



EnviroFor Reporter

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ENVIROFOR NEWS:

Legislature Resumes in October


The BC Legislative Assembly is scheduled to resume on Monday, October 3, 2022. Click [here](#) to view the legislative calendar for the upcoming session.

Latest Annotations

New annotations were recently added to Quickscribe by [Mark Oulton](#) of Hunter Litigation Chambers – [Forest and Range Practices Act](#), [Wildfire Regulation](#).

If you wish to be alerted when new annotations are published by our contributors, select "[My Alerts](#)" via the top navigation, then select the "View Expert Annotators". Here you can view and "follow" any contributor from the list.

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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

Adjusting to BC's Increased Reclamation Bonding Requirements

The BC government is increasing its reclamation bonding requirements from mining operations. On April 8th, 2022, BC published a new interim [Major Mines Reclamation Security Policy](#) (the "interim policy"). Among other things, the interim policy seeks to reduce the difference between the mining sector's reclamation liabilities and the reclamation security held by the Province.

Background to the Policy: Recommendations and Examinations in BC's Security Reclamation Practice

The interim policy was developed in response to recommendations following a 2016 audit of compliance and enforcement in the BC mining sector. The [audit report](#) found that the Ministry of Energy and Mines was not holding enough security (\$0.9 billion at the time) to cover the estimated environmental liabilities at major mines (\$2.1 billion at the time). The Auditor General recommended that the "...government safeguard taxpayers by ensuring the reclamation liability estimate is accurate and that the security held by government is sufficient to cover potential costs."

Read the [full article](#) by Christopher Langdon, Patrick Deutscher and Dave Nikolesjsin with McCarthy Tétrault LLP.

Mining in the Courts – Case Law Summary

In this series of blogs, we will share one of our case law summaries. In *Kaban Resources Inc. v. Goldcorp Inc.*, [2021 BCCA 427](#), the British Columbia Court of Appeal confirmed that a mining company had no legal duty to consent to a proposed financing arrangement that differed materially from the terms of a letter agreement. Goldcorp Inc. (now Newmont Corp.) and two of its subsidiaries (Goldcorp) brought a summary trial application for an order dismissing a claim by Kaban Resources Inc. (Kaban) alleging breach of contract. The claim arose in the context of a proposed sale of Goldcorp's rights to the Cerro Blanco gold-silver mine in Guatemala and certain other assets. In February 2016, Goldcorp and Kaban signed a letter agreement providing that Goldcorp would transfer these rights to Kaban in exchange for a 40% interest in Kaban, a cash payment 12 months after commercial production, piggyback rights on an initial public offering of Kaban, and other consideration. This agreement was subject to Kaban raising C\$35 million in financing. Read the [full article](#) by McCarthy Tétrault LLP's mining litigation group.

Finance Releases Draft Legislation on the Critical Mineral Exploration Tax Credit but "Critical" Details Remain Outstanding

On August 9, 2022, the Department of Finance released draft legislation (Draft Legislation) to implement the 30 percent Critical Mineral Exploration Tax Credit (CMETC) that was introduced on April 7, 2022 (Budget Day).¹ While the structure of the CMETC Draft Legislation is generally similar to the framework under the existing 15 percent Mineral Exploration Tax Credit (METC), there are a number of new requirements that must be satisfied in order to qualify for the CMETC. Although the Draft Legislation states that the CMETC will apply to expenditures renounced under eligible flow-through share agreements entered into after Budget Day (and on or before March 31, 2027), mining companies planning to undertake flow-through share financings in 2022 that may be eligible for the CMETC should seek guidance on these new requirements as important details are still missing from the Draft Legislation. Read the [full article](#) by [Zahra Nurmohamed](#), [Tera Li Parizeau](#) and [Neil Burnside](#) with Cassels Brock & Blackwell LLP.

Environmental Appeal Board Upholds Mt. Polley Mine Copper Concentration Discharge Target

Imperial Metals has lost an appeal of a BC environment ministry decision to set a target lowering the copper concentration of treated wastewater from the Mt. Polley gold and copper mine. The mine was allowed to begin to discharge treated wastewater directly into Quesnel Lake in the BC Interior after it started up two years after the catastrophic collapse of a rock-and-earth dam in 2014. The mine is permitted to discharge wastewater from the treatment plant at a copper concentration of 33 micrograms per litre, but the B.C. environment ministry has also stipulated that treatment of wastewater should target a significantly reduced copper concentration of 12 micrograms per litre. Read the [full article](#) by [Gordon Hoekstra](#) published on the *Vancouver Sun*.

New BCOGC Security Program Requirements June 1, 2023 – Early Consolidation

Effective June 1, 2023, the new Security Management Regulation will come into force, requiring permit holders regulated by the BC Oil and Gas Commission to comply with CSA Standard Z246.1. This regulation requires permit holders to develop a Security Management Program to identify threats and risks on a continuing basis and manage them with appropriate mitigation and response measures. For your convenience, Quickscribe has published [an early consolidation](#) of this regulation.

BC Minerals Could be Key Contributors to Hitting Climate Goals

Here in BC, we've witnessed firsthand the devastating effects of climate change: ice storms, floods, heat domes, atmospheric rivers and wildfires have devastated communities. Meanwhile, Europe and the United Kingdom are recovering from an unprecedented heatwave. What does this have to do with mining? It's simple. The world must rapidly build clean energy infrastructure to confront climate change. This means building more wind turbines and solar farms and improving our electricity grids. It means transitioning to electric vehicles (EVs) and building batteries and charging infrastructure to support them. Foresight Canada and the Mining Association of BC (MABC) held a contest, the Mining Innovation Challenge, aimed at finding ways to reduce the use of water in mining operations. Mines use large amounts of fresh water to move mine waste (slurry), which must be stored in tailings ponds. Read the [full article](#) by [Michael Goehring](#), published by *BIV*.

Recent BCOGC Bulletins

The BCOGC has recently issued the following bulletins:

- [IB 2022-02](#) – Multi-Year Study to Look at Methane Emissions
- [INDB 2022-13](#) – Participants Sought for Testing Well Decommissioning Submissions

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

ENERGY AND MINES

Act or Regulation Affected	Effective Date	Amendment Information
Petroleum and Natural Gas Royalty and Freehold Production Tax Regulation (495/92)	Sept. 1/22	by Reg 117/2022

FORESTRY AND ENVIRONMENT NEWS

British Columbia's Carbon Credit System

Under the [Climate Change Accountability Act](#), SBC 2007, c 42, the province of British Columbia (BC) set certain greenhouse gas (GHG) emissions reduction targets. One initiative for meeting these climate change goals is the carbon credit system governed by the [Greenhouse Gas Industrial Reporting and Control Act](#), SBC 2014, c 29 (GGIRCA). It establishes GHG emissions reporting requirements, allows for the creation of emission standards applicable to industrial facilities, and allows for the adherence to emissions standards through earning or purchasing emissions offsets and/or credits or purchasing government-generated credits. So long as GGIRCA meets or exceeds federal carbon pricing standards as outlined in the [Canadian Greenhouse Gas Offset Credit System Regulations](#), SOR/2022-111 and the [Greenhouse Gas Pollution Pricing Act](#), SC 2018, c 12, BC's system will likely remain independent from the federally legislated Greenhouse Gas Offset Credit System. Read the [full article](#) by Courtney Burton, with the assistance of Jack Yuan (law student) with Dentons LLP.

WorkSafeBC Update – Proposed Improvements to the Certificate of Recognition Program

WorkSafeBC is proceeding with the next step in its gradual, phased implementation of proposed improvements to the Certificate of Recognition (COR) program after extensive consultation, research, development, and testing of a new health and safety management audit standard. Read the [full article](#) on BC Forest Safety.

Pilot Program Aims to Turn "Dead Wood" into Lumber

Deadwood Innovations, of Fort St. James, in a joint venture with the Nak'azdli Whut'en First Nation, has a unique, pilot-scale mill based in the former TI'Oh Forest Products mill in the northern B.C. community. The BC government is working with the group to fund the development of a commercial-scale plant that, proponents say, could turn waste wood into commercial lumber. A key source for the wood is the thousands of trees killed by the mountain pine beetle, which caused the closure of the TI'Oh mill in 2014. Read the [BIV article](#).

Pre-treaty Agreement Returns Land to BC First Nation in Campbell River

A Campbell River First Nation has signed a pre-treaty agreement that would see the return of more than 22 square kilometres of land — a "significant milestone," says its chief, in a treaty negotiation process that has taken more than two decades. The transfer of 2,276 hectares of territorial land on the east coast of Vancouver Island to the Wei Wai Kum will help boost its economic activities for its 850 members, allowing them to access the land for cultural activities and reap the benefits of the forestry harvest. Read the [full article](#) by Cheryl Chan with the *Vancouver Sun*.

Environmental Appeal Board Decisions

The following Environmental Appeal Board decisions were made recently:

[Environmental Management Act](#)

- [Stephen James Lewis vs. Director, Environmental Management Act](#) [Preliminary Issue of Jurisdiction – Summarily Dismissed]
- [Mount Polley Mining Corporation v. Director, Environmental Management Act](#) [Final Decision – Appeal Allowed in Part]
- [Gavin Mines Inc. v. Director, Environmental Management Act](#) [Consent Order – Resolved]

[Water Sustainability Act](#)

- [Hans Buchler v. Assistant Water Manager](#) [Final Decision – Appeal Dismissed]

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

Forest Appeals Commission Decisions

The following Forest Appeals Commission decision was made recently.

[Forest and Range Practices Act](#)

- [Halfmoon Bay Ventures Corp. v. Government of British Columbia](#) [Preliminary Decision – Application Dismissed]

Visit the Forest Appeals Commission [website](#) for more information.

FORESTRY AND ENVIRONMENT

Act or Regulation Affected	Effective Date	Amendment Information
Agrologists Regulation (10/2021)	Sept. 1/22	by Reg 239/2021
Applied Biologists Regulation (13/2021)	Sept. 1/22	by Reg 239/2021
Wildlife Act	Sept. 1/22	by 2022 Bill 14, c. 13, sections 1 to 4 only (in force by Royal Assent), Wildlife Amendment Act, 2022

OCCUPATIONAL HEALTH AND SAFETY NEWS

New Rules for Work Refusals in BC Take Effect

A new rule strengthening the rights of workers in British Columbia to refuse unsafe work has come into effect. The [new section 3.12.1](#) under the Occupational Health and Safety Regulation (OHSR) states that if a worker refuses work, the employer must not require or permit another worker to do the refused work unless the matter has been resolved, or the employer informs the worker of the following:

1. the refusal
2. the unsafe work reported
3. the reasons why the work would not create an undue hazard to the health and safety of the other worker or any other person
4. the right of the other worker under section 3.12 to refuse unsafe work

Read the [full article](#) by [Jim Wilson](#) with Canadian Occupational Safety.

Workers' Compensation Schemes Cannot Recover Other Benefits Paid to Claimants, Court Rules

In a straightforward ruling, with two sets of reasons delivered, the Alberta Court of Appeal said that a statutory interpretation of a section of Alberta's *Insurance Act* does not preclude — in this case, WorkSafeBC — from bringing a subrogated action against an estate to recover the amounts of workers' compensation benefits paid to two claimants. Read the [full article](#) by Christopher Guly on *The Lawyer's Daily*.

Regulatory Amendment: A Primer on Refusing Unsafe Work

[Amendments](#) to the [Occupational Health and Safety Regulation](#) took effect on August 22, 2022, including changes related to refusing unsafe work. This primer outlines the changes, and describes the requirement for employers to provide written notice of the work refusal before allowing or permitting any other workers to perform the refused work. Read the WorkSafe [article](#).

WorkSafeBC Issues Orders after Attack that Injured Workers in BC Psychiatric Hospital

WorkSafeBC has issued two orders to a psychiatric hospital in British Columbia following an attack that left three

workers injured inside the workplace.

The incident happened last month, when one patient attacked the workers at the Forensic Psychiatric Hospital in Coquitlam, B.C. This happened inside the kitchen in a ward at the facility. The incident left two workers with concussions and one with back pain.

Nearly two-thirds (63 per cent) of [healthcare workers experienced physical violence](#), and 53 per cent reported an increase in violence targeting them or a co-worker during the COVID-19 pandemic, according to a previous survey from the Canadian Union of Public Employees (CUPE). Read the [full article](#) by [Jim Wilson](#) with Canadian Occupational Safety.

Understanding Roles and Responsibilities in Workplace Safety

When it comes to preventing workplace accidents in British Columbia, a great deal of responsibility falls on employers. Their policies as well as their follow-through will often be thoroughly examined if a worker is hurt. However, they are not the only ones with obligations when it comes to safety. Here is a general overview of the [responsibilities different parties carry to keep a workplace safe](#). Read the [full article](#) published by Overholt Law LLP.

OHS Policies/Guidelines – Updates

Guidelines – OHS Regulation:

August 22, 2022

The following guideline was revised, consequential to the August 22 amendments to the OHS Regulation:

- Part 3 Rights and Responsibilities
 - [G3.12 Refusal of unsafe work](#)

Housekeeping changes were also made to the following guidelines:

- [G1.1 Professional engineer](#)
- [G4.19 Physical or mental impairment – Recreational diving instructors](#)
- [G4.87 Unsafe water](#)
- [G5.3-3 Cylinders of breathing air](#)
- [G5.6 Worker education and training](#)
- [G6.4 Inventory of asbestos-containing materials](#)
- [G7.19-1 Exposure to ionizing radiation – Exposure limits and exposure period](#)
- [G12.74-1 Automotive lifts and other vehicle support standards – Evidence of compliance](#)
- [G13.23\(1\) Inspection and certification of elevating work platforms](#)
- [G14.71 Mobile crane and boom truck annual inspections](#)
- [G16.43\(2\)-1 Lift truck operator training](#)
- [G16.43\(2\)-2 Lift truck operator training – Alternative standard](#)
- [G20.47\(1\) Inspection and certification of masts](#)
- [G20.47\(2\)-\(4\) Inspection and certification of concrete pump and placing booms](#)
- [G21.12 Custody of certificates](#)
- [G24.13-2 Diving competency standards](#)
- [G26.18 Acceptable standards for landslide risk assessments](#)

Policies – OHS Regulation:

August 22, 2022

Housekeeping changes were made to the following policy items to reflect amendments to the OHS Regulation.

- [R4.25-1 Workplace Conduct – Prohibition of Improper Activity or Behaviour](#)
- [R4.27-1 Violence in the Workplace – Definition](#)

Visit the [WorkSafeBC website](#) to explore previous OHS updates.

OCCUPATIONAL HEALTH AND SAFETY

Act or Regulation Affected	Effective Date	Amendment Information
Accessible British Columbia Act	Sept. 1/22	by 2021 Bill 6, c. 19, sections 11 and 12 (in force by Reg 105/2022), Accessible British Columbia Act
Occupational Health and Safety Regulation (296/97)	Aug. 22/22	by Reg 116/2022
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