. Reg. 202/2023, Sch. 11 amendments
(effective September 1, 2023)]

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B.C. Reg. 50/2021

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Provisions of the *Energy Resource Activities Act*, SBC 2008, c. 36, relevant to the enactment of this regulation: sections 106 and 107]

PART 1 – Interpretation

Definitions

1. In this regulation:

"**Act**" means the *Energy Resource Activities Act*;

"**applicant**" means a person described in Division 1 [*Who Must Consult or Notify*] of Part 2 as a person who must provide an invitation to consult or a notice under Division 2 or 3 [*Who Must Be Consulted or Notified*] of that Part;

"**class**", in relation to a facility, means a class of facility as defined in section 1 of the Fee, Levy and Security Regulation;

"**consultation distance**" means the distance set out in Division 5 [*Consultation and Notification Distances*] of Part 2 between a place or thing referred to in section 8 [*persons within consultation distance*] and the site of proposed activities;

"**invitation to consult**" means an invitation to consult with respect to proposed activities, given in accordance with sections 19 [*information to be provided in all cases*] and 20 [*additional information to be provided if obligation to consult*];

"**local authority**" means a municipality or a regional district;

"**notice**", except in Part 3, means a notice with respect to proposed activities, given in accordance with section 19;

"**notification distance**" means the distance set out in Division 5 of Part 2 between a place or thing referred to in section 11 [*persons within notification distance*] and the site of proposed activities;

"**proposed activities**" means energy resource activities that are or will be the subject of an application under section 24, 31 or 32 of the Act;

"**registered land owner**" means a land owner other than one to whom a disposition of Crown land has been issued under the *Land Act*;

"**rights**", in relation to a rights holder, means a right conferred on the rights holder under that rights holder's licence, permit, agreement, claim, certificate or registration;

"**rights holder**" means a permit holder under the Act and a person who holds any of the following authorizations:

- (a) a community forest agreement, first nations woodland licence, forest licence, timber licence, timber sale licence, tree farm licence or woodlot licence under the *Forest Act*;
- (b) a forestry licence to cut under the *Forest Act*, if the licence is a major licence as defined in section 1 of that Act;
- (c) a permit for geothermal exploration, a lease or a well authorization under the *Geothermal Resources Act*;
- (d) a licence of occupation under section 39 of the *Land Act*;
- (e) a claim under the *Mineral Tenure Act*;
- (f) a grazing licence or grazing permit under the *Range Act*;
- (g) a licence under the *Water Sustainability Act*, whether a conditional licence or a final licence;
- (h) a guide outfitter licence for Crown land, guiding territory certificate for Crown land or registered trapline under the *Wildlife Act*;

"**service date**" means the date on which a person is deemed, under section 79 (2) of the Act or section 2 (2) of the Service Regulation, to have received all of the information set out in section 19 or 20, or both, of this regulation, as applicable;

"**wellsite**" means the area within which an applicant intends to locate one or more wells and facilities.

[am. B.C. Reg. 202/2023, Sch. 11.]

Interpretation of "known"

2. In this regulation, "**known**", when used to describe information, means that
- (a) the information is contained in the Integrated Land and Resource Registry referred to in section 7.2 of the *Land Act*, or
 - (b) the information, in relation to an applicant referred to in section 3 [*applicants for permits*],
 - (i) has been made available by the regulator to the applicant, or
 - (ii) is or ought reasonably to be known to the applicant.

[am. B.C. Reg. 202/2023, Sch. 11.]

PART 2 – Obligations to Consult or Notify

Part 2: Division 1 – Who Must Consult or Notify

Applicants for permits

3. (1) Unless subsection (2) applies, a person who applies under section 24 of the Act for a permit to carry out an energy resource activity must carry out consultations or provide a notice in accordance with this Part.
- (2) Consultation or notice is not required by a person referred to in subsection (1) if the proposed activities will be carried out on land that is not a land owner's land and are limited to one or more of the following:
- (a) the maintenance of an energy resource road;
 - (b) the construction of a water pipeline or a gas pipeline that
 - (i) will be used only for testing a well,
 - (ii) will be located on the surface and within the wellsite, and
 - (iii) will not be used after the well is constructed;
 - (c) the operation of a pipeline.

[am. B.C. Reg. 202/2023, Sch. 11.]

Applicants for amendments to permits

4. A person who applies under section 31 of the Act for an amendment to a permit must carry out consultations or provide a notice in accordance with this Part if the regulator requires this under section 31 (5) of the Act.

[am. B.C. Reg. 202/2023, Sch. 11.]

Applicants for extensions of permits

5. A person who applies under section 32 of the Act for an extension of a permit must carry out consultations or provide a notice in accordance with this Part if the regulator requires this under section 32 (3) of the Act.

[am. B.C. Reg. 202/2023, Sch. 11.]

Part 2: Division 2 – Who Must Be Consulted

Land owners to whom section 22 (2) or 31 (1) of the Act applies

6. If section 22 (2) or 31 (1) of the Act applies, an applicant must provide an invitation to consult to the applicable land owner referred to in those sections.

Rights holders

7. An applicant must provide an invitation to consult to a rights holder if
- (a) the proposed activities are to be carried out on an area subject to the rights of the rights holder, and
 - (b) it is known to the applicant that the ability of the rights holder to exercise those rights will be directly and adversely affected by the proposed activities.

Persons within consultation distance

8. (1) An applicant must provide an invitation to consult as follows:
- (a) to a local authority, if all or part of a structure owned by the local authority is within an applicable consultation distance;
 - (b) to the government of Canada, if all or part of a structure owned by the government of Canada is within an applicable consultation distance;
 - (c) to a First Nation, if all or part of the First Nation's reserve within the meaning of the *Indian Act* (Canada) is located within an applicable consultation distance;
 - (d) to a person who has entered into an agreement with a land owner to lease or rent a residence or a structure used for livestock on the land, if all or part of the residence or structure is located within an applicable consultation distance.
- (2) An applicant must provide an invitation to consult to a registered land owner if all or part of any of the following are located within the applicable consultation distance:
- (a) a residence occupied by the registered land owner;
 - (b) a structure used by the registered land owner for livestock;
 - (c) a school or related structure owned by the registered land owner.

Applicants for pipeline permits

9. An applicant for a pipeline permit must provide an invitation to consult to a municipality and the minister responsible for the administration of the *Transportation Act* if the pipeline is to be
- (a) located within the municipality and within the right of way of an arterial highway or municipal highway within the meaning of the *Transportation Act*, and
 - (b) used for transporting
 - (i) petroleum, natural gas or both, or
 - (ii) water associated with activities performed in relation to petroleum, natural gas or both.

Part 2: Division 3 – Who Must Be Notified

Rights holders

10. An applicant must provide a notice to a rights holder if
- (a) the proposed activities are to be carried out on an area subject to the rights of the rights holder, and
 - (b) the applicant has not provided to the rights holder an invitation to consult.

Persons within notification distance

11. (1) Subject to subsection (3), an applicant must provide a notice as follows:
- (a) to a local authority, if all or part of a structure owned by the local authority is within an applicable notification distance;

- (b) to the government of Canada, if all or part of a structure owned by the government of Canada is within an applicable notification distance;
 - (c) to a First Nation, if all or part of the First Nation's reserve within the meaning of the *Indian Act* (Canada) is located within an applicable notification distance;
 - (d) to a registered land owner, if all or part of the registered land owner's land is located within an applicable notification distance.
- (2) Subject to subsection (3), an applicant must provide a notice as follows if all or part of a known community watershed is established or continued under the Act and is located within an applicable notification distance:
 - (a) to each person who holds a licence issued under the *Water Sustainability Act*, whether a conditional licence or a final licence, with respect to the community watershed;
 - (b) to each person who holds a construction permit or operating permit issued under the *Drinking Water Protection Act* with respect to the community watershed.
- (3) An applicant is not required under this section to provide a notice to
 - (a) a land owner to whom the applicant gave notice under section 22 (2) or 31 (1) of the Act with respect to the same application, or
 - (b) a person to whom the applicant provided an invitation to consult.

Invitation to consult permitted instead

12. An applicant who is required to provide a notice under this Division may instead provide an invitation to consult.

Part 2: Division 4 – If Proposed Activities Are Revised

Application of Division

13. (1) This Division applies to an applicant referred to in section 3 [*applicants for permits*] who revises the proposed activities that will be the subject of the applicant's application in one or more of the following ways:
- (a) by changing the area on which the applicant intends to carry out proposed activities by increasing that area by one hectare or more or shifting that area by 100 metres or more;
 - (b) by adding to the proposed activities the drilling of a new well;
 - (c) by adding to the proposed activities any of the following:
 - (i) the construction of a new pipeline;
 - (ii) the construction of a new facility;
 - (iii) the installation of new storage tanks, compressors, dehydrators, flare stacks, generators or stabilizers;
 - (iv) the installation of new gas processing equipment for fractionation, liquefaction or extraction of hydrocarbons or other substances;
 - (v) without limiting subparagraph (i), (ii), (iii) or (iv), the installation of any new major equipment that may significantly increase the amount or duration of the noise, dust, light and odours, or anticipated vehicle traffic on energy resource roads within the consultation distance, if applicable, that will be caused by the proposed activities;
 - (d) by increasing the capacity of a proposed facility for petroleum, natural gas or water so as to change the class of the facility.

- (2) This Division applies to an applicant referred to in section 4 or 5 [*applicants for amendments or extensions*] if the regulator requires this.

[am. B.C. Reg. 202/2023, Sch. 11.]

Extent of obligations on revision

14. (1) Subject to subsection (2), an applicant to whom this Division applies must provide to a person or body an invitation to consult or a notice in accordance with Division 2 or 3, as applicable, with respect to
- (a) the entirety of the applicant's proposed activities as revised, if the applicant did not previously provide to the person or body an invitation to consult or a notice under those Divisions, or
 - (b) the revisions to the applicant's proposed activities, if the applicant previously provided to the person or body an invitation to consult or a notice in accordance with those Divisions.
- (2) If the proposed activities of an applicant to whom this Division applies are revised to add the construction of a new pipeline and the pipeline will not be used to transport sour gas, the applicant is required only to provide an invitation to consult as described in subsection (1) to land owners on whose land the new pipeline will be constructed.
- (3) For the purposes of subsection (2), "sour gas" has the same meaning as in CSA Z662, Oil and gas pipeline systems, published by the Canadian Standards Association and as amended from time to time.

Part 2: Division 5 – Consultation and Notification Distances

Definitions

15. In this Division:

"facility area" means an area within which an applicant intends to locate one or more facilities;

"LNG facility" has the same meaning as in the Liquefied Natural Gas Facility Regulation.

Measuring consultation and notification distances

16. For the purposes of this regulation, consultation distances and notification distances are measured as the horizontal distance, in metres, from
- (a) the centre point of a facility area or wellsite, and
 - (b) the centre line of a pipeline right of way, energy resource road right of way or seismic line.

[am. B.C. Reg. 202/2023, Sch. 11.]

Consultation and notification distances

17. For a proposed activity described in column 1 of the following table,
- (a) the consultation distance is the distance set out opposite the activity in column 2, and
 - (b) the notification distance is the distance set out opposite the activity in column 3:

Item	Column 1 Proposed Activity	Column 2 Consultation Distance (m)	Column 3 Notification Distance (m)
1	The use of an LNG facility, petroleum refinery, natural gas manufacturing plant or a gas processing plant that is a Class C natural gas facility and that is not the subject of an environmental assessment certificate under the <i>Environmental Assessment Act</i>	3 300	3 300
2	Facilities that are not listed in item 1 and have a facility area or wellsite measuring ≥ 5 ha	1 300	1 800
3	Facilities that are not listed in item 1 and have a facility area or wellsite measuring < 5 ha	1 000	1 500
4	A wellsite measuring ≥ 5 ha	1 300	1 800
5	A wellsite measuring < 5 ha	1 000	1 500
6	The use of a pipeline or the construction of an energy resource road	200	200
7	The carrying out of geophysical exploration	not applicable	400

[am. B.C. Reg. 202/2023, Sch. 11.]

Part 2: Division 6 – How to Carry Out Consultation or Notification

Definitions

18. In this Division:

"**recipient**" means a person to whom an applicant provides an invitation to consult or a notice;

"**respondent**" means a recipient who, within 30 days after the service date with respect to an invitation to consult or a notice, as applicable, provides a response to an applicant;

"**response**" means one or both of the responses referred to in section 19 (4) [*information to be provided in all cases*] or 20 (3) [*additional information to be provided if obligation to consult*], as applicable.

Information to be provided in all cases

19. (1) An applicant who is required to provide to a person or body an invitation to consult or a notice must provide to the person or body, in writing, all of the information set out in this section.
- (2) An applicant must provide
- the name of the applicant, and
 - the name, telephone number and email address of the applicant's contact person.
- (3) An applicant must describe all of the following:

- (a) the location of the proposed activities, including a map that shows the location in relation to dwellings, public facilities and nearby urban centres;
 - (b) the proposed activities, including
 - (i) the significant structures and equipment that will be used, and
 - (ii) the roads that will be constructed;
 - (c) the proposed related activities;
 - (d) how, if at all, the proposed activities relate to existing energy resource activities being carried out within the notification distance or consultation distance, as applicable;
 - (e) the approximate order in which the proposed activities will be carried out.
- (4) An applicant must advise that a recipient may, within 30 days of the service date, provide a written response to the applicant stating whether the recipient has any concerns with the applicant's proposed activities, and, if so, the reasons for those concerns.
- (5) An applicant referred to in section 3 [*applicants for permits*] of this regulation must advise that a recipient may make a submission to the regulator under section 22 (5) of the Act.

[am. B.C. Reg. 202/2023, Sch. 11.]

Additional information to be provided if obligation to consult

20. (1) In addition to the information that must be provided under section 19 [*information to be provided in all cases*], an applicant who is required to provide to a person or body an invitation to consult must provide to the person or body, in writing, all of the information set out in this section.
- (2) For each phase of the proposed activities, an applicant must
- (a) provide an estimate of the dates that the phase will begin and end, and
 - (b) describe the nature and extent of
 - (i) reasonably foreseeable noise, dust, light and odours that will be caused by the proposed activities and the measures that will be taken to mitigate their negative effects, and
 - (ii) anticipated vehicle traffic on energy resource roads within the consultation distance, if section 8 [*persons within consultation distance*] applies.
- (3) An applicant must advise that a recipient may, within 30 days of the service date, provide a written request to the applicant for a meeting to discuss the proposed activities.

[am. B.C. Reg. 202/2023, Sch. 11.]

Replying to respondents

21. (1) An applicant who receives a response requesting a meeting with respect to an invitation to consult must make reasonable efforts to meet with the respondent.
- (2) An applicant must provide to each respondent, as soon as practicable, a written reply that includes all of the following:
- (a) if applicable, a summary of the meeting with the respondent;
 - (b) a description of the revisions, if any, that will be made to the proposed activities based on the concerns, if any, raised by the respondent;
 - (c) a statement advising that the respondent's response and the applicant's reply under this subsection will be included in the written report referred to in section 24 (1) (c), 31 (6) or 32 (4) of the Act, as applicable;
 - (d) if applicable, a statement advising that the respondent may make a submission to the regulator under section 22 (5) of the Act.

[am. B.C. Reg. 202/2023, Sch. 11.]

When obligations end

22. (1) In this section, "**consultation period**", in relation to a recipient, means the period that
- (a) begins, subject to subsection (4), on the service date that applies with respect to an invitation to consult, a notice or both, as applicable, and
 - (b) ends 30 days after the period begins.
- (2) If an applicant receives no response from a recipient on or before the date that the consultation period ends, the applicant has no further obligation to consult with or notify the recipient after the consultation period ends.
- (3) If an applicant receives a response from a respondent on or before the date that the consultation period ends, the applicant has no further obligation to consult with or notify the respondent after the earliest of the following dates that applies:
- (a) the date that the respondent indicates that the respondent has no concerns or, if applicable, is not requesting a meeting;
 - (b) the date that the respondent withdraws all stated concerns or, if applicable, withdraws a request for a meeting;
 - (c) the date on which the applicant provided a reply to the respondent under section 21 (2) *[replying to respondents]*.
- (4) If section 14 *[extent of obligations on revision]* applies, the consultation period in relation to a recipient restarts on the date that the applicant complies with the applicant's obligations to the recipient under that section.

PART 3 – Notice Before Entry

Notice before entry

23. For the purposes of section 23 (3) of the Act, a person who intends to enter on land under section 23 (2) of the Act must provide to the land owner, at least 2 days before entering on the land, a notice that contains all of the following information:
- (a) the name of the person who intends to enter on the land;
 - (b) the name, phone number and email address of a contact person for the person referred to in paragraph (a);
 - (c) a copy of the preliminary plan, if any, submitted to the regulator under section 23 (1) of the Act;
 - (d) a description of the portion of land to be surveyed or examined and of the activities to be undertaken for the purpose of fixing the site of the pipeline;
 - (e) a description of the approximate order in which the activities referred to in paragraph (d) will be carried out;
 - (f) a statement advising the land owner that if the person who intends to enter on the land further intends to apply to the regulator for a pipeline permit respecting a pipeline to be located on the land, the person will provide an invitation to consult or a notice to the land owner in accordance with the Act and this regulation.

[am. B.C. Reg. 202/2023, Sch. 11.]

Provisions of the *Energy Resource Activities Act*, SBC 2008, c. 36, relevant to the enactment of this regulation: sections 106 and 107]