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ENVIROFOR NEWS:

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CATEGORIES

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ENERGY AND MINES NEWS

BCOGC Bulletin – Proposed Activities Must Be Considered within Established s. 16/17 *Land Act* Dispositions

The BC Oil and Gas Commission issued the following bulletin on August 29, 2019:

Effective Immediately – Applicants wishing to submit a new application or an amendment application through the BC Oil and Gas Commission's (Commission) Application Management System, must consider proposed activities, which fall within a s. 16 or s. 17 [Land Act](#) disposition established by the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD). View the full bulletin [here](#).

English Commercial Court Enforces Multi-Billion Arbitral Award Over Failed Gas Project

On August 16, 2019, the England and Wales High Court of Justice (Commercial Court) released its decision in *Process & Industrial Developments Limited v The Federal Republic of Nigeria* ("Process & Industrial Developments"), [2019] EWHC 2241, in which it enforced a US\$9 billion arbitral award against the Republic of Nigeria ("Nigeria"). The enforcement of this 'mega-award' is significant for oil and gas companies doing business abroad and also for the practice of international commercial arbitration.

Process & Industrial Developments Ltd. ("PID"), a BVI entity, entered a "Gas Supply and Processing Agreement" with Nigeria (the "Agreement"). Under the Agreement, PID was to build and operate a gas processing plant for "wet gas" to be supplied from the Nigerian Ministry of Petroleum Resources. The Agreement had a 20 year term. Furthermore, the Agreement contained an arbitration clause, which stated:

"The Agreement shall be governed by, and construed in accordance with the laws of the Federal Republic of Nigeria. ... The Parties agree that if any difference or dispute arises between them concerning the interpretation or performance of this Agreement and if they fail to settle such difference or dispute amicably, then a Party may serve on the other a notice of arbitration under the

rules of the Nigerian Arbitration and Conciliation Act (Cap A18 LFN 2004) which, except as otherwise provided herein, shall apply to any dispute between such Parties under this Agreement. ... The arbitration award shall be final and binding upon the Parties. ... The venue of the arbitration shall be London, England or otherwise as agreed by the Parties. The arbitration proceedings and record shall be in the English language. ..." (emphasis added)

Read the [full article](#) by [Jack Maslen](#) of Borden Ladner Gervais.

BCUC Completes EV Charging Inquiry with Recommendations about Regulated Utilities' Role

In June 2019, the British Columbia Utilities Commission (BCUC) issued the [Phase 2 Report](#) from its [Inquiry into the Regulation of Electric Vehicle \(EV\) Charging Service](#). This Report looked at the role that might be played by regulated utilities in providing EV charging services and concluded that their participation should be limited, with appropriate protections for their ratepayers and for unregulated market participants. The Report includes a number of considerations and recommendations for the B.C. government to take into account when directing the BCUC about how to regulate utility involvement in this activity.

As described in earlier posts ([here](#) and [here](#)), the BCUC EV charging Inquiry was aimed at examining whether, and how, EV charging in British Columbia should be regulated, and it was conducted in two phases. Read the [full article](#) by David Stevens with Aird & Berlis LLP.

ENERGY AND MINES

| Act or Regulation Affected | Effective Date | Amendment Information |
|----------------------------|----------------|-----------------------|
|----------------------------|----------------|-----------------------|

There were no amendments this month.

FORESTRY AND ENVIRONMENT NEWS

A Summary of the ABCFP's Submission on the Forest and Range Practices Act

In July, the Association of BC Forest Professionals submitted a response to the BC government about proposed changes to the [Forest and Range Practices Act](#) (FRPA). When FRPA was introduced in 2004, it increased the reliance on the advice and judgement of forest professionals and reduced the amount of prescriptive practices set by government. The FRPA model also shifted government's role from reviewing and approving all plans or project designs to:

1. Establishing the goals, rules, and objectives or results to be achieved;
2. Relying on regulated professionals hired by resource users (tenure holders) to advise how those objectives or results will best be met;
3. Monitoring the results and environment; and
4. Enforcing compliance among resource users through its laws. For the past 20 years, the ABCFP and its forest professionals have made significant investment and effort to support the proper function of professional reliance under the Act.

Read the [full article](#) by Paul Nuttall, RFP, in the September-October 2019 issue of *BC Forest Professional* magazine.

Five Things Project Proponents Need to Know about Canada's New Impact Assessment Act Introduction

Effective [August 28, 2019], the [Impact Assessment Act](#) ("IAA") will set aside the past 40 years of federal environmental assessment in Canada. Impact assessment will replace environmental assessment. Similarly, federal decisions on whether or not to approve designated infrastructure, energy and mining projects will be made after assessing the overall "public interest" of the project, replacing the existing test of avoiding "significant adverse environmental effects".

[The] implementation of the IAA remains controversial. It follows more than 18 months of heated debate inside and outside Parliament and the Senate. Stepping back from specific controversies, here are five things all project

proponents (and other participants) need to know about the IAA as they address its new requirements and processes. Read the [full article](#) by [Rodney Northey](#), [Liane Langstaff](#) and Anna Côté with Gowling WLG (Canada) LLP.

The Benefits of Tactical Forest Planning for British Columbia

In early July, the Forest Practices Board released a report recommending that government implement a tactical forest planning process as part of the next stage of amendments to the [Forest and Range Practices Act](#). The Board sees tactical forest planning as a practical way to translate broad goals set out in legislation, policy, or land use plans into direction for forestry operations to implement across a specific landscape and management unit.

Our report describes the Board's vision of tactical forest planning, the benefits it would bring to BC and the principles that should be incorporated in a new planning process. We published our report during the public consultation period for amendments to the *Forest and Range Practices Act* (FRPA) to encourage public and stakeholder discussion of this concept. Read the [full article](#) by Kevin Kriese, chair of the Forest Practices Board, in the September-October 2019 issue of *BC Forest Professional* magazine.

BC Court of Appeal Addresses Pollution Exclusions and Special Costs in Coverage Actions

In *West Van Holdings Ltd. v. Economical Mutual Insurance Co.*, [2019 BCCA 110](#) ("West Van Holdings"), a dry cleaning company (the "Insured") was sued by owners of adjacent properties who alleged that dry-cleaning products had migrated to their respective properties and caused damage, prior to and during the Insured's ownership of its land. Four separate causes of action were alleged: negligence, nuisance, strict liability and statutory liability under the [Environmental Management Act](#) ("EMA").

The Insured sought a defence to the underlying action from two of its insurers (collectively, the "Insurers") under different commercial general liability policies issued by the Insurers since 1998. The Insurers denied coverage on the basis of the application of environmental liability or pollution liability exclusions contained within the policies. The Insured applied to Court for a declaration that the Insurers were obligated to provide a defence. Read the [full article](#) by Nicholas McKnight of Alexander Holburn Beaudin + Lang LLP.

Environmental Appeal Board Decisions

There was one Environmental Appeal Board decisions in the month of August:

[Environmental Management Act](#)

- [Emily Toews: Elisabeth Stannus: Unifor Local 2301 v. Director, Environmental Management Act](#) [Consent Order – Appeals Dismissed]

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

FORESTRY AND ENVIRONMENT

Act or Regulation Affected

Effective Date

Amendment Information

There were no amendments this month.

OCCUPATIONAL HEALTH AND SAFETY NEWS

Consultation on Proposed Amendments to the Occupational Health and Safety Regulation

The Policy, Regulation and Research Division is requesting feedback on proposed amendments to [Part 6, Substance Specific Requirements – Cytotoxic Drugs](#), of the [Occupational Health and Safety Regulation](#). The consultation phase provides stakeholders an opportunity to provide feedback prior to the proposed amendments being taken to public hearing. All stakeholder feedback is carefully considered and analyzed, and provided to the Board of Directors of WorkSafeBC as part of their decision-making process. Read the [full article](#) published by WorkSafe BC.

| OCCUPATIONAL HEALTH AND SAFETY | | |
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