



EnviroFor Reporter

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ENVIROFOR NEWS:

New Bills Introduced

The following government Bills have been introduced since the current parliamentary session began February 13th:

- [Bill 1](#), An Act to Ensure the Supremacy of Parliament
- [Bill 2](#), Budget Measures Implementation Act, 2018
- [Bill 3](#), Tla'amin Final Agreement Amendment Act, 2018
- [Bill 4](#), British Columbia Innovation Council Amendment Act, 2018

Two non-government Bills were introduced in February:

- [M201](#), Interpretation Amendment Act, 2018
- [M202](#), Safe Care Act

A reminder that if you would like to track the progress of these bills, or to track changes to any laws that bills amend, please feel free to make use of our [BC Legislative Digest](#) tracking tool, and have us monitor and alert you to changes for laws of your choosing.

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

Proposed Changes to Legislation for Major Natural Resource Projects

On February 8, 2018, the federal government introduced [Bill C-69](#) which, if passed, will enact the *Impact Assessment Act* (IAA) and the *Canadian Energy Regulator Act* (CERA). The Bill also proposes amendments to the [Navigation Protection Act](#), retitling the act, broadening its scope, and increasing the number of waterways deemed navigable in Canada. As a result of recommendations from the expert panel report [Building Common Ground: A New Vision for Impact Assessment in Canada](#), the IAA will shift focus from environmental effects of a federally regulated project to a wider assessment of project impacts on social and health aspects, economic opportunities, and cultural matters. A new Impact Assessment Agency will be established as the authority responsible for conducting impact assessments. Quickscribe has published [an early consolidation of the new IAA](#), which will replace the current [Canadian Environmental Assessment Act, 2012](#). CERA, which will replace the [National Energy Board Act](#), intends to create a new federal Canadian Energy Regulator to replace the National Energy Board, restructure the approval process for major natural resource projects, and enhance consultation with groups affected by development. Proposed amendments to the [Fisheries Act](#) were also introduced on February 6, 2018 by [Bill C-68](#). The legislation, among other things, aims to restore protections to all fish and fish habitats, support restoration of degraded habitat, and rebuild depleted fish stocks. In addition, the role of

Indigenous peoples will be strengthened during the process of making habitat decisions.

2018 Federal Budget – Tax Support for Clean Energy

Canada's Finance Minister Bill Morneau delivered the government's 2018 federal budget on February 27, 2018. As part of the budget's tax proposals, the government is extending an existing tax incentive measure to encourage investment in clean energy equipment (known as Class 43.2 property) for an additional five years.

The capital cost allowance system provides an accelerated capital cost allowance rate for Class 43.1 and 43.2 properties as an incentive to encourage businesses to invest in specified clean energy generation and conservation equipment.

Class 43.1, which provides an accelerated capital cost allowance rate of 30% per year on a declining balance basis, is available for a variety of equipment that generates or conserves energy by:

- using a renewable energy source (e.g., wind, solar, or small hydro),
- using a fuel from waste (e.g., landfill gas, wood waste, or manure), or
- making efficient use of fossil fuels (e.g., high efficiency cogeneration systems, which simultaneously produce electricity and useful heat).

Read the [full article](#) by [Christopher Ross](#) with DLA Piper.

Site C: Behind the Decision to Proceed

Site C is a 1100-MW hydro-electric dam on the Peace River in northern British Columbia. It is being developed by BC Hydro, a British Columbia crown corporation, and has been under construction since 2014. It is costly – at the time of BC Hydro's Final Investment Decision, Site C was estimated to cost \$8.34B, with a further \$400M reserve fund held by the Province to cover unanticipated contingencies.

Site C has also been controversial, arousing substantial opposition from affected First Nations, environmental groups and local landowners.

With the election, in June 2017, of a new NDP government in British Columbia, Site C was referred to the British Columbia Utilities Commission, or BCUC. The BCUC was tasked to conduct an Inquiry into the costs of completing Site C as well as the costs and benefits of cancelling it. Read the [full article](#) by Jonathan S. Drance, Glenn Cameron and Rachel V. Hutton with Stikeman Elliott LLP.

BC Environment Minister Unveils Oil Spill Response Paper

Pipeline operators and railways would be required to start assessing and cleaning up an oil spill within two hours if it is near a populated area or four hours anywhere else, under regulations proposed by the BC government Wednesday [February 28th].

Environment Minister George Heyman released his ministry's intention paper on the beefed-up provincial spill response regulations that he and Premier John Horgan promised to "defend BC's interests" amid the prospect of increasing oil shipments across the province.

The province is now seeking public input on the measures, which, without mentioning the company, are seen as an additional barrier to Kinder Morgan's \$7.4-billion Trans Mountain Pipeline expansion project.

"This is not about Kinder Morgan specifically," Heyman said in a scrum with reporters at the legislature. "This is about anyone who transports oil through the province." Read the *Vancouver Sun* [article](#).

BC's Bitumen Blockade: Selected Legal Options Available to Producers and Shippers

Recently, the Government of British Columbia released an announcement to consider a series of proposed measures to restrict the shipment of diluted bitumen from Alberta oil sands operations by rail or pipelines, setting the stage for a constitutional dispute. If the proposals are enacted, such regulations will directly engage federally regulated matters of interprovincial commerce as well as interprovincial trade agreements. Proponents of pipeline projects and shippers may be faced with the prospect of launching constitutional challenges to the proposed new regulations if enacted. However, recent case law suggests that other, more immediate, legal remedies may be available to prevent harm to those parties, including injunctive relief.

On January 30, 2018, the British Columbia Environment and Climate Change Strategy Minister George Heyman proposed a series of new regulations that would limit the increase of diluted bitumen transported into the

province via rail and pipeline. The Minister claimed that the new regulations would impose restrictions on the increase of diluted bitumen transportation until "there is certainty about our ability to clean up a spill."

The move has significant consequences for a large number of Alberta oil producers and shippers, and raises serious legal implications from a constitutional perspective. diluted bitumen, any proposed restrictions will risk conflicting with and breaching the terms and objectives of both the NWPTA and the CFTA. Read the [full article](#) by Peter Hogg, Dalton W. McGrath Q.C., and Michael O'Brien on Blakes Business Class.

ENERGY AND MINES

| Act or Regulation Affected | Effective Date | Amendment Information |
|--|------------------------------|----------------------------------|
| Emergency Management Regulation (217/2017) | NEW Mar. 1/18 | see Reg 217/2017 |
| Emergency Management Regulation (204/2013) | REPEALED Mar. 1/18 | by Reg 217/2017 |

FORESTRY AND ENVIRONMENT NEWS

Moving Towards Sustainability and Public Interest: Federal Government Introduces the *Impact Assessment Act*

On February 8, 2018, the federal government introduced the [Impact Assessment Act](#) ("IAA" or "Act"), federal legislation to replace Canada's current environmental assessment legislation, the [Canadian Environmental Assessment Act, 2012](#) ("CEAA 2012").

The proposed IAA is the result of the federal government's review of the scope and process of Canada's federal environmental assessment legislation, which began with the establishment of an external Expert Panel in August 2016. As we previously wrote, on April 5, 2017, the Expert Panel released a report that contained various recommendations to fundamentally change the federal approach to project assessment. Such recommendations included the consideration of a broader range of project impacts, the establishment of a single impact assessment agency, increased participation of Indigenous groups, and earlier participation of the public and Indigenous groups in the planning process for assessments. Many of these recommendations have been implemented in the proposed IAA. Read the [full article](#) by Peter Brady, Joanna Rosengarten and Stephanie Axmann with McCarthy Tétrault LLP.

BC MP's Bill on Wood Infrastructure Branches into Committee

After passing second reading in the House of Commons, Richard Cannings' bill suggesting Ottawa seriously consider wood structures when constructing federal buildings is moving to the committee level. Though he has previously had [a bill he tabled](#) be taken on by government as a policy, rather than going through the legislative process, Cannings, member of Parliament for South Okanagan–West Kootenay, said [Bill C-354](#) was only one of two NDP bills to pass second reading in two years. The bill saw support from all MPs outside of the Conservative Party, which voted entirely against the bill. "I knew cabinet would be behind it, but I didn't know how the rest of the caucus would feel, and I had quite a number of Conservatives lined up, but it turned out that they both whipped their vote in different directions," Cannings said. "It's a nice feeling." Cannings said the natural resources committee, on which he sits, still has yet to decide whether they will move ahead with the bill quickly or sit on it, but he said he heard from cabinet that the governing Liberal Party would like to see the bill move forward, albeit watered down.

"The Liberal side and the parliamentary secretaries for public works and natural resources both brought up concerns about the strong language it has in there about giving preference and thought this might cause problems with international trade law," Cannings said. "I don't think it does, because of the language around using this test of cost and carbon footprint cost. I think that would mitigate that. In British Columbia we have the [Wood First Act](#), which does basically the same thing and no one's ever complained about it." Read the [full article](#) by Dustin Godfrey at the *Columbia Valley Pioneer* website.

Softwood Lumber Update: WTO Affirms US Methodology in Determining the Benefit Attributable to Log Export Restrictions in Indonesia Paper as a Countervailable Subsidy

Canada's efforts to defend its controversial restrictions on the export of logs from British Columbia (LERs) took a recent blow, as a World Trade Organization (WTO) panel affirmed the United States Department of Commerce's (DoC) methodology in calculating the countervailing duties (CVDs) on coated paper from Indonesia on account of Indonesia's log export ban. Under US domestic trade policy, DoC has historically and consistently treated export restrictions on inputs as financial contributions that confer a benefit to the end product.

In its decision to impose CVDs in Indonesia Paper, the DoC found that (a) through Indonesia's prohibition on log exports, it directed its harvesting companies to provide logs to pulp and paper companies at low or suppressed domestic prices (i.e. a financial contribution), and (b) to measure the benefit conferred by the export ban, it compared the domestic price paid by the paper company for logs to a benchmark price based on world prices. Although the issue of financial contribution was not before the WTO, the WTO panel found no error with the US methodology for calculating the benefit attributable to Indonesia's log export restrictions. There was no appeal. Read the [full article](#) in *The National Law Review* by Brenda C. Swick, Daniel D. Ujcz, and Dylan E. Augruso of Dickinson Wright.

Environmental Appeal Board Decisions

There were three Environmental Appeal Board decisions in the month of February.

[Wildlife Act](#)

- [Kevin Newberry v. Deputy Regional Manager, Cariboo Regional Operations Division](#) [Final Decision – Appeal Dismissed]

[Environmental Management Act](#)

- [Steve Hallett and Amanda Hallett v. Regional Director](#) [Final Decision – Appeal Dismissed]

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

FORESTRY AND ENVIRONMENT

| Act or Regulation Affected | Effective Date | Amendment Information |
|--|----------------|--------------------------------|
| Logging Tax Remission Regulation (67/2009) | Feb. 20/18 | by Reg 16/2018 |

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