

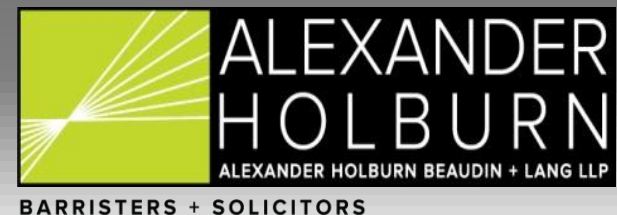
# Regulatory Update 2015-2016: New and Upcoming Developments of Note

Environmental Managers Association  
of British Columbia

Legal Update Session – Thursday, January 21, 2016

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# Agenda

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- Federal Regulatory Update
  - *Fisheries Act*
  - WHMIS and Transport of Dangerous Goods
- Provincial Regulatory Update
  - Contaminated Sites Regime Changes
  - Proposed New Spills Response Regime
  - *Greenhouse Gas Industrial Reporting and Control Act*
  - *Water Sustainability Act*
  - *Liquefied Natural Gas Facility Regulation*
- Summary

# *Fisheries Act*

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- Two omnibus budget bills introduced by the federal government in 2012 – Bill C-38 and C-45.
- Contained major changes to environmental legislation:
  - *Fisheries Act*
  - *Canadian Environmental Assessment Act*
  - *Navigable Waters Protection Act*

# *Fisheries Act*

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- Immediate changes:
  - Repeal and replacement of existing *Canadian Environmental Assessment Act*.
  - Some amendments to fish habitat provisions in the *Fisheries Act*.
  - Increase in fines for offences under the *Fisheries Act*.
  - Provisions for agreements between federal and provincial governments to delegate roles, powers and functions under *CEAA* or *Fisheries Act*.

# *Fisheries Act*

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- New penalty regime took effect in 2014.
- Significantly increased maximum fines.
- Higher minimum fines on corporate offenders.
- Federal government has not as yet entered into any equivalency agreements with B.C.

# *Fisheries Act*

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- New regulation to establish conditions for authorizations under s. 36(5.2) to allow DFO to make regulations allowing deposits of “deleterious substances”.
- This will include deposits authorized under other federal or provincial laws.
- Attempt to harmonize regulations.

# *Fisheries Act*

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- Still some unanswered questions after 2 years:
  - To what extent will DFO be prepared to accept opinions of third-party experts with respect to determining potential for serious harm to fish or adequacy of mitigation efforts?
  - What constitutes sufficient mitigation?
  - Will DFO provide approval of mitigation measures?
  - How will existing authorizations be treated under the new regime?

# WHMIS and TDG

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- Federal government has updated Workplace Hazardous Material Information System (WHMIS) as well as Transport of Dangerous Goods (TDG) regime.
- Response to the Lac-Mégantic, QC rail disaster in 2013.



# WHMIS and TDG

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- New standards for classification and labelling of chemicals and dangerous goods.
- New requirements and standards for transport methods and containers.
- New mandatory requirements for emergency response plans.

# Contaminated Sites Review

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- B.C. Government is undertaking a comprehensive review of the contaminated sites regime set out in the *Environmental Management Act* and *Contaminated Sites Regulation*.
- Will include omnibus updates to the CSR standards.

# Contaminated Sites Review

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- Many of the standards have not been updated since they were initially developed in 1995.
- Most of the changes/updates to date have focused on the addition of standards for new substances (eg sediment, vapour).
- Updates to drinking water guidelines as well as certain metals (lead, arsenic, iron, manganese).

# Contaminated Sites Review

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- MOE has set 3 goals for the omnibus update:
  - Update existing standards or create new standards for some new substances
  - Create new standards for Wildlands and High-Density Residential Land Uses.
  - Create mandatory 5-year cycle for future updates of standards.

# Contaminated Sites Review

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- Timing:
  - MOE has consulted with stakeholders (CSAP, industry, public)
  - MOE to calculate initial set of new standards – goal of December, 2015.
  - Target of April/May 2016 to provide omnibus amendments to minister for approval.

# Contaminated Sites Review

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- Anticipated changes to soil standards:
  - Schedules 4, 5 and 10 standards will be combined into a single set of soil standards.
  - Three new levels of soil standards:
    - Low Density Residential (existing RL)
    - High-Density Residential
    - Wildlands
  - New soil-to-groundwater protective standards

# Contaminated Sites Review

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- Major changes to contaminated soil relocation agreements
- Repeal of Schedule 7 and use of all applicable CSR Schedule standards to determine if soil can be relocated.
- “Triggers” for soil relocation agreements to be replaced with new language in the CSR which will make standards of the receiving environment and not the lowest standards the trigger.

# Contaminated Sites Review

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- Proposed new single schedule for water quality standards.
- Will combine and update existing AW, IW & LW standards.
- DW standards to be replaced with new, toxicologically-based DW standards



# Contaminated Sites Review

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- Sediment Criteria in Schedule 9 will become standards
- Schedule 11 (Vapour Quality) will add new “Parkade” and Wildlands standard for human health protection.
- Omnibus changes will also require revisions to Technical Guidances and Procedures.

# Contaminated Sites Review

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- What are some of the practical implications of these changes?
- Petroleum hydrocarbon standards will be less restrictive.
- Metals standards will become more restrictive.
- No grandfathering but there will be an effective date.

# Contaminated Sites Review

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- Likely applications for instruments will have to reflect new standards starting in 2016.
- May result in changes to existing remediation depending on nature of contamination.

# New Spills Response Regime

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- MOE reports approximately 4,000 spills reported per year.
- $\frac{3}{4}$  are land based, most small.
- Sophisticated regime for marine spills (eg WCMRC)
- MOE wants to have province-wide spills response regime.

# New Spills Response Regime

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- MOE has noted gaps in current regime:
  - Standard response and preparedness requirements across all industries
  - Assured timely and effective response
  - Effective community, First Nations engagement
  - Standardized restoration requirements
  - Orphan spills
  - Need for comprehensive plans to address spills.

# New Spills Response Regime

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- 7 design principles:
  - Polluter pays
  - Risk-based requirements
  - Avoid unnecessary duplication
  - Transparency
  - Opportunities for public and First Nations participation
  - Strong government oversight
  - Continuous improvement

# New Spills Response Regime

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- New regulatory requirements for spill preparedness, response and remediation
- Establish provincially-certified, industry-funded province-wide Preparedness and Response Organization

# New Spills Response Regime

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- Continued exploration of industry funding options for:
  - Provincial Environmental Emergency Program;
  - Enhanced community and First Nations involvement;
  - Addressing orphaned spills.



# New Spills Response Regime

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- MOE is proposing Preparedness and Response Organization
  - Industry funded and operated but certified by the province
  - Mandatory membership based on quantity, toxicity and presence of hazardous materials
  - Open to others on voluntary basis.

# New Spills Response Regime

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- PRO will be responsible for:
  - Ensuring unified command
  - Creation of area response plans
  - Ensuring required response capacity is immediately available
  - Ensuring response services are paid for by the responsible party

# New Spills Response Regime

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- Anticipated timing:
  - Developing policy options – Spring 2016
  - Engage stakeholders – beginning early 2016
  - Enabling legislation in force – Spring 2016
  - Finish engagement – Summer 2016
  - Develop regulations – Winter 2016
  - Launch of new regime – Spring 2017

# *Greenhouse Gas Industrial Reporting and Control Act*

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- In 2015 B.C. Government passed new *Greenhouse Gas Industrial Reporting and Control Act*.
- Act not yet in force.
- Will replace existing regime.
- Long term intention is to have a GHG “cap and trade” regulatory regime.
- Shift from volume-based to intensity-based regulation.
- Intended to harmonize with federal and Alberta regulations.

# *Greenhouse Gas Industrial Reporting and Control Act*

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- 2050 target = 80% below 2007 levels
- 2030 target = 40% below 2007 levels
- Reductions by sector:
  - Transportation – 30% reduction (6.3 MT)
  - Industry – 30% reduction (8.4 MT)
  - Built Environment – 50% reduction (3.4 MT)
- Also proposing increase to carbon tax (\$10/tonne per year).

# *Water Sustainability Act*

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- Existing *Water Act* implemented in 1909
- MOE recognized need for modernization with “Living Water Smart” strategy
- First discussion paper issued in early 2010, followed by public consultation
- Formal policy proposal for new *Water Sustainability Act* issued in December 2010.

# *Water Sustainability Act*

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- March 2014: *Water Sustainability Act* (WSA) introduced in the legislature.
- Received Royal Assent May 29, 2014, however not yet in force.
- Expected to come into force in April 2015, once supporting regulations finalized.
- Still not in force.
- New target date of early 2016.

# *Water Sustainability Act*

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- Once fully implemented, the WSA will effectively repeal and replace the existing licensing scheme in the *Water Act*.
- Authorizes establishment of water objectives to be considered in decision-making under WSA and other enactments
- Mandates consideration of environmental flow needs of streams in licensing decisions



# *Water Sustainability Act*

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- Provides new powers to modify existing precedence of water use where streams at risk of falling below flow thresholds
- Creates new regulatory powers to enforce water sustainability plans, including administrative monetary penalty scheme.
- Preserves existing “first-in-time, first-in-right” system of water licenses.

# *Water Sustainability Act*

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- Perhaps the most significant change is the extension of the water licensing regime and WSA provisions to ground water.
- Will include imposition of licensing requirements and user fees.
- Note that “first-in-time, first-in-right” regime still applies – well owners will retroactively be given licenses to time they started using well.

# *LNG Facility Regulation*

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- B.C. Government passed new *Liquefied Natural Gas Facility Regulation*.
- Part of effort to create regulatory regime for construction and operation of LNG facilities.
- Sets out rules, requirements for permitting for LNG facilities.

# Summary

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- Questions?
- Comments?

**Thank you for attending!**

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