



EnviroFor Reporter

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ENVIROFOR NEWS:

Legislature to Resume September 8th

The Legislative Assembly will resume on the morning of Friday, September 8th, to prorogue the 1st session of the 41st Parliament. The opening of the 2nd session will take place later in the afternoon.

NDP Can Push Much of its Agenda through Cabinet, Not Legislature

BC's incoming NDP government could fulfil many of its campaign promises through cabinet orders and the annual provincial budget, bypassing the need to squeak numerous bills through the legislature with its one-vote margin. An analysis of the NDP's election platform and its power-sharing deal with the BC Green party indicates as much as three-quarters of the New Democrat agenda could be implemented through cabinet orders, cabinet-approved changes to regulations, ministerial orders and allocations in the annual budget, rather than a host of specific bills that would each require a vote in the house. That could free premier-designate John Horgan's administration to govern largely outside the legislature, where the Greens and NDP hold a tenuous one-member advantage over the Liberals, and in which every stage of debating and passing bills would be fraught with potential amendments and defeat. While it may be faster and more convenient to govern by cabinet order, that route could also open the Horgan government to criticism it was making major policy decisions in secret without public debate in the legislature. Cabinet and ministerial orders only become public days after being signed. Read the [Vancouver Sun article](#).

Latest Annotations


New annotations have recently been added to the Quickscribe site. These annotations include contributions from:

- [Richard Bereti](#), Harper Grey LLP – [Environmental Management Act](#)

Watch this 20-minute [YouTube video](#) to learn more about annotations and how to receive alerts when new annotations are published to the laws that matter most to you.

Tip: Log in to EnviroFor Online prior to clicking Reporter links.

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

[\[Previous Reporters \]](#)

ENERGY AND MINES NEWS

Supreme Court of Canada Releases Landmark Decisions on Role of Regulatory Bodies in Fulfilling the Crown's Duty to Consult with Indigenous Peoples

On July 26, 2017, the Supreme Court of Canada released two landmark decisions in the companion cases of *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc., et al.* and *Hamlet of Clyde River, et al. v. Petroleum Geo-Services Inc. (PGS), et al.*

These cases were heard by the Supreme Court on November 30, 2016. Together, they raise the important question of the proper role of administrative boards and tribunals in ensuring the Crown's duty to consult and accommodate Indigenous people is fulfilled prior to the issuance of decisions with the potential to affect Indigenous rights.

The Court dismissed the appeal in *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc., et al.*, holding that the National Energy Board (the "Board") adequately consulted the Chippewas of the Thames First Nation (the "Chippewas") and that the potential impacts of the approved project were minimal. The Court found that the Board adequately consulted prior to approving the proposed project by taking actions, such as issuing notice to the Chippewas with regards to the Board's process and role, and granting funding to ensure that the Chippewas did, in fact, participate by filing written submissions and making oral submissions at the hearing. Read the [full article](#) by [Jaimie Lickers](#) of Gowling WLG.

No Charges Will Be Laid over Mount Polley Dam Failure under BC Law

There will be no regulatory charges laid under BC's environmental laws for the Imperial Metals' Mount Polley tailings-dam failure in 2014.

One of the largest mining-dam failures in the world in the past 50 years, it had shaken the industry and caused concerns that aquatic life would be harmed, particularly salmon that use the Quesnel Lake system to spawn. There remains a possibility of federal charges under the [Fisheries Act](#). The three-year deadline to lay provincial charges in a court proceeding – which would need to be approved by B.C. Crown counsel – ends Friday [August 4th]. But a BC-federal investigation isn't complete and will not be finished by [August 4th], Chris Doyle, BC Conservation Officer Service deputy chief, said [August 2nd].

"It's important to note that the limitation period of a particular piece of legislation – that's just one of the considerations agencies must make during the course of these investigations," said Doyle, responding to a question on why there would be no charges under BC laws. "Other factors include the complexity of a situation and the amount of information that needs to be gathered and analyzed."

Doyle said he couldn't say when the investigation would be complete, nor would he comment on the nature of the probe. In a written statement, B.C. Environment Minister George Heyman said British Columbians should know the overall objective continues to be ensuring a "complete investigation." Read the *Vancouver Sun* [article](#).

Super Power: Are Rechargeable Batteries Transforming the Mining Sector?

Advances in consumer and industrial technology are creating a new demand for minerals such as lithium, cobalt and graphite and make mining itself more efficient and profitable.

Though global demand for minerals has declined in recent years, not least because of China's slowing fiscal growth and transition to a consumer and services-led economy, there are signs of vigour in the mining industry.

Rechargeable batteries for portable electronic devices, electric cars and other products, as well as a mounting interest in energy storage, has created a worldwide demand for lithium and other key minerals, such as cobalt and graphite. The market for these minerals is expected to balloon in the coming years as the world increases its focus on harnessing new sources of renewable energy – and energy storage becomes a priority.

At the same time, technology is transforming the mining industry, making it more efficient, more productive and ultimately more profitable. Read the [full article](#) by [Charles Bond](#) and [Stuart M. Olley](#) of Gowling WLG.

Abandoned Oil Well Battle Will Go to Supreme Court of Canada, Lawyer Predicts

A battle over whether energy-company creditors should help pay for cleaning up thousands of abandoned oil wells may be heading to the Supreme Court of Canada.

At the centre of the dispute is Redwater Energy Corp., a small publicly traded oil producer in Alberta that filed for bankruptcy in late 2015. The receiver that's liquidating the company argues it should be able to sell its best wells and leave the worst behind for an energy industry-funded group to clean up. The province's regulator argues that buyers should have to take both good and bad wells, even if it means that the sale proceeds will be lower.

A court in Alberta sided with the receiver in May 2016, reducing companies' concerns about the legal liability of walking away from some of their oil wells. Since then, the number of inactive, abandoned, or otherwise

orphaned sites has more than doubled to 3,200, according to the Orphan Well Association, the cleanup group. The provincial government has given the organization an emergency loan to fund the growing costs. Read the full *Financial Post* [article](#) by Allison McNeely and Kevin Orland.

ENERGY AND MINES

Act or Regulation Affected	Effective Date	Amendment Information
Petroleum and Natural Gas Act	Aug. 1/17	by 2014 Bill 12, c. 10, section 30 (a) only (in force by Reg 198/2016), Natural Gas Development Statutes Amendment Act, 2014
Petroleum and Natural Gas General Regulation (357/98)	Aug. 1/17	by Reg 198/2016

FORESTRY AND ENVIRONMENT NEWS

BC Ministry of the Environment: Contaminated Sites Protocols and Guidance Documents Released

As a result of [Stage 10 \(Omnibus\) amendments](#) to the [Contaminated Sites Regulation](#) (CSR), the following Contaminated Sites Protocols and Guidance Documents have been updated or developed and are now ready for stakeholder comment:

- Protocol 2: Site-Specific Numerical Soil Standards
- Protocol 6: Eligibility of Applications for Review by Approved Professionals
- Protocol 11: Upper Cap Concentrations for Substances Listed in the CSR
- Protocol 13: Screening Level Risk Assessment

Read the [full news bulletin](#) on the British Columbia Environment Industry Association website.

Vandals, Thieves and Outdoor Enthusiasts Disrupt BC Firefighting Efforts

Frontline workers risking their lives battling wildfires across BC are now adding thieves, vandals and careless outdoor enthusiasts to their list of problems.

On Saturday [July 29th], 148 wildfires burned across BC, while 4,700 people worked with the BC Wildfire Service to control them.

But public interference with these operations has become an increasing concern, particularly in areas where there have been evacuation alerts, said Kevin Skrepnek, BC Wildfire Service's chief fire information officer. Skrepnek said there have been multiple incidents in the Cariboo Region of people accessing areas where crews are fighting fires, including people driving through these areas on off-road vehicles.

As well, people are accessing areas where there are helicopters operating and they're using boats in bodies of water and hampering water-skimming aircraft operations. Water hoses, pumps and other firefighting equipment have been vandalized or stolen, Skrepnek added.

"This is not only posing a risk to the members of the public who are doing this, but also it's potentially impacting our operations and affecting the safety of our crews as well," he said.

The BC Wildfire Service is working closely with the RCMP to combat the problem, which has been particularly bad in Williams Lake, the Chilcotin Region and along the Highway 97 corridor.

"Certainly, there's zero tolerance for any criminal activities in evacuated areas or in areas where we're operating," Skrepnek said. "Anyone suspected of theft or mischief is going to be arrested."

Skrepnek said RCMP and conservation officers have stepped up patrols in areas where interference is an issue and where crews are working. The BC [Wildfire Act](#) and [Wildfire Regulation](#) allows authorities to order people to leave an affected area. But if such behaviour continues to be a problem, they may need to implement area

closures around fire sites, on lakes and in the backcountry, Skrepnek added. Those caught interfering with firefighting operations or burning a campfire during a prohibition face fines of \$1,150. Read the full *Times Colonist* [article](#) by Nick Eagland.

Recovering the Species at Risk Act

Wildlife is central to the Canadian identity. From Indigenous communities to the urbanites of our largest cities, an overwhelming majority of Canadians want the federal government to protect and restore species at risk of extinction.

The principal federal instrument that provides for this protection is the [Species at Risk Act](#) (SARA), passed by Parliament in December 2002. SARA's purposes are to prevent extinction, to recover species currently threatened directly or indirectly by humans and to manage other species to prevent them from becoming endangered or threatened in the future. Judged against these objectives, SARA has underachieved because of withering political interest and weak policy prescriptions. Read the [full article](#) by the Institute for Research on Public Policy (IRPP) on *LawNow*.

Environmental Appeal Board Decisions

The following Environmental Appeal Board decisions were released in the month of July:

[Wildlife Act](#)

- [Robert J. Cutts v. Deputy Regional Manager, Recreational Fish and Wildlife Program \(Kootenay-Boundary Region\)](#) [Final Decision – Appeal Dismissed]
- [Hans-Albert Jacobs v. Deputy Regional Manager, Recreational Fish and Wildlife Programs](#) [Final Decision – Appeals Dismissed]
- [Fraser MacDonald v. Regional Manager, Recreational Fisheries and Wildlife Program, Omineca Region](#) [Final Decision – Appeal Dismissed]

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

FORESTRY AND ENVIRONMENT

Act or Regulation Affected	Effective Date	Amendment Information
Cattle Industry Development Council Regulation (240/94)	July 28/17	by Reg 154/2017
Grain Industry Development Fund Regulation (236/90)	Aug. 1/17	by Regs 154/2017 and 155/2017

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