



# EnviroFor Reporter

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## ENVIROFOR NEWS:

### Happy New Year

The team at Quickscribe would like to take this opportunity to wish you a Happy New Year and all the best for 2020!

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

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## CATEGORIES

[ENERGY & MINES](#)

[FORESTRY & ENVIRONMENT](#)

[OCCUPATIONAL HEALTH & SAFETY](#)

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### ENERGY AND MINES NEWS

#### Updated Rules for Water Use in Mineral Exploration, Mining

[Updated rules](#) for water use in mineral exploration and small-scale placer mining operations are now in place to better protect the environment and provide more guidance for the people involved.

The updated provisions, under the [Water Sustainability Act](#), make permanent the temporary provisions that allow certain individuals the use of available water for mineral exploration and small-scale placer mining activities without authorization.

In addition, the provisions now limit the size of a camp to 20 people that can use water without an authorization. Statutory decision makers can also now require an authorization if there is a risk of potential impacts to streams, other authorized water users or cultural heritage resources, such as sites that have historical or archaeological significance to a community or Indigenous peoples. Read the full government [news release](#).

#### Injunction Granted to Natural Gas Company by BC Supreme Court

The British Columbia Supreme Court has granted Coastal GasLink an interlocutory injunction against members of a First Nation and others who oppose the company's natural gas pipeline. The company is building a pipeline from northeastern BC to LNG Canada's export terminal in Kitimat on the coast. Coastal GasLink says it has signed agreements with all 20 elected First Nations councils along the 670-kilometres route but hereditary chiefs in the Wet'suwet'en First Nation say the project has no authority without their consent. Read the [CTV article](#).

#### New Methane Regulations and Fugitive

## Emissions Guidelines

The BC Oil and Gas Commission (Commission) is reminding industry and other stakeholders of new regulations and guidelines which take effect on Jan. 1, 2020. The Commission has introduced new regulations to reduce methane emissions from upstream oil and gas operations to meet or exceed federal and provincial methane emission reduction targets, through amendments to the [Drilling and Production Regulation](#). Read the [Information Bulletin](#). View all recent [BCOGC Industry Bulletins](#).

## Chevron's Possible Exit from Kitimat LNG Project Dents Canada's Aspirations of Building LNG Hub

Chevron Corp. is considering putting its entire stake in the proposed liquid natural gas project in British Columbia on the block, in a blow to Canada's aspirations to build a robust LNG industry. "Although Kitimat LNG is a globally competitive LNG project, the strength of Chevron Corporation's global portfolio of investment opportunities is such that the Kitimat LNG Project will not be funded by Chevron and may be of higher value to another company," the company said on Tuesday [December 10th]. The San Ramon, California-based company said its Canadian unit will look for buyers for its 50 per cent interest in the Kitimat LNG Project, but set no timeline to conclude the process. Chevron's other Canadian projects are not part of the sale. Read the [Vancouver Sun article](#).

## ENERGY AND MINES

| Act or Regulation Affected                    | Effective Date                | Amendment Information   |
|---|-------------------------------|---|
| Administrative Penalties Regulation (35/2011) | Dec. 16/19                    | by <a href="#">Reg 272/2019</a>   |
| Drilling and Production Regulation (282/2010) | Jan. 1/20                     | by <a href="#">Reg 286/2018</a>   |
| Exemption Regulation No. 4 (331/2012)         | <b>REPEALED</b><br>Dec. 16/19 | by <a href="#">Reg 269/2019</a>   |
| Exemption Regulation No. 5 (269/2019)         | <b>NEW</b><br>Dec. 16/19      | see <a href="#">Reg 269/2019</a>  |
| Hydro and Power Authority Act                 | Dec. 31/19                    | by 2018 Bill 2, c. 4, section 13 only (in force by Royal Assent), <a href="#">Budget Measures Implementation Act, 2018</a>                                  |
| Investigations Regulation (134/2019)          | <b>NEW</b><br>Jan. 1/20       | see <a href="#">Reg 134/2019</a>  |
| Oil and Gas Activities Act                    | Jan. 1/20                     | by 2018 Bill 56, c. 54, sections 13, 16 and 18 only (in force by <a href="#">Reg 134/2019</a> ), <a href="#">Oil and Gas Activities Amendment Act, 2018</a> |

## FORESTRY AND ENVIRONMENT NEWS

### The Rule Against Multiple Convictions Revisited

In its 1975 decision *R v. Kienapple*, the Supreme Court of Canada established the doctrine of "*res judicata*" in Canadian common law (herein referred to as the "Kienapple Rule"). The Kienapple Rule provides that government cannot pursue multiple convictions for different offenses on the basis of the same facts if the offenses are substantially the same under the circumstances. In terms of policy, the rule is concerned with finality of litigation (no "double jeopardy"), and with multiple convictions for the same legal wrong (no "piling on").

In the early years of the [Forest Practices Code of British Columbia Act](#) (the "Code"), the applicability of the Kienapple Rule to administrative contravention determinations under the Code was extensively litigated before the Forest Appeals Commission (the "Commission"). The classic contravention determination at issue would concern a finding of contravention made in relation to a particular, substantive regulation prescribed under the Code, and another finding of contravention made under Section 67(1) of the Code for a failure to carry out a forest practice "in accordance with ... the regulations". If a person committed a specific contravention of the regulations, then that person also automatically contravened the general requirements of Section 67(1) of the Code – one contravention couldn't exist without the other, even if both findings of contravention related to the exact same conduct. Read the [full article](#) by [Jeff Waatainen](#) in the January-February issue of *BC Forest Professional Magazine*.

### **The BC Court of Appeal Maintains a High Bar for Certifying Environmental Class Actions**

The BC Court of Appeal's decision in [Kirk v Executive Flight Centre et. al](#) striking out certification of an environmental class action illustrates the challenges in bringing environmental torts by way of class proceedings and specifically maintains a high bar for nuisance claims to be certified.

The defendant was driving a fuel truck when his truck rolled down an embankment into Lemon Creek, spilling 35,000 litres of Jet A-1 fuel. Local residents were ordered to evacuate, and water use restrictions were issued. The plaintiff commenced a class proceeding on behalf of local residents for claims including negligence, nuisance and diminution of market value of properties. The matter was certified as a class action, and the defendants appealed on the grounds that the Judge erred in certifying several common issues that lacked sufficient commonality. Read the [full article](#) by [Kelsey Sherriff](#) with Miller Thomson LLP.

### **Public Input Sought on Hunting Regulation Changes**

Proposed hunting, trapping, motor vehicle restriction and firearms restriction regulation changes for 2020 to 2022 are online and available for public review and feedback. Based on regional requirements and conditions, the intent of these regulation adjustments is to promote the conservation of wildlife and wildlife habitat, as well as to optimize sustainable hunting and trapping opportunities. Read the full government [news release](#).

### **New Environmental Assessment Act Now in Force**

On December 16, 2019, the new [Environmental Assessment Act](#) and its supporting regulations came into force. The new legislation establishes a stronger environmental assessment process for reviewing major projects in BC by ensuring greater public participation and participation from Indigenous Nations at all stages. The changes provide greater clarity for collaborating with Indigenous Nations and opportunities for Nations to provide notification of consent at major decision points. Projects already in the environmental process will continue under the [former Environmental Assessment Act](#). However, any projects that do not complete the assessment process within three years will be required to complete an assessment under the new act.

### **Environmental Appeal Board Decisions**

There was one Environmental Appeal Board decision in the month of December:

#### [Wildlife Act](#)

- [Abraham Dougan v. Deputy Director of Wildlife and Habitat](#) [Final Decision – Appeal Dismissed]

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

## **FORESTRY AND ENVIRONMENT**

| <b>Act or Regulation Affected</b>                            | <b>Effective Date</b> | <b>Amendment Information</b>    |
|--|-----------------------|---------------------------------|
| Administrative Orders and Remedies Regulation (101/2005)     | Dec. 12/19            | by <a href="#">Reg 262/2019</a> |
| Conservation Officer Service Authority Regulation (318/2004) | Dec. 16/19            | by <a href="#">Reg 247/2019</a> |
| Cut Control Regulation (578/2004)                            | Jan. 1/20             | by <a href="#">Reg 258/2019</a> |

|   |                               |   |
|---|-------------------------------|---|
| Engineers and Geoscientists Act   | Dec. 1/19                     | by 2018 Bill 49, c. 47, section 142 only (in force by <a href="#">Reg 107/2019</a> ), <a href="#">Professional Governance Act</a>           |
| Environmental Assessment Act  | <b>NEW</b><br>Dec. 16/19      | c. 51, SBC 2018, <a href="#">Bill 51</a> , whole Act in force by <a href="#">Reg 242/2019</a>   |
| Environmental Assessment Act  | <b>REPEALED</b><br>Dec. 16/19 | by 2018 Bill 51, c. 51, section 81 only (in force by <a href="#">Reg 242/2019</a> ), <a href="#">Environmental Assessment Act</a>           |
| Environmental Assessment Fees Regulation (246/2019)                           | <b>NEW</b><br>Dec. 16/19      | see <a href="#">Reg 246/2019</a>  |
| Environmental Assessment Transition Regulation (249/2019)                     | <b>NEW</b><br>Dec. 16/19      | see <a href="#">Reg 249/2019</a>  |
| Exemption Regulation No. 4 (331/2012)   | <b>REPEALED</b><br>Dec. 16/19 | by <a href="#">Reg 269/2019</a>   |
| Enacts Exemption Regulation (No. 2) (285/2019)                                | <b>NEW</b><br>Dec. 19/19      | see <a href="#">Reg 285/2019</a>  |
| Foresters Act   | Dec. 1/19                     | by 2018 Bill 49, c. 47, section 142 only (in force by <a href="#">Reg 107/2019</a> ), <a href="#">Professional Governance Act</a>           |
| Natural Resource Officer Authority Regulation (38/2018)                       | Dec. 16/19                    | by <a href="#">Reg 250/2019</a>   |
| Nisga'a Final Agreement Act   | Dec. 16/19                    | by 2018 Bill 51, c. 51, section 80 only (in force by <a href="#">Reg 242/2019</a> ), <a href="#">Environmental Assessment Act</a>           |
| Professional Governance Act   | Dec. 2/19                     | by 2018 Bill 35, c. 36, sections 5 to 7 only (in force by Reg 259/2019), <a href="#">Miscellaneous Statutes Amendment Act (No. 2), 2019</a> |
| Protected Areas ( <i>Environmental Assessment Act</i> ) Regulation (248/2019) | <b>NEW</b><br>Dec. 16/19      | see <a href="#">Reg 248/2019</a>  |
| Reviewable Projects Regulation (243/2019)                                     | <b>NEW</b><br>Dec. 16/19      | see <a href="#">Reg 243/2019</a>  |
| Reviewable Projects Regulation (370/2002)                                     | <b>REPEALED</b><br>Dec. 16/19 | by <a href="#">Reg 243/2019</a>   |
| Trees Designated Area No. 2 (261/2019)  | <b>NEW</b><br>Dec. 12/19      | see <a href="#">Reg 261/2019</a>  |
| Waste Assessment Regulation (262/2019)  | <b>NEW</b><br>Dec. 12/19      | see <a href="#">Reg 262/2019</a>  |
| Water Sustainability Regulation (36/2016)                                     | Dec. 16/19                    | by <a href="#">Reg 278/2019</a>   |

## OCCUPATIONAL HEALTH AND SAFETY NEWS

### WorkSafeBC Updates Guidelines – Acceptable Occupational Hygiene Methods

– from WorkSafe BC Website

One guideline has been updated to provide guidance about acceptable occupational hygiene methods Guidelines – Occupational Health and Safety Regulation

- Part 5 Chemical Agents and Biological Agents
  - o G5.53-4 [Occupational hygiene methods acceptable to WorkSafeBC](#) (revised)

New and revised guidelines are posted for a 60-day preliminary period, during which time the stakeholder community may [comment and request revisions](#). To view this and other updates visit the WorkSafeBC [website](#).

### Supreme Court of Canada Defers to Appeal Officer on Canada Post's Health and Safety Inspections

Canada Post does not have to inspect mail routes and destinations in yearly health and safety checks, the majority of Supreme Court of Canada judges said, in the first major application of a new standard of review framework. The Dec. 20, 2019 decision, *Canada Post Corp. v. Canadian Union of Postal Workers*, [2019 SCC 67](#), marked the court's first application of the paradigm espoused in the Dec. 19 decision, *Canada (Minister of Citizenship and Immigration) v. Vavilov*, although the release of *Vavilov* did not change the "reasonableness" standard of review. Read the [full article](#) by Anita Balakrishnan, published on the *Canadian Lawyer Magazine* website.

## OCCUPATIONAL HEALTH AND SAFETY

| Act or Regulation Affected              | Effective Date | Amendment Information           |
|---|----------------|---------------------------------|
| Electrical Safety Regulation (100/2004) | Jan. 1/20      | by <a href="#">Reg 183/2019</a> |

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