



## Vol: XVI – Issue 9 – September 2023

### EnviroFor News

#### Fall Legislative Session Now in Progress

As of October 3, the BC Legislature is back in session. The focus this fall is on housing, clean energy and community safety. The government has announced it will bring in legislation intended to increase housing supply, support victims of crime, update the international credentialing process, advance reconciliation and modernize emergency management, starting with the introduction of [Bill 31](#), the *Emergency and Disaster Management Act*.

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#### ENERGY & MINES NEWS

##### Court Orders Consultation with First Nations Before Granting Mineral Claims in BC

In a [landmark case](#), the British Columbia Supreme Court ("BCSC") has addressed the issue of whether the Crown must consult Indigenous groups prior to registering mineral claims in BC. In the current system, "free miners" stake claims online without any prior Crown consultation with potentially affected Indigenous groups. As a result of this decision, BC's mineral tenure system will need to change.

##### Key takeaways

1. The BCSC found that the Crown owes a duty to consult Indigenous groups prior to granting mineral claims to prospectors or "free miners" on lands on which Indigenous groups assert Aboriginal rights.
2. The BCSC gave the province 18 months to consult with the mining industry and Indigenous groups to modernize the mineral tenure system to address the Crown's duty to consult. This could mean changing the way the Chief Gold Commissioner exercises discretion, or amending the [Mineral Tenure Act](#).
3. The BCSC found that the [Declaration on the Rights of Indigenous Peoples Act](#) ("DRIPA") does not implement the UN Declaration on the Rights of Indigenous People ("UNDRIP") into BC law, and that it is not up to the courts to decide whether the Province's laws are consistent with UNDRIP.

4. The BCSC decision does not impact existing mineral claims in BC. All existing mineral claims remain valid.
5. Ultimately, the BCSC held that the province owes the duty to consult. The court did not find the *Mineral Tenure Act* to be unconstitutional, nor did the court grant the Indigenous groups' requests for an interim and permanent injunctions or quashing existing mineral claims on lands in which they assert Aboriginal rights.

Read the [full article](#) by [Don Collie](#), [Alan Monk](#), [Josh Jantzi](#), [Wally Braul](#), [Denis Silva](#), [Megan Filmer](#), [R. Max Collett](#), Saje Gosal and Jianna Faner (Articling Students) with DLA Piper.

### B.C. First Nation Wants Reasons for Trans Mountain

#### Ruling; Says It's Entitled to Appeal

The Canada Energy Regulator ruled to allow Trans Mountain to alter the route slightly for a 1.3-kilometre stretch of pipeline near Kamloops.

A B.C. Indigenous Nation is asking the Canada Energy Regulator to release its reasons as soon as possible for allowing a modification of the Trans Mountain pipeline's route.

In a letter to the regulator dated Wednesday, a lawyer representing the Stk'emlupsemc te Secwépemc Nation said the decision to grant the route deviation Monday without providing its reasons has left the Nation without the ability to decide its next steps. Read the *Vancouver Sun* [article](#).

### BC Energy Regulator Announcements

The following BC Energy Regulator announcements were posted recently:

- [TU 2023-14](#) – BCER Increases Availability and Quality of Digital Records

Visit the BC-ER [website](#) for more information.



## ENERGY & MINES

Act or Regulation Affected	Effective Date	Amendment Information
Administrative Penalties Regulation (35/2011)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Blueberry River First Nations Implementation Agreement Regulation (146/2023)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Direction No. 1 to the British Columbia Energy Regulator (1/2015) (formerly titled <i>Direction No. 1 to the Oil and Gas Commission</i> )	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Dormancy and Shutdown Regulation (112/2019)	Sept. 1/23	by <a href="#">Reg 202/2023</a>
Drilling and Production Regulation (282/2010)	Sept. 1/23	by <a href="#">Reg 202/2023</a>
Emergency Management Regulation (217/2017)	Sept. 1/23	by <a href="#">Reg 202/2023</a>
Energy Resource Activities Act (formerly titled <i>Oil and Gas Activities Act</i> )	Sept. 1/23	by 2022 Bill 37, c. 42, sections 1, 2 (a), (b), (d) to (i), 3, 4, 6, 8 to 10, 12 to 20, 22, 24, 26 to 28, 30, 32 to 34, 62, 63, 64 and 65 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>
Energy Resource Activities General Regulation (274/2010) (formerly titled <i>Oil and Gas Activities General Regulation</i> )	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Energy Resource Road Regulation (56/2013) (formerly titled <i>Oil and Gas Road Regulation</i> )	Sept. 1/23	by <a href="#">Reg 202/2023</a>
Environmental Protection and Management Regulation (200/2010)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Fee, Levy and Security Regulation (8/2014)	Sept. 1/23	by <a href="#">Reg 202/2023</a>
Geophysical Exploration Regulation (280/2010)	Sept. 1/23	by <a href="#">Reg 202/2023</a>
Geothermal Geophysical Exploration Regulation		

(358/98)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Geothermal Resources Act	Sept. 1/23	by 2022 Bill 37, c. 42, sections 60, 62, 63 and 70 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>
Geothermal Resources General Regulation (39/2017)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Investigations Regulation (134/2019)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Liquefied Natural Gas Facility Regulation (146/2014)	Sept. 1/23	by <a href="#">Reg 202/2023</a>
Mines Act	Sept. 1/23	by 2022 Bill 37, c. 42, section 60 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>
Oil and Gas Processing Facility Regulation (48/2021)	Sept. 1/23	by <a href="#">Reg 202/2023</a>
Petroleum and Natural Gas Act	Sept. 1/23	by 2022 Bill 37, c. 42, sections 36, 40, 52, 53, 60 and 62 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>
		by 2023 Bill 10, c. 23, section 144 only (coming into force of <a href="#">2022 Bill 37</a> , c. 42, section 60), <a href="#">Budget Measures Implementation Act, 2023</a>
Petroleum and Natural Gas Act Fee, Rental and Work Requirement Regulation (378/82)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Petroleum and Natural Gas Drilling Licence and Lease Regulation (10/82)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Petroleum and Natural Gas General Regulation (357/98)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Petroleum and Natural Gas Royalty and Freehold Production Tax Regulation (495/92)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Pipeline Crossings Regulation (147/2012)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Pipeline Regulation (281/2010)	Sept. 1/23	by <a href="#">Reg 202/2023</a>
Public Utility Regulation (174/2006)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Requirements for Consultation and Notification Regulation (50/2021)	Sept. 1/23	by <a href="#">Reg 202/2023</a>
Security Management Regulation (181/2022)	Sept. 1/23	by <a href="#">Reg 202/2023</a>
Service Regulation (199/2011)	Sept. 1/23	by <a href="#">Reg 202/2023</a>



## FOREST AND ENVIRONMENT NEWS

### The Legal Perspective

On November 25, 2021, the BC Legislature enacted Bill 23 – the [Forest Statutes Amendment Act, 2021](#). While Bill 23 will make a variety of amendments to BC's forestry legislation, its primary focus relates to the operational planning and approval process under the [Forest and Range Practices Act](#) (FRPA). The changes made to this process are not yet in force, but will come into effect by order of the provincial cabinet.

Bill 23 introduces forest landscape plans (FLP) into the planning process, and authorizes the chief forester to establish FLPs by order. FLPs must identify a forest landscape area. A forest landscape area could correspond to a management unit (TSA or TFL, for example), though there is nothing that requires this. An FLP must also include outcomes in relation to various objectives specified in the legislation. An FLP may also include planning guidelines for forest operations plans (FOP) in relation to the location of cutblocks and roads, limitations on the size and configuration of cutblocks, and other requirements related to forest practices, silviculture systems and stocking standards. Read the [full article](#) by [Jeff Waatainen](#) in the Fall 2023 issue of *BC Forest Professional*.

### **Appeals: Decision Not to Appeal Amendments to Okanagan-Columbia FSP**

The Forest Practices Board has made the decision not to appeal a district manager's approval of amendments to BC Timber Sales' (BCTS) Okanagan-Columbia Forest Stewardship Plan (FSP) #771.

A member of the public requested that the Board appeal the Okanagan Shuswap District Manager's decision to the Forest Appeals Commission. The Board has the authority under the [Forest and Range Practices Act](#) (FRPA) to appeal certain government decisions to the Commission, including the approval of amendments to an FSP. The FSP amendments relate to a 1996 order establishing the Rose Swanson Mountain area as a sensitive area and setting objectives for its management (the Order).

Following a thorough review of BCTS's results and strategies in the FSP, the Board concluded that they represent a reasonable balance between timber harvesting and preserving recreational activities and values in the area. A summary of the Board's analysis is available [here](#) in an open letter addressing the request to appeal. Read the [full notice](#) from the Forest Practices Board.

### **Province Tackles Climate Change by Reducing Single-Use Plastics in Tree Planting**

Communities around the Province will see less plastic in landfills after three million single-use plastic tree seedling wraps, which support 45 million seedlings, are eliminated from the tree-planting process in 2024.

Following a successful trial of plastic removal for the growth of pine and spruce seedlings within the Cariboo region, run by the Ministry of Forests' BC Timber Sales, the Province will remove single-use plastic wraps for all pine, spruce and cedar tree seedlings. The 45 million plastic-free tree seedlings will support reforestation projects in every corner of the province. The elimination of the single-use plastic will be led by BC Timber Sales. Read the government [news release](#).

### **B.C. Issues Environmental Certificate Approving Contentious Roberts Bank Terminal Expansion Project**

*Project likely environmentally harmful, but certificate issued to safeguard provincial interests: B.C. gov't*

The British Columbia government has issued an environmental assessment certificate for the contentious container port expansion project at Roberts Bank, despite acknowledging the project is likely environmentally harmful.

In a media release, the province said not granting the certificate would prevent B.C. from safeguarding provincial interests.

It noted that the project is almost entirely on federal land, within federal jurisdiction and already approved by Ottawa, and that "a decision not to issue a B.C. certificate could not prohibit the project from going forward." Read the *CBC* [article](#).

### **Report Shows Pathway to Improve Credential Recognition Process**

The Province is releasing a [new report](#) that shows professional regulatory bodies made changes to improve credential-recognition processes for internationally trained professionals.

The review was carried out by the Office of the Superintendent of Professional Governance, which oversees regulatory bodies outside the health sector. The office reviewed five regulatory bodies as part of this report:

- Applied Science Technologists and Technicians of British Columbia (ASTTBC)
- British Columbia Institute of Agrologists (BCIA)
- College of Applied Biologists (CAB)
- Engineers and Geoscientists British Columbia (EGBC)
- Forest Professionals British Columbia (FPBC)

Read the government [news release](#).

### **Environmental Appeal Board Decisions**

The following Environmental Appeal Board decisions were made recently:

#### [Environmental Management Act](#)

- [Richmond Steel Recycling Limited v. Director, Environmental Management Act](#) [Final Decision – Appeal Dismissed]

#### [Integrated Pest Management Act](#)

- [Larry Wartels, Canadian Christian Lobby, Kathryn McMullen, Dr. Jennifer Tynan, Lynne Mackie, Dan Peruzzo, Dr. Evan Frangou, Dino Pagliardi v. Administrator, Integrated Pest Management Act](#) [Dismissal Decision – Application Granted; Appeals Dismissed]

#### [Water Sustainability Act](#)

- [Triple W Farms Ltd. v. Water Manager](#) [Preliminary Decision on Jurisdiction – Appeal Dismissed]
- [Altherr & Schellenberg Cattle Co. Ltd. v. Assistant Water Manager](#) [Consent Order]

- [Michael Anderson v. Assistant Water Manager](#) [Dismissal Order – Appeal Dismissed]
- [Robert Macdonald v. Surface Water Protection Officer](#) [Dismissal Order – 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](#)

- [367079 BC Ltd. DBA Pro-Link Logging v. Government of British Columbia](#) [Dismissal Order – Appeal Dismissed]

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



## FOREST AND ENVIRONMENT

Act or Regulation Affected	Effective Date	Amendment Information
Environmental Management Act	Sept. 1/23	by 2022 Bill 37, c. 42, sections 60, 62 and 66 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>
Flathead Watershed Area Conservation Act	Sept. 1/23	by 2022 Bill 37, c. 42, sections 60 and 61 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>
Forest Act	Sept. 1/23	by 2022 Bill 37, c. 42, sections 60 and 69 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>
Forest and Range Practices Act	Sept. 1/23	by 2022 Bill 37, c. 42, sections 60 and 61 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>
Greenhouse Gas Emission Administrative Penalties and Appeals Regulation (248/2015)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Greenhouse Gas Emission Reporting Regulation	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Land Surveyors Act	Sept. 1/23	by 2022 Bill 37, c. 42, section 60 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>
Oil and Gas Waste Regulation (254/2005)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Park Act	Sept. 1/23	by 2022 Bill 37, c. 42, section 60 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>
Petroleum Storage & Distribution Facilities Storm Water Regulation (168/94)	Sept. 1/23	by <a href="#">Reg 177/2023</a>
Professional Governance General Regulation (107/2019)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Reviewable Projects Regulation (243/2023)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Spill Contingency Planning Regulation (186/2017)	Sept. 1/23	by <a href="#">Reg 201/2023</a>
Spill Preparedness, Response and Recovery Regulation (185/2017)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Spill Reporting Regulation (187/2017)	Sept. 1/23	by <a href="#">Reg 201/2023</a>
Water Sustainability Act	Sept. 1/23	by 2022 Bill 37, c. 42, section 60 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>

Water Sustainability Fees, Rentals and Charges Tariff Regulation (37/2016)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Water Sustainability Regulation (36/2016)	Sept. 1/23	by <a href="#">Reg 187/2023</a>
Wildfire Act	Sept. 1/23	by 2022 Bill 37, c. 42, sections 60 and 61 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>
Wildlife Act	Sept. 1/23	by 2022 Bill 37, c. 42, section 60 only (in force by <a href="#">Reg 187/2023</a> ), <a href="#">Energy Statutes Amendment Act, 2022</a>



## OCCUPATIONAL HEALTH AND SAFETY NEWS

### New Workers Compensation Statutory Duties Coming to British Columbia in 2024

British Columbia is expanding legal protections for workers who, because of an injury that arose out of and in the course of their employment, are unable to earn full wages at their pre-injury work. Starting on January 1, 2024, employers engaging with such injured workers will have two new legislative obligations under the [Workers Compensation Act](#) (the *WCA*). The first duty, the duty to cooperate, requires injured workers and their employers to work with one another, and with WorkSafeBC, to facilitate a safe and timely return to, or continuation of, work. Read the [full article](#) by [Chanelle Wong](#) and [Sarah Hanson](#) with Norton Rose Fulbright.

### Consultation on Proposed Amendments to Part 4 of the Occupational Health and Safety Regulation

Our Policy, Regulation and Research Department is requesting feedback on proposed amendments to Part 4, General Conditions, [sections 4.24 to 4.31.2 — Harassment and Violence, of the Occupational Health and Safety Regulation](#). The consultation phase provides stakeholders an opportunity to provide feedback before the proposed amendments are taken to public hearing. All stakeholder feedback is carefully considered and analyzed, and is provided to WorkSafeBC's Board of Directors as part of their decision-making process.

Proposed regulatory amendments under review:

- [Part 4, General Conditions, sections 4.24 to 4.31.2 — Harassment and Violence](#)

Feedback will be accepted until **4:30 p.m. on Tuesday, November 14, 2023.**

### BC Gives \$4M Grant to Help Hurt People Reintegrate into Workforce

In honor of British Columbia's Disability Employment Month, the National Institute of Disability Management and Research (NIDMAR) has received a substantial financial boost of \$4 million. This funding injection will help people with disabilities or those recovering from injuries or mental health challenges, work towards recovery and safe reintegration into the workforce. September has been designated as Disability Employment Month in British Columbia to recognize the valuable contributions made by individuals with disabilities within the workforce while promoting resources and tools that assist employers in breaking down barriers to inclusion and creating more accessible workplaces. Read the [full article](#) by [Shane Mercer](#) with Canadian Occupational Safety.

### Owners of Tugboat Ordered to Pay \$310K for Fatal Sinking

The tugboat owners responsible for a fatal sinking near Kitimat, B.C., which claimed the lives of two individuals, have been ordered to pay \$310,000 during a recent sentencing hearing in Prince Rupert, British Columbia. But instead of paying a typical fine, the judge has allowed for an alternate payment plan that would see the funds go to prevention programs. The incident occurred on February 10, 2021, when the tugboat Ingenika sank in treacherous conditions while attempting to tow a loaded barge through the icy waters of the Gardner Canal. Captain Troy Pearson, 58, and deckhand Charley Cragg, 25, lost their lives, while a third crew member, Zac Dolan, was rescued after spending hours in a life raft and subsequently hospitalized for hypothermia and frostbite. Read the [full article](#) by [Shane Mercer](#) with Canadian Occupational Safety.

### OHS Policies/Guidelines – Updates

Guidelines – Occupational Health and Safety Regulation – September 14, 2023

The following guideline was issued:

- Part 19 Electrical Safety  
[G19.15\(1\)-1 Use of GFCL outdoors in the film and performing arts industries](#)

OHS Policies – *Workers Compensation Act* – September 15, 2023

Housekeeping changes were made to the following policy item:

- [P2-90/91/92-1 Stop Work Orders](#)

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



## OCCUPATIONAL HEALTH AND SAFETY

Act or Regulation Affected	Effective Date	Amendment Information
Workers Compensation Act	Sept. 1/23	by 2022 Bill 5, c. 3, sections 1, 3, 8, 9 (part), 10, 11, 13 (part) and 14 to 16 only (in force by <a href="#">Reg 142/2023</a> ), <a href="#">Workers Compensation Amendment Act, 2022</a>

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