



EnviroFor Reporter

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ENVIROFOR NEWS:

Legislature Returns April 12

A total of nine government bills were introduced since the legislature resumed back in early March, all of which have received Royal Assent. We recommend using the Status Checker tool to determine which sections of these bills have come into force. The Status Checker is located via the Historical Research tab on the top navigation. The legislature returns to work on April 12, with a budget to be delivered on April 20.

70 Laws Updated with Gender Neutral Clauses

It is worth noting that a significant number of the amendments referenced in this Reporter are a result of a recent [Order in Council 140/2021](#) which replace gendered language with non-gendered alternatives in provincial laws and regulations.

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View [PDF](#) of this Reporter.

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](#)

ENERGY AND MINES NEWS

Case Summary: Municipal Bylaws Do Not Apply to Activities Authorized under Permit Issued under *Mines Act* because of Exclusive Provincial Jurisdiction over "Mines" and "Mining Activities"

O.K. Industries Ltd. v. Highlands (District), [2021] B.C.J. No. 85, [2021 BCSC 81](#), British Columbia Supreme Court, January 20, 2021, C.E. Hinkson C.J.S.C.

The petitioner O.K. Industries Ltd. was engaged in the quarrying of mining aggregates. It purchased vacant and unimproved property from the Province located within the respondent District of Highlands, a municipal corporation created pursuant to the [Community Charter](#), S.B.C. 2003, c. 26.

The petitioner sought a permit to operate a quarry on the property. The respondent opposed that application. The Province, through the Senior Inspector of Mines, issued the petitioner a quarry permit pursuant to the [Mines Act](#), R.S.B.C. 1996, c. 293. The quarry permit was subject to detailed authorizations and conditions. The quarry permit specifically restricted vegetation clearing and other ecological activities. The quarry permit also indicated other laws and regulations may apply to the petitioner's activities, including local government bylaws. Read the [full article](#) by Joel A. Morris with Harper Grey LLP.

McCarthy Tétrault Publishes Mining in the Courts, Vol. XI

The 11th annual edition of Mining in the Courts provides a one-stop annual update on legal developments impacting the mining industry. In addition to providing summaries of many of the most important cases, this edition contains articles with our insights on current legal trends and what we think the industry can expect to face in the coming year.

Topics covered in this edition include:

- Aboriginal Law and UNDRIP;
- Administrative Law;
- Bankruptcy and Insolvency;
- Civil Procedure;
- Constitutional Law;
- Contract Law;
- COVID-19 and its impact on the Mining Sector;
- Criminal Law;
- Climate Disclosure and Environmental Law;
- Intellectual Property Litigation;
- Labour and Employment Law, including workplace impairment;
- Shareholder Rights and Remedies; and
- Tax Law.

A PDF version of this McCarthy Tétrault publication can be downloaded [here](#) and additional information about the publication can be found on the McCarthy Tétrault website <https://www.mccarthy.ca/en/insights/books-guides/mining-courts-vol-xi> Authors include: – [Aidan L. Cameron](#), [Lindsay Burgess](#), [Kathryn Gullason](#), [Selina Lee-Andersen](#), [Meghan S. Bridges](#), [Miranda Lam](#), [Timothy St. J. Ellam](#), [Steven Tanner](#), [James S. S. Holtom](#), [Tracey Doyle](#), [Kendra Levasseur](#), [Gabriel Faure](#), [François Alexandre Toupin](#), [Gabrielle G. Maurer](#), [Bryn Gray](#), [Ben Ratelband](#), [Justine Lindner](#), [Caroline-Ariane Bernier](#), [Mathieu Bernier-Trudeau](#), [Marco Fimiani](#), [Daniel Thomas](#) and [Alexis Hudon](#).

Teck Coal Fined Record \$60 Million for BC River Contamination

The company's Teck Coal Ltd. (TCL) subsidiary pleaded guilty to two charges of depositing a deleterious substance under the federal [Fisheries Act](#) related to discharges of selenium and calcite into the Fording River and a pond in 2012. Those substances, Associate Chief Justice Paul Dohm heard from prosecutor Alexander Clarkson as part of a joint submission to the court, can cause deformities and mortality in fish fry.

Dohm said cutthroat trout were affected by discharges from the Fording and Greenhill's mines. Fish had moved from the river into mine settling ponds. Further, he said, calcite can bind rock and gravel together and harm fish habitats.

Selenium is a naturally occurring element that is essential to human health, but at high concentrations it can be toxic to fish, birds and amphibians. Dohm said Tech Coal was aware of selenium and calcite harms prior to 2009 but has taken significant steps since 2012 "to reduce its presence in the Elk Valley watershed." But, said Dohm, there has been "very serious damage," although he added the company is of good corporate Canada and one of the world's leading environmentally committed companies. Read the BIV [article](#).

Health, Safety and Reclamation Code for Mines in British Columbia Amendments

On April 1, 2021 a number of [amendments](#) to the [Code](#) came into force. According to the government, the intent of these changes is to provide greater worker protection and oversight for the mining industry.

The revisions include:

- adding cannabis in the impairment clause to align with federal legalization
- adding avalanche safety requirements
- adding gas detection and blowout prevention for exploration sites
- updating Workplace Hazardous Materials Information System (WHMIS)
- updating requirements to ensure safety mechanisms are in place for under-truck repairs on haul trucks
- updating clauses related to pressure vessels to ensure they meet current Canadian Standards Association standards
- updating legislation references in the Code for the *Public Health Act*

modernizing the requirements for atmospheric detection in underground mines

Additionally, the chief permitting officer now oversees the provisions of the code related to the permitting process, demonstrating the separation of accountabilities established under the Mines Act, which was amended in August 2020. The chief inspector of mines remains accountable for health and safety, as well as compliance and enforcement functions.

Canada Announces the Critical Minerals List

On March 11, 2021, Canada unveiled its [Critical Minerals List](#). The list includes 31 minerals considered integral to the Canadian economy, all of which are available in Canada. The list highlights focus areas in future Canadian mining policy and investments and builds on the existing [Canadian Minerals and Metals Plan](#). The plan is a framework and signals the future strategic direction Canada will encourage in support of national security and economic growth objectives through the minerals and metals industry. Read the [full article](#) by Radha Curpen, Sharon Singh, Sander Grieve and Kenryo Mizutani with Bennett Jones LLP.

Recent BCOGC Bulletins

The BCOGC has recently issued the following bulletins:

- [INDB 2021-08](#) – Release of New Light Control Best Practices Guideline
- [INDB 2021-09](#) – Regulation Changes – Consultation and Notification Regulation; Service Regulation; Fee, Levy and Security Regulation
- [INDB 2021-10](#) – A new Oil and Gas Processing Facility Regulation (OGPFR) has been approved
- [INDB 2021-11](#) – Natural Gas Levy Rate Change

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

ENERGY AND MINES

Act or Regulation Affected	Effective Date	Amendment Information
Administrative Penalties (Mines) Regulation (47/2017)	Apr. 1/21	by Reg 7/2021
Direction No. 8 to the British Columbia Utilities Commission (24/2019)	Mar. 22/21	by Reg 88/2021
Drilling and Production Regulation (282/2010)	Mar. 4/21	by Reg 48/2021
Fee, Levy and Security Regulation (8/2014)	Mar. 16/21	by Reg 79/2021
Gas Utility Act	RETROACTIVE to Feb. 1/21	by 2021 Bill 12, c. 3, section 39 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021
Liquefied Natural Gas Facility Regulation (146/2014)	Mar. 4/21	by Reg 48/2021
Mineral Rights Compensation Regulation (19/99)	Mar. 11/21	by Reg 73/2021
Mineral Tax Costs and Expenditures Regulation (405/89)	Mar. 11/21	by Reg 64/2021

Mineral Tenure Act Regulation (529/2004)	Mar. 11/21	by Reg 64/2021
Oil and Gas Processing Facility Regulation (48/2021)	NEW Mar. 4/21	see Reg 48/2021
Workplace Hazardous Materials Information System Regulation (Mines)	REPEALED Apr. 1/21	by Reg 7/2021

FORESTRY AND ENVIRONMENT NEWS

Failure to Report Spills May Attract Penalties up to \$75,000: New Administrative Penalties in Effect for BC Land-based Spills

In February 2021, more than three years after BC's land-based spills regime came into force (see our previous [legal update](#)), the BC government amended the [Administrative Penalties \(Environmental Management Act\) Regulation](#) (the Regulation) to allow the government to impose fines for contraventions of the Spill Preparedness, Response and Recovery provisions of the [Environmental Management Act](#) and associated regulations. The new amendments create three categories of penalties with maximum limits of \$75,000, \$40,000 and \$10,000. Of note, the amendments allow administrative penalties of up to \$75,000 to be levied for failing to:

- Report an actual or potential spill that is at imminent risk of occurring to the Provincial Emergency Program (by phone at 1-800-663-3456).
- Take specific actions if a spill occurs or is at imminent risk of occurring, including a failure to identify and mitigate spill-related environmental, human health, and infrastructure impacts.
- Have a compliant spill contingency plan in place.

Read the [full article](#) by Max Collett, Emily Chan and Michael Manhas with Norton Rose Fulbright Canada LLP.

Road Maintenance and Protection of Fish Habitat

One aspect of environmental management the Forest Practices Board often examines is the protection of fish habitat; most recently in its special investigation on Conserving Fish Habitat (2020), which found that sediment from forest service roads (FSR) in streams is a common source of potential harm to fish habitat. Elevated levels of sediment may be harmful to fish and negatively affect their habitat.

In a recent Board audit, auditors found a section of a FSR had been sliding into a fish stream for several years. There were multiple industrial road users – none of which were fully aware of their maintenance obligations and legal requirements – and none had stabilized the road. To protect fish habitat it is important for road users to understand legislative requirements for road maintenance, understand who is responsible for road maintenance, and apply sound road maintenance practices. The [Forest Planning and Practices Regulation](#) (FPPR) provides protection for fish habitat by requiring persons responsible for road maintenance to: Read the full article by Daryl Spencer, RPF published in the [BC Forest Professional Spring 2021](#) (PDF).

The Federal Carbon Pricing Regime is Constitutional – What the Supreme Court's Decision Means for Business

On March 25, 2021, the Supreme Court of Canada (the "SCC") released the much-anticipated decision on the provincial challenges to the constitutionality of the federal [Greenhouse Gas Pollution Pricing Act](#) (the "GGPPA"). The verdict: the GGPPA is constitutional. The SCC's decision to uphold the GGPPA affirmed the federal government's authority to regulate greenhouse gas ("GHG") emissions through a GHG pricing system under the "national concern branch" of the "peace, order and good government" power ("POGG") of the [Constitution Act, 1867](#). Each of Alberta, Ontario, and Saskatchewan had previously challenged the federal GGPPA's regulation of such matters as an intrusion into provincial powers. Read the [full article](#) by Selina Lee-Andersen, Joanna Rosengarten, Kimberly Howard, William Horne and Ashley Wilson with McCarthy Tetrault LLP.

BC Timber Sales Audit in Burns Lake Finds Issues State-Province Joint Report

An audit of BC Timber Sales (BCTS) and timber sale licence (TSL) holders in the Burns Lake Field Unit portion of BCTS's Babine Business Area found compliance with BC's forestry legislation, with two exceptions, according to the audit report. "BCTS complied with requirements of the [Forest and Range Practices Act](#) and the [Wildfire Act](#). However, auditors found two bridges had guardrails that needed repair and several TSL holders' fire hazard

assessment practices require improvement," said Kevin Kriese, board chair, Forest Practices Board. Read the [full article](#) published by the Forest Practices Board.

State of Regulation of Plastics in Canada: The Basics

Plastics have become part of the fiber of daily life in Canada. Their low cost, durability and utility make them an attractive material. Over the last 70 years, the production of plastics globally has increased more than any other manufactured material. Plastic resin and plastic product manufacturing in Canada accounts for more than five per cent of sales in the Canadian manufacturing sector. If the trend continues in this regard, current forecasts predict little change in the current management of the plastics economy.

However, as highlighted by The Honourable Jonathan Wilkinson, Canada's minister of Environment and Climate Change, in [a news release dated Oct. 7, 2020](#), the government recognises that Canadians expect them to take action in order to improve environmental protections and reduce plastic pollution across the country. Read the [full article](#) by Jonathan Cocker, Julie-Anne Pariseau, Morgane Larnder-Besner, Brianne Taylor with the firm Borden Ladner Gervais.

Environmental Appeal Board Decisions

There were two Environmental Appeal Board decision in the month of March:

[Water Sustainability Act](#)

- [Dario Rossi; Cora Rossi; Rocky Rossi; Samantha Rossi v. Assistant Water Manager](#) [Final Decision – Appeal Dismissed]

[Environmental Management Act](#)

- [GFL Environmental Inc.; Michael Dumancic; Nathalie McGee; Meaghan Lyall; Margaret & Foster Richardson; Wendy Betts; David Frame; Carol Ann La Croix; Joss Rowlands; Shelley Lee; Barry Mah; Trish Steinwand; Harry Dhaliwal; Joan Hislop; Douglas Burgham; Jennifer Burgham; Douglas McDougall; Michael W. Betts v. District Director, Environmental Management Act](#) [Final Decision – Appeals Granted in Part]

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

FORESTRY AND ENVIRONMENT

Act or Regulation Affected	Effective Date	Amendment Information
Administrative Penalties (<i>Environmental Management Act</i>) Regulation (133/2014)	Mar. 11/21	by Reg 64/2021
Angling and Scientific Collection Regulation (125/90)	Mar. 11/21	by Reg 64/2021
BC Timber Sales Regulation (381/2008)	Mar. 11/21	by Reg 69/2021
Carbon Neutral Government Regulation (392/2008)	Mar. 11/21	by Reg 66/2021
Carbon Tax Act	Mar. 25/21	by 2021 Bill 12, c. 3, section 2 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021
Carbon Tax Regulation (125/2008)	Mar. 11/21	by Reg 65/2021
Climate Change Accountability Act	Mar. 25/21	by 2021 Bill 12, c. 3, section 4 only (in force by Royal Assent), Miscellaneous Statutes (Minor

		Corrections) Amendment Act, 2021
Consular Tax Exemption Regulation (127/2008)	Mar. 11/21	by Reg 65/2021
Contaminated Sites Regulation (375/96)	Mar. 11/21	by Reg 64/2021
Designation and Exemption Regulation (168/90)	Mar. 11/21	by Reg 64/2021
Forest Planning and Practices Regulation (14/2004)	Mar. 11/21	by Reg 64/2021
Government Actions Regulation (582/2004)	Mar. 11/21	by Reg 64/2021
Greenhouse Gas Emission Control Regulation (250/2015)	Mar. 11/21	by Reg 64/2021
Groundwater Protection Regulation (39/2016)	Mar. 11/21	by Reg 75/2021
Hazardous Waste Regulation (63/88)	Mar. 11/21	by Reg 64/2021
Hunting Licensing Regulation (8/99)	Mar. 11/21	by Reg 64/2021
Integrated Pest Management Act	RETROACTIVE to Mar. 30/06	by 2021 Bill 12, c. 3, section 40 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021
North American Gypsy Moth Eradication Regulation (102/2021)	NEW Apr. 1/21	see Reg 102/2021
North American Gypsy Moth Eradication Regulation, 2020 (81/2020)	REPEALED Apr. 1/21	by Reg 102/2021
Permit Regulation (253/2000)	Mar. 11/21	by Reg 64/2021
Pound Districts Regulation (66/81)	Mar. 11/21	by Reg 64/2021
Water Protection Act	Mar. 25/21	by 2021 Bill 12, c. 3, section 34 only (in force by Royal Assent), Miscellaneous Statutes (Minor Corrections) Amendment Act, 2021
Wildlife Act Commercial Activities Regulation (338/82)	Mar. 11/21	by Reg 64/2021
Wildlife Act General Regulation (340/82)	Mar. 11/21	by Reg 64/2021

OCCUPATIONAL HEALTH AND SAFETY NEWS

WorkSafe BC Updates Guidelines – (March 11)

– from WorkSafeBC:

A number of Occupational Health and Safety regulation guidelines were updated in March. These include:

Guidelines – Occupational Health and Safety Regulation

- Part 4 General Conditions
 - G4.16 [Training](#) (revised)
 - G4.38 [Extreme temperatures](#) (revised)
 - G4.46 [Definition of musculoskeletal injury \(MSI\)](#) (revised)
 - G4.66 [Means of illumination](#) (retired)
 - G4.67 [Brightness, reflectance and glare](#) (revised)
 - G4.68 [Illumination measurement](#) (revised)
- Part 21 Blasting Operations
 - G21.3 [Dangerous incident reports](#) (revised)
- Part 23 Oil and Gas
 - G23.22 [Driver training](#) (revised)
 - G23.60 [Rotary tongs](#) (revised)

New and revised guidelines are posted for a 60-day preliminary period, during which time the stakeholder community may [comment and request revisions](#). Visit [WorkSafe BC Updates page](#) for these and other changes.

Mandatory Vaccinations Unlikely in BC Workplaces

Offices left mostly barren during the pandemic may soon be home again to the hum of workplace chatter and lunchroom confabs as British Columbians get their COVID-19 vaccinations en masse in the coming months. But if employers want throngs of work-from-home employees to return to the office, can they tell them to get their jobs first? "The first question is: What do people mean by mandatory vaccinations?" said Elizabeth Reid, a lawyer specializing in employment, labour and human rights at Vancouver's Boughton Law Corp. "You can't hold your employees down and say, 'You're getting this whether you want to or not.'" Read the BIV [article](#).

New Public Health Orders

The Public Health Office (PHO) recently issued the following orders & Guidelines:

- [Gatherings and Events – March 31, 2021](#) (PDF, 465KB)
 - [Requirements: Indoor Individual Exercise – March 31, 2021](#) (PDF, 352KB)
 - [Variance Suspension: Indoor Worship Services on Four Days – March 29, 2021](#) (PDF, 207KB)
 - [Variance: Outdoor Worship Services – March 23, 2021](#) (PDF, 250KB)
 - Read related [Public Health guidelines](#)
- [Food and Liquor Serving Premises and Retail Establishments which Sell Liquor – March 31, 2021](#) (PDF, 377KB)
- [Regulated and Unregulated Health Professionals SARS-CoV-2 Immunization Order – March 24, 2021](#) (PDF, 458KB)
- [Emergency Medical Assistants SARS-CoV-2 Immunization Order – March 18, 2021](#) (PDF, 289KB)
- [Agricultural Temporary Foreign Workers – March 14, 2021](#) (PDF, 279KB)
- [Ministry of Health – Overview of Visitors in Long-Term Care and Seniors' Assisted Living – April 1, 2021](#) (PDF, 672KB)

Visit the [PHO website](#) to view these and other related orders and notices.

Everything You Need to Know about Respiratory Protection

What was already a pretty key bit of PPE has now become one of the most sought-after pieces of equipment due to the ongoing pandemic. Respiratory protection has been an integral part of a number of professions for many years, be it doctors who require surgical masks or construction workers in need of N95 respirators. Since the COVID-19 outbreak last year, however, almost every single worker is required to wear a respirator or face covering of some sort. Read the [full article](#) by Canadian Occupational Safety.

BC Increases Fines for Covid-Related Offences

Effective March 25, the fines issued to those promoting or attending a non-compliant gathering was increased

from \$230 to \$575. According to the government, even sharing an event on social media could be considered promoting the event. The changes were made to Schedule 2 of the [Violation Ticket Administration and Fines Regulation](#), B.C. Reg. 89/97, under the "Protective Measures (COVID-19) Order".

OCCUPATIONAL HEALTH AND SAFETY

Act or Regulation Affected	Effective Date	Amendment Information
Elevating Devices Safety Regulation (101/2004)	Mar. 3/21	by Reg 54/2021
Firefighters' Occupational Disease Regulation (125/2009)	Mar. 22/21	by Reg 89/2021
Mental Disorder Presumption Regulation (136/2018)	Mar. 22/21	by Reg 89/2021
Time Period for Review Regulation (164/2015)	Mar. 22/21	by Reg 89/2021
Workers Compensation Act Appeal Regulation (321/2002)	Mar. 22/21	by Reg 89/2021
Workplace Hazardous Materials Information System Regulation (Mines)	REPEALED Apr. 1/21	by Reg 7/2021

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