



EnviroFor Reporter

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Vol: XIII – Issue: XII – December 2020

ENVIROFOR NEWS:

Short Legislative Session – Recovery Benefit

The BC Government wrapped up a short session of the legislature in December. The session was held prior to Christmas to allow the NDP to make good on their election promise to make available \$1000 to eligible families and up to \$500 for individuals to help with economic hardships relating to the COVID-19 pandemic. The new [legislation](#) entitles individuals earning less than \$87,500 or families with an annual income of less than \$175,000 to apply for a one-time, tax free deposit. The entitled amount is based on a sliding scale with the maximum \$500 to be paid to individuals earning less than \$62,500 in 2019 and \$1000 to families with income less than \$125,000 in 2019. The public can [apply online](#) for the BC Recovery Benefit. Applications are open until June 30, 2021.

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

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ENERGY AND MINES NEWS

Canadian Government Releases Draft Clean Fuel Regulations

The development of a Canada-wide clean fuel standard took a major step forward on December 19, 2020, with the federal government's release of draft Clean Fuel Regulations which, once finalized, will come into force in December 2022.

The Clean Fuel Regulations will apply to producers or importers of gasoline, diesel, kerosene and light and heavy fuel oils (referred to as "primary suppliers"). Each fuel type is assigned a lifecycle carbon intensity value, expressed in grams of carbon dioxide equivalent per megajoule of energy (gCO₂e/MJ), which is meant to represent the emission intensity of such fuel throughout its entire lifecycle. The carbon intensity values serve as a baseline, against which primary suppliers will be required to make annual reductions. Beginning in 2022, each primary supplier must reduce the carbon intensity of the fuels it produces or imports by a minimum amount that increases each year, starting at 2.4 gCO₂e/MJ in 2022 and culminating in a 12 gCO₂e/MJ reduction requirement in 2030. Read the [full article](#) by Thomas McInerney, Shawn Munro, Sarah Gilbert, Sharon Singh, Dylan Gibbs and Kenryo Mizutani of Bennett Jones LLP.

FortisBC fee Increase in January

On December 8, the BCUC approved the application by FortisBC to move ahead on rate increase of 6.59% effective January 1, 2021. According to the BCUC press release, in an effort to reduce the impact on rate payers, the 2020 rates have been largely mitigated by drawing down accumulated credits from previous years. Since these accumulated credits will be fully depleted by the end of 2021, the BCUC strongly encourages FEI to focus on mitigating cost pressures to moderate rates for customers, particularly in light of the potential impacts from the COVID-19 pandemic. Read the full [press release](#).

Disputes Involving Regulated Utilities

The oil and gas industry can be divided into two main segments: upstream and downstream. Most of the writing about energy arbitration relates to the upstream, as that is where the exploration and development takes place. This sector is dominated by governments that control the rights to the assets in the ground, and the multinational oil companies that extract the oil and move it to market. This is the world of investor-state arbitration.

The attention the segment receives is not surprising. Investor-state arbitrations are the product of the rapid growth of treaties designed to protect the interests of investors – multilateral treaties such as the Energy Charter Treaty and approved by the North American Free Trade Agreement (NAFTA) – but also a wide array of bilateral treaties between specific countries.

However, for every one of the investor-state cases, there are 10 significant commercial arbitrations in the downstream energy sector. Here, the centre of gravity is not London, Stockholm or Paris, but Houston or Calgary. More than 90 energy companies have head offices in Calgary – and Houston has three times that number. Read the [full article](#) by [Gordon Kaiser](#) with [Energy Arbitration Chambers](#).

Recent BCOGC Bulletins

The BCOGC has recently issued the following bulletin:

- [IB 2020-09](#) – AMS Payment to be Renamed as ePayment
- [IB 2020-10](#) – Disposal Well Near Hudson's Hope Decommissioned
- [IB 2020-11](#) – Results of the Commission's 2020 Aerial Leak Detection Survey
- [INDB 2020-26](#) – Changes to Submission Process for As-Drilled Survey Plans
- [INDB 2020-27](#) – Revisions to the Dormancy and Shutdown Regulation
- [INDB 2021-01](#) – Online Submissions for Corporate Financial and Reserves Information Launched

Visit the [BCOGC website](#) to view this and other bulletins.

ENERGY AND MINES

Act or Regulation Affected	Effective Date	Amendment Information
Direction to the British Columbia Utilities Commission Respecting Industrial Electrification	NEW Dec. 21/20	see Reg 295/2020
Dormancy and Shutdown Regulation (112/2019)	Dec. 18/20	by Reg 288/2020
Pipeline Regulation (281/2010)	Dec. 18/20	by Reg 289/2020

FORESTRY AND ENVIRONMENT NEWS

Impending Changes to British Columbia's Contaminated Sites Regime: New Obligations to Take Effect February 1, 2021

The [Environmental Management Amendment Act, 2019](#) ("EMAA"), which became law in May of 2019, seeks to address a number of purported weaknesses in the current contaminated site regime and streamline the contaminated site identification process by simplifying the trigger conditions and the submission procedures.

Both the [Environmental Management Act](#) ("EMA") and [Contaminated Sites Regulation](#) ("CSR") have been modified by the EMAA and a complimentary [Order in Council](#) made by the provincial cabinet. These changes take effect on February 1, 2021. [For your convenience, Quickscribe has published an early consolidation of the [EMA](#) and the [CSR](#) as they will read on February 1st].

Since 1997, a "site profile" process has been used to identify potentially contaminated sites in BC. Where required by the EMA or CSR, a person must fill out a site profile form that contains a basic description of the site together with present and historical uses. Several identified gaps have resulted in the Ministry of the Environment and Climate Change Strategy replacing the site profile with a new screening process. Read the [full article](#) by [Lana Finney](#), [Ryan McNamara](#) and Eric Yao (Articling Student) with DLA Piper.

The Role of Precedent at the Forest Appeals Commission

Deference to judicial precedent is foundational to the Canadian justice system. It promotes certainty and security of legal rights; a critically important objective of our legal system. The rule (otherwise known to law students as "*stare decisis*") is that once a court determines a principle of law is applicable to particular facts, equivalent or lower levels of court are bound to apply that principle in future cases that arise on substantially the same facts. For this reason, litigators will often go on at length as to whether the circumstances before a court are "distinguishable on the facts" from previous decisions of the court.

Given the importance of precedent in our judicial system, the fact that the Forest Appeals Commission is not bound to follow its own previous decisions may come as a surprise to some. The *Practice and Procedure Manual* of the Commission states that while "the Commission is bound by the decisions of certain courts, it is not required to follow ... its past decisions." The surprise is potentially magnified given that the Commission does appear to routinely follow its own "precedents." For example, as discussed in this space previously, over a period of two decades the Commission consistently and repeatedly followed its previous decisions holding that the "Kienapple Rule" (developed to prevent multiple convictions for the same wrongful conduct in criminal proceedings) does not apply to administrative proceedings under BC's forestry legislation.

Then, one day in its 2018 decision in *Forest Practices Board v. Government of British Columbia*, the Commission held that the Kienapple Rule should apply to prevent multiple administrative findings of contravention under the [Wildfire Act](#). Read the [full article](#) by [Jeff Waatainen](#) in the Winter 2021 issue of the BC Forest Professional Magazine.

All of the Above: Canada Reveals \$15 Billion Plan to Accelerate Decarbonization

On Dec. 11, 2020, the federal government unveiled its latest comprehensive plan to address climate change (the "Climate Plan"). Entitled "A Healthy Environment and a Healthy Economy", Canada's federal Climate Plan comprises 64 policies, programs, and investments intended to support post-pandemic economic recovery while accelerating Canada's climate goals. The Climate Plan aims to exceed Canada's 2030 emissions reduction target and achieve a net-zero emissions economy by 2050.

Containing \$15 Billion in investments, the Climate Plan offers significant opportunities for a variety of industries. When considered together with the Canadian Infrastructure Bank's (the "CIB") recently-released [Growth Plan](#), the Climate Plan is especially good news for Canada's clean energy sector.

Although some of the Climate Plan's features will be put into action right away, others will require stakeholder consultation. As a consequence, industry and community stakeholders need to stay carefully tuned-in and be ready to engage as plans and policy choices evolve. Read the [full article](#) by Thomas Timmins, Chris Hummel and Shamus Slaunwhite with Gowling WLG.

Biodiversity at Risk in Prince George Natural Resource District

An investigation of a complaint about the management of biodiversity in the Prince George Timber Supply Area (PG TSA) has found that biodiversity, as it relates to old growth forest, may be at risk in the TSA. While forest licensees are complying with legal requirements for biodiversity protection in the PG TSA, the investigation identified several concerns with how government and licensees are managing old forest. Read the [full report](#) published by BC Forest Practices Board.

Environmental Appeal Board Decisions

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

[Mines Act](#)

- [Mountainside Quarries Group Inc. v. Ministry of Energy, Mines, and Petroleum Resources](#) [Preliminary Decision Regarding Nature and Scope of Appeal – Hearing to Proceed; Application to Limit Hearing to Record – Denied; Application for Preliminary Determination to Proceed by Written Submissions – Denied]

[Wildlife Act](#)

- [Richard Todd Bunnage v. Regional Manager, Recreational Fisheries and Wildlife Programs](#) [Final Decision – Appeal Denied]

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

FORESTRY AND ENVIRONMENT

Act or Regulation Affected	Effective Date	Amendment Information
Climate Change Accountability Act	Dec. 31/20	by 2019 Bill 38, c. 43, sections 8 and 10 only (in force by Royal Assent), Climate Change Accountability Amendment Act, 2019
Greenhouse Gas Emission Reporting Regulation (249/2015)	Dec. 21/20	by Reg 294/2020

OCCUPATIONAL HEALTH AND SAFETY NEWS

Policy Changes to Implement the *Workers Compensation Amendment Act, 2020* (Bill 23) Amendments Regarding Retirement Age Determinations

On August 14, 2020, the *Workers Compensation Amendment Act, 2020* ([Bill 23](#)) came into effect. Under Bill 23, 34 legislative amendments were made to the [Workers Compensation Act](#). One of these legislative amendments concerns retirement age determinations and [came] into effect on January 1, 2021. Read the [full update](#) on the WorkSafeBC website.

WorkSafeBC Provides Updates to BCFSC Trainers

In November 2020, BC Forest Safety Council trainers gathered for a two-day virtual meeting for the annual Train the Trainer session. During one of the sessions they received WorkSafeBC updates on industry performance, discussed sections of the Regulation and addressed emerging issues. WorkSafeBC's Darcy Moshenko and Terry Anonson provided updates on WorkSafeBC activities, which included details about the Forestry High Risk Strategy, injury rate summaries, Safe Phase Integration, new resources and changes to the [Workers Compensation Act](#) (WCA) and [Occupational Health and Safety Regulations](#) (OHSR). Read the [full article](#) in the December 2020 edition of the *BC Forest Safety Newsletter*.

OHS Policies/Guidelines – Updates

WorkSafeBC recently issued the following OHS updates:

Policies

- [January 4, 2021](#): Updates to the Table of Exposure Limits for Excluded Substances
- [January 1, 2021](#): CPI adjustments for penalties, citations, and claims cost levies

OHS Guidelines

- [January 1, 2021](#): A guideline was revised to reflect CPI adjustments for OHS citations
- [December 18, 2020](#): A guidelines was revised to clarify when two vessels can be considered a single dive site

Check the [WorkSafe BC Updates page](#) to explore these and other important OHS updates.

OCCUPATIONAL HEALTH AND SAFETY

Act or Regulation Affected	Effective Date	Amendment Information
Workers Compensation Act	Jan. 1/21	by 2020 Bill 23, c. 20, sections 17 and 18 only (in force by Royal Assent), Workers Compensation Amendment Act, 2020
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