



EnviroFor Reporter

Powered by Quickscribe Online

Toll Free: 1-877-727-6978
Phone: 1-250-727-6978
Fax: 1-250-727-6699

Email:
info@quickscribe.bc.ca

Website:
www.quickscribe.bc.ca

Vol: XI – Issue: I – January 2018

ENVIROFOR NEWS:

Parliament Resumes February 13th

The spring session of the Legislative Assembly will resume on Tuesday, February 13th. Quickscribe intends to publish a number of early consolidations again this session, so stay tuned.

A reminder that if you would like to track the progress of new bills this session, or track proposed changes to laws that matter most to you, please feel free to make use of our [BC Legislative Digest](#) tracking tool.

Latest Annotations

New annotations have recently been added to the Quickscribe site. These annotations include contributions from [Anita Mathur](#), BC Oil & Gas Commission – [Emergency Management Regulation](#), 217/2017.

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.

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

2017 Year in Review: Top 10 Judicial Decisions and Trends of Import to the Canadian Energy Industry

In 2017, Canadian courts released an unusually large number of decisions affecting the energy industry directly.

The Alberta Court of Appeal rendered the much-awaited Redwater decision, confirming the right of a trustee in bankruptcy to disclaim uneconomic assets of a bankrupt debtor. The impact of this decision has been felt throughout the upstream and midstream oil and gas industry, as the Alberta Energy Regulator has required licensees to provide much more information and to be much more financially stable. An appeal to the Supreme Court of Canada was granted, and the industry is on tenterhooks awaiting the result.

Other crucial decisions of 2017 touched upon a wide variety of issues including:

- clarifying the Crown's duty to consult First Nations as part of the project approval process;
- the definition of "Working Interest" under oil and gas contracts;
- the interaction among rights of first refusal, contractual language, and the duty of good faith under a contract;
- the application of intellectual property principles to oil and gas technology;
- ongoing disputes between oil and gas operators and their partners, especially in regards to set-off;
- an energy regulator's liability for damages under the [Canadian Charter of Rights and Freedoms](#);
- liability for matters carried out by affiliates in other jurisdictions;

- personal liability of corporate directors for oppression; and
- the deference owed to arbitration panels, an increasingly important dispute resolution forum for the energy industry.

Read the [full article](#) by [Miles Pittman](#); [Michael A. Marion](#); [Raminder Arora](#); [Alan L. Ross](#); [Karen A. Salmon](#); [Rick Williams](#) with Borden Ladner Gervais LLP.

Mining Company Asks Supreme Court to Hear Its Challenge to Allegations of Human Rights Abuses in Eritrea

Nevsun Resources, a British Columbia mining company, has asked the Supreme Court to hear its appeal from a recent BC ruling that would send the human rights claims of a group of Eritrean plaintiffs towards trial.

The plaintiffs allege that the company was complicit in torture, slavery, forced labour, and other human rights abuses at its Bisha mine in Eritrea. The company strongly denies liability for the claims. This is the latest instance of foreign litigants seizing on a fast-evolving area of law that seeks to hold transnational businesses liable for abuses of human rights committed abroad.

In late November 2017, the BC Court of Appeal issued lengthy reasons that allowed the plaintiffs to proceed toward trial of their claim in the British Columbia courts. The company has just filed an application for permission to appeal to the Supreme Court of Canada. Read the [full article](#) by Milos Barutciski, Andrew D. Little and Josh Scheinert of Bennett Jones LLP.

British Columbia Announces New Regulations that May Stop Trans Mountain Pipeline Expansion

On January 30, 2018, the British Columbia Minister of Environment and Climate Change Strategy [announced](#) that the province would introduce new regulations that will stop pipeline companies from increasing bitumen shipments. The justification for the new regulations is to give the province time to undertake studies and implement appropriate standards for spill response plans.

As highlighted in news reports, a practical effect of any such regulations would be to stop the planned expansion of the Trans Mountain pipeline.

In 2013, Kinder Morgan applied to the National Energy Board (NEB), seeking an expansion of the 1,150-kilometre Trans Mountain pipeline that runs from Edmonton, Alberta to Burnaby, British Columbia. The expansion would nearly triple the pipeline's capacity from 300,000 to 890,000 barrels per day. The NEB undertook a lengthy review process culminating with a May 2016 Report. Subsequently, in November 2016, the federal government issued its approval of the project, setting out 157 conditions to be met.

While the Trans Mountain expansion project approval continues to be subject to numerous legal challenges, the NEB is now proceeding with detailed route hearings for the project. The proposed new regulations from the BC government seek to interrupt the project – this is made clear in statements by BC Environment Minister George Heyman. Read the full *Energy Insider* [article](#) by David Stevens of Aird and Berlis.

Canada Unveils Framework for National Clean Fuel Standard

The Environment and Climate Change Canada (ECCC) recently released the [regulatory framework](#) outlining the proposed design of Canada's Clean Fuel Standard (Standard), a critical element of Canada's climate strategy that is designed to drive clean growth and reduce greenhouse gas (GHG) emissions.

Overview

The Standard will be implemented by way of a regulation that will be put in place under the [Canadian Environmental Protection Act, 1999](#). Its goal is to help achieve Canada's GHG mitigation target of a 30 per cent emission reduction below 2005 levels by 2030, established as part of Canada's participation in the Paris Agreement and as part of the federal government's commitments under the Pan-Canadian Framework on Clean Growth and Climate Change, published by ECCC in December 2016. By 2030, ECCC expects the Standard will help reduce GHG emissions by 30 million tonnes annually.

Generally, the Standard will require producers, importers and distributors to reduce the carbon intensity (or the "carbon footprint") of fuels. Carbon intensity is the measure of GHG emissions associated with production, processing, distribution and use of a fuel. The Standard will set different pollution-reduction targets for gaseous, liquid and solid fuels and will also establish various compliance mechanisms for parties who must comply with the Standard.

Read the [full article](#) by [Anne-Catherine Boucher](#) and [Grace Smith](#) of Blake, Cassels & Graydon.

20 Months Remain to Lay Charges in Mt. Polley Mine Dam Collapse

The clock is counting down on the time remaining to lay environmental charges in Imperial Metals' Mount Polley mine dam failure, which took place nearly 3½ years ago in the BC Interior.

One of the largest mining-dam failures in the world in the past 50 years, it shook the industry and caused concern among the public, First Nations and environmental groups that aquatic life would be harmed, particularly salmon that use the Quesnel Lake system to spawn.

The three-year deadline to lay charges under BC's environmental laws passed last summer. Under federal law, there is a five-year window to lay environmental charges, leaving 20 months to do so.

The BC Environment Ministry said Friday [January 12th] that a joint investigation of the BC conservation officer service and federal officers continues but could not provide information on when the investigation was expected to be complete.

"BC's conservation officer service will continue to work actively alongside federal agencies on this complex and thorough investigation," environment minister spokesman David Karn said in a written statement. "In general, the length of an investigation is dependent upon the complexity of the occurrence and the amount of information that needs to be gathered and considered. Be assured that both levels of government are committed to a thorough investigation within the timeframe of the federal statute of limitations," said Karn.

Penalties can be far more significant under federal legislation, specifically the *Fisheries Act*, than under provincial legislation, noted Karn. The federal Environment Department did not respond to a request for comment. Read the full *Vancouver Sun* [article](#) by [Gordon Hoekstra](#).

ENERGY AND MINES

Act or Regulation Affected

Effective Date

Amendment Information

There were no amendments this month.

FORESTRY AND ENVIRONMENT NEWS

Truck Driver Shortages Hitting Canada's Forest Products Sector

A shortage of truck drivers is hampering the country's forest sector as shipments have been delayed and at least one producer was forced to slow production because of a lack of wood chips. Weyerhaeuser Co. chief executive Doyle Simons said Friday [February 2nd] that availability of transportation services has been a challenge, especially in the past quarter.

"We, like other companies, are, in fact, seeing that type of tightness," he said during a conference call about the company's results. Simons said the company faced truck and rail disruptions, mainly in December, and took a US\$10 million to US\$15 million hit in the fourth quarter. Read the *Financial Post* [article](#).

Will 2018 be the Year British Columbia Enacts Species-at-Risk Legislation?

Despite being Canada's most biologically diverse province and the home of some of Canada's most vocal environmental advocates, BC does not have any provincial species-at-risk legislation. In 2017 opposition MLAs introduced three private member bills regarding species-at-risk (SAR) legislation in the Legislative Assembly, but none were advanced under the Liberal government.

Under the previous Liberal government Andrew Weaver of the BC Green Party tabled a private member's bill introducing the [Endangered Species Act, 2017](#) (ESA #1) for first reading on February 27. On February 28, George Heyman (now minister of environment and climate change strategy) of BC's New Democratic Party tabled a private member's bill introducing the [Species at Risk Protection Act, 2017](#) (SRPA). Neither of these bills progressed beyond first reading prior to the dissolution of BC's Liberal government on April 11, 2017. On

November 6, under BC's new NDP government, Andrew Weaver again tabled a private member's bill to introduce the [Endangered Species Act, 2017](#) (ESA #2).

Weaver's ESA #2, which received minor amendments prior to being re-introduced in November, purports to be based on Ontario's *Endangered Species Act*, the American federal *Endangered Species Act*, and [SAR legislation](#) that was tabled by the BC NDP in 2011. Read the [full article](#) by [Max Collett](#) of Norton Rose Fulbright.

Embracing Continuous Improvement through Effectiveness Monitoring

When the [Forest and Range Practices Act](#) (FRPA) was enacted in 2004, it was a new type of resource legislation that provided freedom for professionals to manage within the bounds of objectives established by government for 11 forest values. However, there were strings attached to this new freedom to manage. Effectiveness monitoring would evaluate how well government's objectives for the 11 values are being achieved and professionals would embrace the ongoing "Plan, Do, Check, Act" cycle of continuous improvement to adjust and improve practices. The Forest Practices Board just published its report on government's program for monitoring the effectiveness of forest and range practices – the *Forest and Range Evaluation Program* (FREP). The Board's evaluation looked at how well the program has been implemented, using a standard outcome-based evaluation approach. Read the [full article](#) by Doug Wahl and Darlene Oman of the Forest Practices Board, published in the January-February edition of the *BC Forest Professional Magazine*.

FORESTRY AND ENVIRONMENT

Act or Regulation Affected	Effective Date	Amendment Information
Park Act	Jan. 30/18	by 2012 Bill 25, c. 9, section 16 only (inforce by Reg 233/2017), Miscellaneous Statutes Amendment Act, 2012
Park, Conservancy and Recreation Area Regulation (180/90)	Jan. 30/18	by Reg 233/2017

The content of this document is intended for client use only. Redistribution to anyone other than Quickscribe clients (without the prior written consent of Quickscribe) is strictly prohibited.

QUICKSCRIBE SERVICES LTD.

UNSUBSCRIBE FROM THIS EMAIL SERVICE
To unsubscribe from this service, click [here](#).