



EnviroFor Reporter

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ENVIROFOR NEWS:

BC Legislature's Fall Session Overshadowed by Growing Scandals *2015 was a rare year in which MLAs sat during spring, summer and fall*

MLAs adjourned for Christmas break [November 17th] after a fall session in which minor housekeeping legislation was overshadowed by growing scandals in the children's ministry and over freedom of information records. The Liberal government passed 12 bills, including protection for franchisees, new riding boundaries for the 2017 provincial election and changes to workers' compensation spurred by coroner's inquests into fatalities at sawmills in Prince George and Burns Lake. Read the [Vancouver Sun](#) article.

View [PDF](#) of this Reporter.

FEDERAL LEGISLATION — For notification of federal amendments, we recommend you use our [Section Tracking](#)  tool.

[\[Previous Reporters \]](#)

ENERGY AND MINES NEWS

Burnaby, BC, Loses Court Battle over Trans Mountain Pipeline

The City of Burnaby's bylaw battle against the Trans Mountain pipeline has been shut down by a BC Supreme Court judge who has declared that the National Energy Board rules take precedence over the city's.

The Metro Vancouver city has tried to hamper preliminary planning in advance of laying the 1,100-kilometre-long pipeline between Alberta and coastal BC through two separate bylaws.

But Justice George Macintosh said in a ruling posted online [November 23rd] that the National Energy Board has the constitutional power to direct or limit the enforcement of Burnaby's bylaws.

Macintosh said the energy board can take such action when city bylaws interfere with or block the regulation of the pipeline and expansion project, ruling NEB laws are supreme.

"Where valid provincial laws conflict with valid federal laws in addressing interprovincial undertakings, paramountcy dictates that the federal legal regime will govern," said Macintosh. "The provincial law remains valid but becomes inoperative where its application would frustrate the federal undertaking."

Macintosh ruled the city's bylaws were lawful but constitutionally inoperative and inapplicable. Read *The Globe and Mail* [article](#).

ENERGY AND MINES

Act or Regulation Affected	Effective Date	Amendment Information

Mineral Tax Costs and Expenditures Regulation (405/89)	Dec. 1/15	by Reg 187/2015
Mineral Tax Disposition of a Mine Regulation (400/89)	Dec. 1/15	by Reg 187/2015
Mineral Tax General Regulation (401/89)	Dec. 1/15	by Reg 186/2015
Mineral Tax Reclamation Regulation (8/98)	Dec. 1/15	by Reg 187/2015
Mineral Tax Return Form Regulation (86/98)	Dec. 1/15	by Reg 188/2015
Oil and Gas Activities Act	Nov. 17/15	by 2015 Bill 40, c. 40, sections 10 and 20 only (in force by Royal Assent), Natural Gas Development Statutes Amendment Act, 2015
Partnership Election Form Regulation (60/91)	Dec. 1/15	by Reg 187/2015
Utilities Commission Act	Nov. 17/15	by 2015 Bill 37, c. 41, section 24 only (in force by Royal Assent), Miscellaneous Statutes Amendment Act (No. 2), 2015 ; and 2015 Bill 41, c. 42, sections 17 to 27 only (in force by Royal Assent), Miscellaneous Statutes Amendment Act (No. 3), 2015

FORESTRY AND ENVIRONMENT NEWS

Environmental Appeal Board Decisions

There were two Environmental Appeal Board decisions released in the month of November:

Wildlife Act

- [Ryan Damstrom v. Regional Manager \(Kootenay Boundary Region\)](#) [Final Decision – Appeal Dismissed]

Environmental Management Act

- [Emily Toews; Elisabeth Stannus v. Director, Environmental Management Act](#) [Reconsideration Decision; Preliminary Issue of Standing to Appeal – Granted]
- [Unifor Local 2301 v. Director, Environmental Management Act](#) [Reconsideration Decision; Preliminary Issue of Standing to Appeal – Granted]
- [Geoffrey Nielson; Thomas H. Coape-Arnold; Kenneth R. Fiddes v. Director, Environmental Management Act](#) [Preliminary Application – Allowed in Part]

Water Act

- [Greengen Holdings Inc. v. Regional Water Manager](#) [Preliminary Application to Dismiss the Appeal – Granted; Application for Costs – Denied]

Visit the Environmental Appeal Board [website](#) for more information.

"Polluter Pays" Wins the Day: BC Court of Appeal Decides Significant Contaminated Sites Case

The BC Court of Appeal has upheld a trial decision that requires the historical polluter of James Island to pay the current landowner \$4.75 million for monies spent remediating a contaminated site on the island. This award is the largest of its kind under BC's [Environmental Management Act](#) ("EMA"). The decision is significant for

reinforcing that the concept of "polluter pays" under BC's contaminated sites legal regime is paramount, despite the polluter's attempts to negate or reduce its liability by pointing to its prior efforts to remediate James Island before selling it in 1988.

In [*J.I. Properties Inc. v. PPG Architectural Coatings Canada Ltd.*](#), the plaintiff J.I. Properties Inc. argued at trial that it should recover all of its reasonably incurred remediation costs against the defendant and historical polluter PPG Architectural Coatings Canada Inc. ("PPG"). The trial court agreed, awarding \$4.75 million. Read the [full article](#) by [Jana McLean](#) and [Michael Manhas](#) of Bull, Housser & Tupper LLP.

WorksafeBC Reviews Exemption from Coverage for Out-of-Province

The following discussion paper considers changes to the existing exemption from coverage for employers in the trucking industry. At issue is a review of Item AP1-2-1 *Exemptions from Coverage of the Assessment Manual* ("exemption policy"). Specifically, whether to change the exemption rules for out-of-province employers in the trucking industry. Also at issue is whether the current wording in the exemption policy could be improved to better reflect how the exemptions work within the larger legal framework. No substantive change to the policy would result from these amendments. Stakeholders have requested a review of the criteria and how these criteria apply to US employers who employ no BC residents, have no base of operations in BC, and already have coverage in their home states ("US carriers"). Read the [discussion paper](#).

FORESTRY AND ENVIRONMENT

Act or Regulation Affected	Effective Date	Amendment Information
Carbon Tax Act	Nov. 17/15	by 2015 Bill 37, c. 41, section 7 only (in force by Royal Assent), Miscellaneous Statutes Amendment Act (No. 2), 2015
Conservation Officer Service Authority Regulation (318/2004)	Nov. 1/15	by Reg 193/2015
Environmental Management Act	Nov. 17/15	by 2015 Bill 37, c. 41, section 5 only (in force by Royal Assent), Miscellaneous Statutes Amendment Act (No. 2), 2015
Integrated Pest Management Act	Nov. 17/15	by 2015 Bill 37, c. 41, section 6 only (in force by Royal Assent), Miscellaneous Statutes Amendment Act (No. 2), 2015
Land Survey Act	Nov. 17/15	by 2015 Bill 37, c. 41, section 14 only (in force by Royal Assent), Miscellaneous Statutes Amendment Act (No. 2), 2015
Livestock Identification Act	Nov. 17/15	by 2015 Bill 37, c. 41, section 2 only (in force by Royal Assent), Miscellaneous Statutes Amendment Act (No. 2), 2015
Natural Resource Officer Authority Regulation (38/2012)	Nov. 1/15	by Reg 193/2015
Park, Conservancy and Recreation Area Regulation (38/2012)	Nov. 1/15	by Reg 193/2015

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