Blakes 18th Annual Overview of Environmental Law and Regulation in British Columbia 2013

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BLAKES 18TH ANNUAL OVERVIEW OF ENVIRONMENTAL LAW AND REGULATION IN BRITISH COLUMBIA 2013

Blakes 18th Annual Overview of Environmental Law and Regulation in British Columbia 2013 is intended as an introductory summary. Specific advice should be sought in connection with particular transactions. If you have any questions with respect to this Guide, please contact our Firm Managing Partner, Rob Granatstein, in our Toronto office by telephone at 416-863-2748 or by email at robert.granatstein@blakes.com. Blake, Cassels & Graydon LLP produces regular reports and special publications on Canadian legal developments. For further information about these reports and publications, please contact our Chief Client Relations & Marketing Officer, Alison Jeffrey, in our Toronto office by telephone at 416-863-4152 or by email at alison.jeffrey@blakes.com.

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Blakes Vancouver Environmental Group

The members of the Blakes Vancouver Environmental Group provide legal services in all aspects of environmental and energy law, including:

- Corporate/commercial transactions and due diligence
- Litigation, prosecutions, hearings and appeals
- Environmental compliance reviews and impact assessments
- Natural resource and renewable energy development, including First Nations engagement
- Federal and provincial environmental assessments
- Contaminated sites and brownfield development
- Environmental due diligence training
- Endangered species
- Climate change regulation and carbon transactions

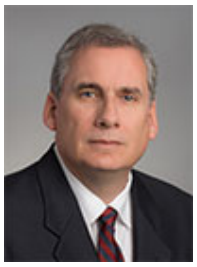
For a more detailed list of the services we provide, please refer to the section entitled Environmental Legal Services at the end of this Overview.

The Blakes Vancouver Environmental Group has received the top ranking of environmental law groups in British Columbia by *The Canadian Legal Lexpert Directory* in every year since 2001.

Blakes environmental lawyers have developed an extensive knowledge of environmental legislation and contacts with regulatory authorities to provide timely, efficient and effective advice to assist clients in this complex field. We have been involved in the development of major construction projects in a variety of industries, the redevelopment of old industrial lands, the disposal of hazardous waste, the development of landfill operations, the import and export of toxic and non-toxic substances and the clean-up of contaminated sites. Our environmental lawyers have in-depth knowledge of the energy (conventional and renewable), forest/pulp and paper, and mining industries. In the area of Power, Blakes has committed substantial resources to ensuring that our clients receive quality legal services at this cutting edge of policy and law. We focus on the emerging opportunities and challenges for our clients created by clean technologies and climate change regulations. In particular, our environmental lawyers have significant expertise in advising clients on various aspects of alternative energy projects and regulatory compliance, as well as the emerging carbon markets. We frequently assist businesses in making submissions to government regarding proposed environmental laws and amendments to existing laws.

Members of the group are often called on to defend corporations and individuals charged with significant environmental offences under federal legislation such as the *Canadian Environmental Protection Act, 1999* and the *Fisheries Act*, and under provincial legislation across the country.

Group members work closely with the Real Estate, Financial Services, Corporate & Commercial,Forestry, Oil & Gas, Energy, Power, Aboriginal Law, and Creditors' Rights groups within Blakes to provide environmental law advice to clients. We have been responsible for overseeing environmental site assessments and compliance reviews as part of major business transactions involving multiple properties across the country and around the world.



Paul Cassidy has been named Canada's "most well thought of environmental practitioner" by Law Business Research's *The International Who's Who of Environmental Lawyers.* A former federal prosecutor with extensive experience in all aspects of corporate environmental law, Paul has been recognized in each of the past 15 years by *The Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada.* He is the only B.C. lawyer listed in the top tier of environmental lawyers by *Chambers Global: The World's Leading Lawyers for Business 2013*. Paul is a founding member of the Canadian Centre for Environmental Arbitration and Mediation (cceam.com).

Email: paul.cassidy@blakes.com; Telephone: 604-631-3390

Jim Sullivan is one of Canada's leading environmental litigators. He has repeatedly been named as one of the world's leading litigators by the Euromoney Legal Media Group. Jim is nationally recognized by *The Best Lawyers in Canada* in the areas of environmental law and class actions.

Email: james.sullivan@blakes.com; Telephone: 604-631-3358

Caroline Findlay has extensive commercial and transaction experience. She advises clients on the development of natural resource projects based on in-depth knowledge of the laws and policies governing renewable energy, mining and forestry. Caroline is an expert in aboriginal law and negotiations with First Nations. She is recognized in Legal Media Group's *Guide to the World's Leading Women in Business Law 2012* (Environmental Law), *The Canadian Legal Lexpert Directory 2012* (Aboriginal Law) and *Chambers Global: The World's Leading Lawyers for Business 2013* (Environmental and Aboriginal Law). Caroline holds a master's degree in environmental law.

Email: caroline.findlay@blakes.com; Telephone: 604-631-3333

Janice Walton's environmental practice includes both litigation and corporate work. She provides advice on a broad range of environmental compliance issues, and has a detailed knowledge of fisheries, migratory birds and is a leading practitioner in endangered species law. Janice is the author of *Blakes Canadian Law of Endangered Species*. She is recognized for her expertise in *The Best Lawyers in Canada 2013* (Environmental Law). Janice holds a master's degree in urban planning.

Email: janice.walton@blakes.com; Telephone: 604-631-3354

Monika Sawicka has experience in environmental matters relating to corporate transactions, environmental prosecutions and civil disputes. She assists clients in a range of matters, particularly in relation to the Canadian and British Columbia environmental assessment approval processes, contaminated sites issues and regulatory compliance.

Email: monika.sawicka@blakes.com; Telephone: 604-631-4182

1. INTRODUCTION

As Canadians become ever more vigilant about the state of the environment and insistent that offenders of environmental laws be held accountable, we have witnessed an increasing degree of government regulation intent upon protecting the environment. Indeed, in light of the emergence of climate change as perhaps the major environmental issue of our time, the environment has become such an important issue that it is imperative for anyone in a business venture to be fully informed on what the relevant environmental laws allow and prohibit, and how to respond to the demands of governments and the public.

All levels of government across Canada have enacted legislation to regulate the impact of business activities on the natural and human environment. Environmental legislation in Canada is not only complex, but often exceedingly vague, and regulators have considerable discretion in the manner in which it is enforced. Courts have been active in developing new standards and principles for interpreting environmental legislation. In addition, civil environmental lawsuits (including class actions) are now commonplace in Canadian courtrooms, involving claims over contaminated land, noxious air emissions and environmental agreements. The result has been a proliferation of environmental rules and standards to such an extent that one needs a "road map" to work through the legal maze.

The environment is not named specifically in the Canadian Constitution and, consequently, neither federal nor provincial governments have exclusive jurisdiction over it. Rather, jurisdiction is based upon other named "heads of power", such as criminal law, fisheries or natural resources. For many matters falling under the broad label known as the "environment", both the federal and provincial governments can and do exercise regulatory responsibilities. This is referred to as "concurrent jurisdiction", which, in practical terms for business managers, means both provincial and federal legislation and regulations must be complied with. Historically, the provinces have taken the lead with respect to environmental conservation and protection. However, the federal government is increasing its role in this area and some municipalities are becoming more active, by their use of bylaw authority.

Environmental statutes frequently create offences for non-compliance, which can lead to substantial penalties including million dollar fines and/or imprisonment. Many provide that maximum fines are doubled for subsequent offences, and can be levied for each day an offence continues. Most environmental statutes impose liability on directors, officers, employees or agents of a company where they authorize, permit or acquiesce in the commission of an offence, whether or not the company is prosecuted. Companies and individuals may defend against environmental charges on the basis that they took all reasonable steps to prevent the offence from occurring. Some statutes create administrative penalties, which are fines that can be levied by the government regulators and boards, instead of courts. Some jurisdictions, such as British Columbia, allow for tickets, similar to motor vehicle infractions, for non-compliance. Enforcement officers generally have rights to inspect premises, issue stop-work orders, investigate non-compliance, obtain warrants to enter and search property, and seize anything believed to be relevant to an alleged offence.

This Overview is designed to assist the reader to understand the rapidly changing environmental regulatory maze in Canada, but it is not intended to provide legal or other professional advice. Readers should seek specific legal advice on particular issues with which they are concerned. For more information on how we can help you meet your business objectives, visit our web site at www.blakes.com, or contact any member of the Blakes Vancouver Environmental Group.

The law is stated as of March 15, 2013.

2. BRITISH COLUMBIA ENVIRONMENTAL LAW AND REGULATION

2.1 *Environmental Management Act*

The *Environmental Management Act* (EMA) is the principal environmental statute in British Columbia. The administration of the EMA falls primarily to the Ministry of Environment (the Ministry).

The EMA prohibits the introduction of waste into the environment from industries listed in the *Waste Discharge Regulation.* It also prohibits the introduction of waste into the environment from any activity in a manner or quantity that causes pollution. Pollution is defined in the EMA as the presence in the environment of substances or contaminants that substantially alter or impair the usefulness of the environment. Waste is broadly defined to include air contaminants, litter, effluent, refuse, biomedical waste, hazardous waste and any other substance designated by the provincial Cabinet, whether or not the waste has any commercial value or is capable of being utilized for a useful purpose. "Air contaminants" and "effluents" are defined as substances that injure or damage or are capable of injuring or damaging, among other things, the environment. With respect to air contaminants and effluents, the EMA provides that an air contaminant or effluent continues to be capable of harm, even if it is diluted at, or subsequent to, the point of discharge. Furthermore, it is unnecessary to prove the actual presence of a person or other life form that is capable of being harmed.

Activities which introduce waste into the environment may operate as long as they do so in accordance with a permit, a Code of Practice, or a regulation. The *Waste Discharge Regulation* prescribes the activities which may operate under a Code of Practice, as well as those which must have a permit. Over the past few years, the Ministry has developed several Codes of Practice, and there are a number of others currently under development.

The EMA also contains provisions which:

- establish a specific regime for the handling of hazardous waste;
- establish rules regarding spills and spill reporting;
- provide for pollution abatement and pollution prevention orders;
- provide for orders requiring remediation of contaminated sites;
- provide for municipal waste management programs;
- provide for enforcement powers, procedures and penalties;
- provide for environmental protection orders; and
- provide for orders in the event of an environmental emergency.

Hazardous Wastes

The EMA establishes a detailed regime for dealing with hazardous wastes. These include:

- dangerous goods which are no longer used for their original purpose;
- PCB waste;

- biomedical wastes;
- wastes containing dioxin;
- waste oil;
- waste asbestos;
- waste pest control product containers;
- leachable toxic waste;
- waste containing tetrachloroethylene; and
- waste containing polycyclic aromatic hydrocarbons.

The *Hazardous Waste Regulation* establishes detailed siting and operational requirements and performance standards for facilities, which include on-site management facilities dealing with hazardous wastes. Also, any person generating hazardous waste must register the waste and apply for a provincial identification number.

Spill Reporting

Under the EMA, a person who has charge or control of substances listed on the *Spill Reporting Regulations* must report an escape or spill to the Ministry forthwith.

Contaminated Sites

Part 4 of the EMA and the *Contaminated Sites Regulation* establish a detailed regime for the identification, determination and remediation of contaminated sites, and the assessment and allocation of liability for remediation. Liability under the regime is absolute, retroactive, joint and separate. Once a site is found to be contaminated, persons referred to as "responsible persons" will be responsible for remediation of the site and may be liable to anyone who has incurred costs to remediate the site unless an exemption from liability can be established. Remediation orders may require a responsible person to, among other things, provide information, carry out tests, undertake site investigations, construct or carry out works, and/or carry out site remediation. The term "responsible person" is broadly defined and includes a wide variety of persons connected to the site, including current and past owners and operators of the site, and transporters and producers of contaminants. A responsible person who caused only a portion of the contamination may be named by the government to pay all of the costs of the cleanup, subject to a right of contribution from other responsible persons. Parties are required to notify neighbours and the government when a substance has migrated, or is likely to migrate to a neighbouring site.

The EMA provides for actions for recovery of the costs of investigation and remediation of contaminated sites in civil court if certain conditions are met. The key condition is that the site must be determined to be contaminated by the Ministry or by a court. As of June 1, 2013, there will be no limitation period for cost recovery actions under the EMA. This means the "polluter pay" principle in the statute has no time limitation.

The EMA contains specific exemptions for past owners and operators of mines and mine exploration sites. These exemptions are contingent on a number of factors, including if the owner or operator obtained either a transfer agreement or indemnification under the *Financial Administration Act*.

Since the Act's creation, Protocol 12, which outlines mandatory technical procedures related to site risk classification, has undergone significant revision. In addition, new technical guidance documents related to groundwater investigation and characterization have been introduced, and the technical guidance document on water use determination has been updated. Please refer to the Ministry's website for further details on these and other protocols and technical guidance documents related to the *Contaminated Sites Regulation*.

Other Regulations

The EMA also includes numerous regulations related to specific activities and/or substances. For example, the *Recycling Regulation* sets out requirements for British Columbia's recycling program. This program has been continually expanding and currently includes beverage container, electronic and electrical, solvent and flammable liquid, pesticide, tire, fuel, lubricating oil, pharmaceutical, paint, and packaging and printed paper industries, which are required to implement collection and disposal programs. The *Ozone Depleting Substances and Other Halocarbons Regulation* prohibits the release of an ozone depleting substance from air conditioning, fire extinguishing, and refrigeration equipment, or any other container used in the recycling, re-use, reclaiming or storage of ozone depleting substances.

The *Municipal Wastewater Regulation* establishes municipal effluent quality requirements and applies to all discharges to the ground, sewer system or combination of sewer systems, and to water and to all uses of reclaimed water. It prohibits the discharge of non-domestic waste to a municipal wastewater facility unless the pre-discharge quality of the waste meets the standard or is within the range specified in the *Hazardous Waste Regulation.*

Enforcement Provisions

The EMA creates a number of offences, including the failure to produce, store, transport, handle and treat hazardous waste in accordance with the Regulations, the failure to comply with the terms of a permit, and the failure to report the escape, spill or discharge of waste into the environment. Prosecution of an offence must commence within three years of the date the Director designated under the Act became aware of the offence or if the Minister issues a certificate on which the information of the offence is based, within 18 months after the date the facts on which the information is based came to the knowledge of the Minister. The maximum penalty for a strict liability offence is C$1-million and/or six months' imprisonment. In addition, the maximum penalty may be imposed for each day that the offence continues. Where a person intentionally causes damage or loss to the environment, the maximum penalty is C$3-million and/or three years' imprisonment. Courts may order penalties to be paid directly to the government or into the Habitat Conservation Trust Foundation, which uses the money to fund environmental projects around the province.

The EMA also allows for administrative penalties for contraventions; however, the amount of potential penalties, the circumstances under which they can be imposed and what a proponent may do to defend itself against a penalty have all been left to regulations which have yet to be developed.

The EMA establishes the Conservation Officer Service. Conservation Officers have the power to enforce the EMA and the provisions of a number of other enactments, including the *Forest and Range Practices Act*, the *Integrated Pest Management Act*, the *Transportation of Dangerous Goods Act*, the *Water Act* and the *Water Protection Act*, as well as, through interagency agreements, the federal *Fisheries Act* and the *Canadian Environmental Protection Act, 1999*. Conservation Officers have inspection powers and the authority, in certain circumstances, with or without a warrant, to enter and search property and to seize and remove anything that is believed, on reasonable and probable grounds, to be relevant to the commission of an offence.

The EMA also establishes the Environmental Appeal Board to hear appeals under the EMA, the *Water Act*, the *Integrated Pest Management Act*, the *Wildlife Act* and the *Health Act*.

2.2 Climate Change Legislation

The *Greenhouse Gas Reduction Targets Act* was passed by the British Columbia government in 2007 and came into force on January 1, 2008. It sets a province-wide target of a 33% reduction in the 2007 level of greenhouse gas (GHG) emissions by 2020 and an 80% reduction by 2050. While the Act sets the targets, it does not yet impose requirements on the private sector to achieve the stated goals. Recent amendments to the Act repealed past requirements on public-sector organizations (PSOs) to be carbon neutral by 2010. PSOs are now only required to produce annual carbon reduction plans and reports. In this respect, the Act is primarily a form of policy statement to be implemented through further legislative and regulatory initiatives.

The *Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act* allows the government to set standards for the amount of renewable fuel that must be contained in British Columbia's transportation fuel blends, reduce the carbon intensity of transportation fuels, and meet its commitment to adopt a new low carbon fuel standard similar to California's. Fuel suppliers were required to carry an average of 5% renewable fuel content by 2010. Amendments made to the Act allow fuel suppliers to retain fuel credits and/or GHG emission credits and carry forward a portion of their surplus to future years. They also allow for a deferral of any deficiencies in renewable fuel obligations into the next compliance period. Procedurally, amendments now allow small fuel suppliers to apply for an exemption from the renewable requirements, set out the process for administering administrative penalties, and detail fuel labelling requirements.

The *Greenhouse Gas Reduction (Cap and Trade) Act* enables British Columbia to participate in the Western Climate Initiative's (WCI's) cap-and-trade system which is currently under development. In 2011, six states left the WCI partnership, including: Oregon, Washington, New Mexico, Arizona, Utah, and Montana. Currently, California and the provinces of British Columbia, Manitoba, Ontario and Quebec make up the WCI's membership. The Act requires certain operations to report their GHG emissions and authorizes creation of regulations in relation to both regulated and supporting operations. Contravention of the Act constitutes an offence with a maximum penalty of C$1-million and/or up to six months' imprisonment. Separate fines may be imposed for each day the offence continues.

As part of British Columbia's plan to implement the WCI's cap-and-trade system, a regulation requiring the reporting of GHG emissions was approved under the Act in November 2009, and came into effect on January 1, 2010. The *Reporting Regulation* requires British Columbia-based operations emitting 10,000 tonnes or more of carbon dioxide equivalent per year to report GHG emissions to the Ministry. Reporting

operations with emissions of 25,000 tonnes or greater are required to have emissions reports verified by a third party. The first WCI compliance period is January 2012 to January 2014. In addition, the provincial government has completed stakeholder consultation on two proposed regulations (the *Emissions Trading Regulation* and the *Offsets Regulation)* which will provide the framework for the cap-and-trade market in British Columbia. Although these regulations were expected to be finalized in 2011, they have yet to be drafted.

The *Greenhouse Gas Reduction (Emissions Standards) Statutes Amendment Act* introduces amendments to the EMA which require owners or operators of waste management facilities of certain classes to manage GHGs produced from waste handled in their facilities. Operators of coal-based generating facilities will be prevented from introducing emissions of prescribed GHGs from the facility that are attributable to the use of coal for the generation of electricity. Electricity-generating facilities are required to have zero emissions. Those facilities that have attributable GHG emissions must apply emission offsets in accordance with the regulations to net those emissions to zero.

The *Carbon Tax Act* imposes a tax on the purchase of fossil fuels. Tax rates are set out in a schedule to the legislation. The legislation requires the Minister of Finance to table a plan in the legislature each year, showing how the revenue raised will be returned to taxpayers through reductions in personal and business taxes. The Act was amended in 2011 to include biomethane credits as a form of fuel. The rate of tax payable on fuel escalated gradually until July 1, 2012 but will remain the same until 2017.

2.3 *Environmental Assessment Act*

The *Environmental Assessment Act* (EAA) establishes a comprehensive process for the identification of the potential environmental effects of major projects in British Columbia. It provides that "reviewable" projects must undergo an environmental assessment and cannot proceed without an environmental assessment certificate. It gives discretion to both the Minister, and the Executive Director of the Environmental Assessment Office, to exempt a project from the requirement for a certificate, where the official considers that an otherwise reviewable project will not have a significant adverse environmental, economic, social, heritage or health effect. In making this decision, the official is to take into account any practical means available to prevent or reduce the potential adverse effects to an acceptable level. Further, the Minister may direct that a project, which would not otherwise be reviewable, must be reviewed if the project may have a significant adverse effect on the environment and if the review is in the public interest.

Under the EAA, the scope, procedures and methods for each project review are determined either by the Minister or the Executive Director. These include the facilities to be reviewed, the potential effects to be assessed, the information to be required, the persons (e.g., public, First Nations) to be consulted, and timelines to be followed. These procedures may also be prescribed by regulation. The Act also contains provisions allowing for class assessments for specified categories of "reviewable projects".

"Reviewable projects" are those listed in the *Reviewable Projects Regulation*, which categorizes them according to a variety of criteria, such as size, geographical location, potential for adverse effects, type of industry or type of project. The categories of reviewable projects include:

- industrial;
- energy;
- water management;
- special, solid and liquid waste management;
- mining;
- food processing;
- transportation; and
- tourist destinations.

In addition to the *Reviewable Projects Regulation*, the following regulations establish the parameters for assessment:

- Prescribed Time Limits Regulation;
- Public Consultation Policy Regulation;
- Transition Regulation; and
- Concurrent Approval Regulation.

2.4 *Significant Projects Streamlining Act*

The *Significant Projects Streamlining Act* allows the government to designate a project as a "provincially significant project". Once so designated, authorities responsible for regulatory approval are required to make their decisions expeditiously and to facilitate the expeditious completion of the project. The designation order must come from the Lieutenant Governor upon recommendation from the Minister and Cabinet. The Act also contains provisions for the removal of constraints, project performance, cost recovery and non-compliance. If there is a conflict between this Act and the provisions of the EAA, the latter prevails.

2.5 *Fish Protection Act*

The stated goal of the *Fish Protection Act* (FPA) is to protect and restore fish habitat in waters under provincial jurisdiction. To that end, the Act prohibits the construction of dams on significant rivers in British Columbia including the Fraser, Nass, Tatshenshini and Thompson rivers. The FPA authorizes a regional water manager to consider the impact on fish and fish habitat when deciding whether to grant a licence or approval under the *Water Act*.

The FPA also allows for the designation of sensitive streams and imposes certain restrictions on the granting of *Water Act* licences which will impact those streams. The *Sensitive Streams Designation and Licensing Regulation* designates 15 streams in the Lower Mainland, the Omineca-Peace Region and on Vancouver Island as "sensitive". Plans for the protection and recovery of fish in sensitive streams are to be developed co-operatively with interested stakeholders. The FPA provides for the granting of streamflow protection licences, which may be issued to an organization possessing a community-based

interest in the stream. These must include a condition requiring the licensee organization to undertake works in relation to fish and fish habitat in the stream.

The *Riparian Areas Regulation* (RAR) establishes a system of site-specific assessment of the effect of proposed development on fish habitat. The concept is to allow for development to go ahead when there will be no impact on fish habitat or when such impact can be mitigated. The RAR requires an assessment by a qualified environmental professional on whether there will be an impact to fish habitat, and copies of that assessment to be provided to three levels of government through an electronic database. The assessment methodology is attached to the RAR. Local governments must rely on the conclusions reached by the qualified professional in the assessments and are precluded from varying the setbacks established therein.

2.6 *Forest and Range Practices Act*

The *Forest and Range Practices Act* (FRPA) became law in early 2003 as part of the provincial government's "forestry revitalization" legislative package. It sets the framework for achieving "results-based" forestry on public land. This framework requires forest operators to set specific targets or strategies for environmental objectives established by the government for soils, timber, fish, biodiversity, cultural heritage, forage and associated plant communities, visual quality, water, wildlife, and resource and recreation features. Operators must prepare five-year Forest Stewardship Plans designed to achieve the targets or strategies, and must operate on the land base in accordance with both the targets or strategies and their plans. Detailed objectives and strategies are set out in regulations, discussed below.

Enforcement Provisions

Contraventions of the FRPA are divided into those which are offences and those which are not offences but which give rise to administrative sanctions.

Offences include:

- failure to ensure that the intended results specified in a forest stewardship plan are achieved or strategies are carried out;
- carrying out a forest practice that results in "damage to the environment" (discussed further below);
- unauthorized road construction or modification;
- failure to establish a free growing stand after harvesting; and
- unauthorized cutting or damage to Crown timber (trespass).

The penalties for offences vary depending upon the offence; however, the maximum penalty for an offence is C$1-million and/or a term of imprisonment not exceeding three years. Some offences are continuing offences and an offender may be liable for a separate penalty for each day that the contravention continues. In addition, maximum penalties may be based on a per hectare basis in certain circumstances and may result in a monetary penalty in excess of C$1-million.

In addition to offences, regulators can impose administrative penalties for a contravention of the FRPA and its regulations. Potential maximum penalties range from C$5,000 to C$1-million. The defence of due diligence is available in the case of either an offence or an administrative penalty.

In addition to monetary penalties, the FRPA contains other enforcement mechanisms. For example, in certain circumstances, government officials have the power to issue stopwork and/or remediation orders; to suspend or cancel certain permits; and to seize assets such as vehicles, vessels and Crown timber. Where the contravention is an offence, a court may issue orders requiring, among other things, compliance with stopwork and/or remediation orders.

Finally, the government has created a broad intervention power for remedying or mitigating certain acts, including a potential, unjustifiable infringement of an aboriginal right. The FRPA also provides that a person ordered to take measures under these powers may seek recovery from the government for the costs of carrying out these measures.

FRPA Regulations

The FRPA requires Ministry approval of a Forest Stewardship Plan before forestry activities can take place. The Forest Stewardship Plan must set out the specifics on how operators intend to reach the targets prescribed in the FRPA and its regulations. The key regulation under the FRPA is the *Forest Planning and Practices Regulation* (FRPA Regulation). The FRPA Regulation defines specific objectives which must be provided for in a Forest Stewardship Plan for soils, timber, wildlife, riparian areas, biodiversity, and cultural heritage resources. Forest planning centres around Forest Development Units, identified in the Forest Stewardship Plan, which are the designated areas where forest activities, including timber harvesting, may occur during the term of such Plan. The FRPA Regulation also sets out the procedure for public review and comment, and government approvals of Forest Stewardship Plans. It also contains default requirements for results or strategies on how objectives can be met as an alternative to operator-proposed results or strategies.

In 2009, the FRPA Regulation was amended to provide an exemption to the requirement of a Forest Stewardship Plan for areas subject to contracts which provide for the preparation of areas for reforestation.

The FRPA Regulation defines "damage" for the purposes of the FRPA's prohibition against causing "damage to the environment". "Damage" includes a specific list of events, such as landslides or deposits of harmful substances into streams, that "adversely alters an ecosystem". The effect of this definition is to create an overriding environmental protection rule for *extreme* risks and impacts for forest activities. This very limited approach is presumably because specific forest values are otherwise protected by the objectives and results required in Forest Stewardship Plans.

The FRPA Regulation also provides for offences for contravention of its provisions. Maximum fines are up to C$500,000 and/or two years' imprisonment.

2.7 *Zero Net Deforestation Act*

The *Zero Net Deforestation Act* was introduced in 2010, but it has not yet been brought into force. The Act enshrines in legislation the government's goal of zero net deforestation in British Columbia.

2.8 *Private Managed Forest Land Act*

The *Private Managed Forest Land Act* and its regulations create a mechanism for the regulation of forest practices on private land categorized as managed forest. The legislation creates a governing council representing a partnership of members appointed by government and by private forest landowners. The council must establish and enforce environmentally sustainable forest practices on private managed forest land in accordance with objectives set by the government in the Act.

2.9 *Heritage Conservation Act*

The *Heritage Conservation Act* (HCA) creates a mechanism for the identification and conservation of sites of heritage or archaeological value. Sites included on the Heritage Site Registry established under the HCA are protected from alteration or damage without a permit and the HCA contains specific conditions for the handling of aboriginal artefacts and sites. Under the HCA, the government may issue orders to stop work on any property that has, or may have, heritage value.

Contravention of the HCA constitutes an offence with a maximum penalty of C$50,000 and/or two years' imprisonment for individuals, and C$1-million for corporations. The courts are granted specific powers to grant injunctions restraining persons from carrying out activities that would be in contravention of the HCA, and to issue restoration and compliance orders.

2.10 *Park Act*

The *Park Act* establishes parks, conservancies and recreation areas (collectively referred to as "parks") on Crown land in British Columbia, and sets out the mechanisms for their administration. The relevant government Minister is required to manage all matters concerning parks, including private and public use. While the Act emphasizes conservation, it does allow for use or exploitation of parks under prescribed circumstances. The government is empowered to issue park use permits granting interests in land or use of natural resources, provided such use meets the conditions set out in the Act. The *Park Act* also provides that authorizations, licences and permits issued under the *Petroleum and Natural Gas Act* for the purposes of development or production of petroleum or natural gas are valid in a park.

Contravention of the *Park Act* constitutes an offence with a maximum penalty of C$1-million and/or a term of imprisonment of one year.

2.11 *Protected Areas of British Columbia Act*

The *Protected Areas of British Columbia Act* (PAA) establishes a number of parks, ecological reserves and places which are listed in schedules to the Act. The PAA also transfers existing Class "A" parks and ecological reserves previously established by orders-in-council to schedules to the Act. Over the past several years, PAA Regulations have resulted in a substantial expansion of the number of parks and protected areas in the province. Under the PAA, a change to a park boundary requires a legislative amendment, rather than an order-in-council. The *Protected Areas Forests Compensation Act* provides for compensation to forest licence holders who have suffered a loss because of a reduction in their allowable annual cut, deletion of land from their licence area, or the establishment of a protected area that includes all or part of the area under the licence.

2.12 *Integrated Pest Management Act*

The *Integrated Pest Management Act* (IPMA) requires "integrated pest management", a process that uses a combination of techniques to suppress pests, to be applied to all commercial and industrial pesticide use on all public land, and all private land use by forestry, utilities, transportation and pipelines. The IPMA does not apply to agricultural use or pesticides used by homeowners. The IPMA prohibits the application of pesticides unless a pest management plan has been prepared (in accordance with a regulation), the pesticide is applied in accordance with the plan and the regulation, and a pesticide use notice has been sent to the government. Where pesticides are to be used in areas of high concern, approval of the plan must be obtained.

Contravention of the IPMA constitutes an offence with a maximum fine for first offences of C$200,000 and/or six months' imprisonment for individuals. Corporations can face a maximum fine of C$400,000 for first offences, and up to C$800,000 for subsequent similar offences. Corporate employees and agents may also be held personally liable under the Act. Violations of some provisions of the IPMA are ticketable offences, resulting in fines of C$500. The IPMA also introduces administrative penalties as an alternative to offences.

2.13 *Transport of Dangerous Goods Act*

The *Transport of Dangerous Goods Act* (TDGA) regulates the transportation of dangerous goods within British Columbia and provides additional powers to municipal councils to regulate the transportation of dangerous goods within their boundaries. Provision is also made for agreements with the federal government regarding the administration and enforcement of the TDGA and the regulations. The *Transport of Dangerous Goods Regulation* under the TDGA substantially adopts the Regulation under the federal *Transportation of Dangerous Goods Act*, which is discussed later.

In general, the TDGA prohibits the handling or transportation of dangerous goods unless all applicable and prescribed safety requirements are complied with and all containers, packaging, road vehicles and rail vehicles comply with the applicable safety standards and display the applicable safety marks. The Act imposes reporting requirements where a discharge, emission or escape of dangerous goods occurs.

Contravention of a prohibition of the TDGA, or failure to comply with the terms of a permit, is an offence, and the maximum penalty is, upon first conviction, a maximum fine of C$50,000 and/or two years' imprisonment. Maximum penalties are doubled for subsequent offences. Contravention of the reporting provisions is an offence which has a maximum penalty of a fine of up to C$10,000 and/or a term of imprisonment of up to one year.

2.14 *Water Act*

The *Water Act* (WA) vests property and the right to the use and flow of all the water in any stream in British Columbia in the provincial Crown, except to the extent that private rights have been established under licences or approvals given under the Act. "Stream" is broadly defined to include natural watercourses or sources of water supply, groundwater, lakes, rivers, creeks, springs, ravines, swamps and gulches. The Act imposes an obligation to exercise reasonable care to avoid damaging land, works, trees or other property.

The WA establishes a licensing regime for surface water use whereby holders of licences are permitted to do a number of things, including:

- divert and use water for the "purpose" specified in the licence;
- construct, maintain and operate the "works" authorized under the licence and necessary for the proper diversion, storage, carriage, distribution and use of the water or the power produced from the water; and
- alter or improve a stream or channel for any "purpose".

In 2012, the Act was amended to allow for the grant of an approval rather than a licence where a diversion or use of water is required for a term of less than 24 months. The WA also provides for a "quick" licensing procedure, for licences for domestic purposes, for irrigation purposes or agricultural use, or any other purposes established by regulation.

The WA also requires changes in and about a stream to be approved by the Ministry. Applicants for "Section 9 Approvals", as these are commonly referred to, are required to submit detailed plans which include proposals to mitigate harm to the environment. There are some exemptions from the requirement to obtain a Section 9 Approval in relation to construction or modification of roads authorized under other listed legislation such as the *Mines Act* and the *Forest and Range Practices Act.*

The *Groundwater Protection Regulation* establishes a registration system for qualified well drillers and standards for drilling, sealing, maintaining and closing wells. Wells must be floodproofed so run-off contamination cannot occur during flooding or heavy rains.

The maximum penalty for offences under the WA is a fine of C$1-million and/or one year's imprisonment. Where the offence is a continuing offence, the maximum penalty is a fine of C$1-million each day that the offence continues.

The provincial government is in the process of modernizing the *Water Act* to respond to current and future challenges related to the management of surface and groundwater in British Columbia. The modernization of the *Water Act* has four goals: (i) protect stream health and aquatic environments; (ii) improve water governance and arrangements; (iii) introduce more flexibility and efficiency in the water allocation system; and (iv) regulate groundwater use in priority areas and for large withdrawals. Public consultation took place throughout 2010 and a policy proposal on British Columbia's new *Water Sustainability Act* was released in December 2010. As of the date of this publication, the new *Water Sustainability Act* has not been introduced.

2.15 *Water Protection Act*

The purpose of the *Water Protection Act* (WPA) is to foster sustainable use of British Columbia's water resources. To that end, the Act contains provisions prohibiting, among other things, the removal of water from British Columbia (unless under a historical licence), and the construction or operation of large-scale projects capable of transferring water from one major watershed to another.

The maximum penalty under the WPA is a fine of C$200,000 and/or one year's imprisonment. In addition, the Act provides for continuing offences and provides a maximum fine of C$200,000 for each day that the offence continues.

2.16 *Drinking Water Protection Act*

The *Drinking Water Protection Act* (DWPA) provides a statutory framework for the protection of drinking water in British Columbia, and has as its primary focus the protection of public health by ensuring comprehensive regulation of water supply systems, establishing mechanisms for source protection and providing for greater public accountability of water suppliers. Key elements of the Act include: the establishment of water quality standards, including tap and source standards; requirements for assessments and response plans in relation to threats to drinking water; inspection; monitoring and order powers; public accountability; appointment of drinking water officers with the authority to investigate complaints; and development of community-based Drinking Water Protection Plans.

The DWPA and the *Drinking Water Protection Regulation* define water suppliers as owners of systems which supply domestic water, other than single-family residences or facilities excluded by regulation. Water suppliers must provide potable water, obtain construction and operating permits, meet qualification standards for operators, have emergency response and contingency plans, follow monitoring requirements, and report threats to drinking water. The Regulation provides exemptions to these requirements for "small systems".

The DWPA requires a report to the local drinking water officer if a spill that is also "reportable" to the Provincial Emergency Program under the EMA may result in a threat to drinking water.

The maximum penalty under the DWPA is a fine of C$200,000 and/or one year's imprisonment. In the case of a continuing offence, the Act provides for a maximum fine of C$200,000 for each day that the offence continues.

2.17 *Utilities Commission Act*

The British Columbia Utilities Commission (BCUC) is an independent regulatory agency that operates under and administers the *Utilities Commission Act* (UCA). The BCUC's responsibilities include the regulation of British Columbia's natural gas and electricity utilities as well as intra-provincial pipelines. A person must obtain a certificate of public convenience and necessity from the BCUC before beginning the construction or operation of a public utility plant or system, or an extension of either. All energy supply contracts entered into by independent power producers and British Columbia Hydro and Power Authority (BC Hydro) must be approved by the BCUC under the UCA. The provincial government has stated its intention to have the BCUC consider environmental issues when hearing rate setting applications submitted by regulated utilities.

The *Utilities Commission Amendment Act, 2008* requires the BCUC to consider the 2007 BC Energy Plan's objectives and principles in long-term plans, project approvals and energy supply contracts. The BCUC is also required to conduct an inquiry regarding British Columbia's long-term transmission requirements. Public utilities must consider the government's goal for the province to become electricity self-sufficient by 2016 and maintain self-sufficiency after that year when planning for the construction or extension of generation facilities and energy purchases. The legislation also requires those subject to its provisions to

pursue actions to meet prescribed targets in relation to clean or renewable resources and use the prescribed guidelines in planning for the construction or extension of generation facilities and energy purchases. The installation of "smart meters" had to be completed by the end of the 2012 calendar year.

The maximum penalty under the UCA is a fine of C$1-million. In addition, the BCUC has the ability to issue administrative penalties to a maximum of C$100,000. Due diligence is a defence to an allegation of a contravention of the UCA.

In 2009, the *Mandatory Reliability Standards Regulation* was issued under the UCA. This Regulation applies reliability standards to a variety of transmission facilities, including bulk power systems, generating units connected to bulk power systems or designated as part of a transmission facility operator's plan for the restoration of a bulk power system. The Regulation requires reports on the reliability standard to be prepared and submitted to the BCUC.

2.18 *Clean Energy Act*

The *Clean Energy Act* was introduced in 2010. The Act sets out British Columbia's energy objectives, requires BC Hydro to submit integrated resource plans (by the end of 2013) describing what it intends to do in response to those objectives, and requires the province to achieve electricity self-sufficiency by the year 2016. One of British Columbia's energy objectives is to generate at least 93% of the electricity in the province from clean or renewable resources and to build the infrastructure necessary to transmit that electricity. The Act also prohibits certain projects from proceeding (e.g., the development or proposal of energy projects in parks, protected areas or conservancies), ensures that the benefits of the heritage assets are preserved, provides for the establishment of energy efficiency measures, and establishes the First Nations Clean Energy Business Fund (initially funded at C$5 million). The Act also directed the integration of the British Columbia Transmission Corporation with BC Hydro into a single entity.

2.19 *Metal Dealers and Recyclers Act*

The *Metal Dealers and Recyclers Act* regulates the purchase and sale of regulated metal, which includes household products normally recycled to avoid waste, and requires reports to the police of materials received by the recyclers. It is accompanied by the *Metal Dealers and Recyclers Regulation*, which establishes the registration and recording information for metal dealers and recyclers and includes administrative penalties for non-compliance.

2.20 *Petroleum and Natural Gas Act*

One of the key provincial statutes governing oil and gas activities is the *Petroleum and Natural Gas Act*. Although not an exclusively environmental statute, the Act requires proponents to obtain various approvals before undertaking exploration or production work, such as geophysical licences, geophysical exploration project approvals, and permits for the exclusive right to do geological work and geophysical exploration work, and well, test hole, and water source well authorizations. Such approvals are given subject to environmental considerations and licences and project approvals can be suspended or cancelled for failure to comply with the Act or its Regulations.

A person who contravenes a provision of the Act or the Regulations is liable for a minimum fine of C$500 up to a maximum of C$5,000. If an offence continues for more than one day, each day the offence continues is deemed to be a separate offence.

2.21 *Oil and Gas Activities Act*

The *Oil and Gas Activities Act* regulates conventional oil and gas producers, shale gas producers, and other operators of oil and gas facilities in the province. Under the Act, the British Columbia Oil and Gas Commission (Commission) is granted greatly expanded powers, particularly with respect to compliance and enforcement and the setting of technical safety and operational standards for oil and gas activities.

The Commission's powers include the power to make determinations as to whether contraventions under the Act have occurred and to impose administrative penalties for such conventions. The *Administrative Penalties Regulation* prescribes maximum administrative penalties for contravening the Act and/or the Regulations. Specifically, it prescribes the following maximum penalties: C$500,000 under the *Oil and Gas Activities Act*; C$500,000 under the *Environmental Protection and Management Regulation*; C$100,000 under the *Consultation and Notification Regulation*; C$500,000 under the *Drilling and Production Regulation*; C$500,000 under the *Pipeline and Liquefied Natural Gas Facilities Regulation*; and C$100,000 under the *Geophysical Exploration Regulation*.

Administrative penalties are in addition to monetary fines that the courts can impose, which have also been significantly enhanced under the Act. Contraventions of the Act can result in fines up to C$1.5-million or imprisonment for up to three years or both. Due diligence, mistake of fact and officially induced error are defences to prosecutions for contraventions of the Act. Further, the range of other remedial measures available to the courts for convictions under the Act and its Regulations have been broadened. New administrative appeal and review processes are also provided for under the Act.

At the date of this publication, 11 regulations had been passed under the Act and are in force, including the *Environmental Protection and Management Regulation*, which establishes the government's environmental objectives for water, riparian habitats, wildlife and wildlife habitat, old-growth forests and cultural heritage resources. The Act requires the Commission to consider these objectives in deciding whether or not to authorize an oil and gas activity. The *Pipeline Crossings Regulation* establishes a 30-metre zone on either side of a pipeline in which conditions for activities are prescribed. There are also additional conditions for carrying out activities within 10 metres of a pipeline, which include advising BC One Call of the proposed site of the activity. The Commission must be notified if any physical contact with the pipeline occurs.

2.22 *Mines Act*

The *Mines Act* applies to all mines during exploration, development, construction, production, closure, reclamation and abandonment activities. Before starting any work in or about a mine, the owner, agent, manager or any other person must hold a permit and have filed a plan outlining the details of the proposed work, a program for the conservation of cultural heritage resources, and for the protection and reclamation of land, watercourses and cultural heritage resources affected by the mine.

A person who contravenes a provision of the Act or the Regulations is liable for a maximum fine of C$100,000 and/or one year's imprisonment.

2.23 *Wildlife Act*

The *Wildlife Act* regulates the management of wildlife in British Columbia, other than on federal lands. Although much of it relates to hunting, it was amended in 2004 to allow the Ministry to create an endangered species list, and provide protections for listed species similar to those under the federal *Species at Risk Act* (SARA) (discussed below); however, as of the date of the writing of this Overview, these amendments are not yet in force. A key difference from SARA, however, is that the *Wildlife Act* does not allow for critical habitat designation on private land. It also has specific protections for raptors and their habitats.

In 2008, the *Environmental (Species and Public Protection) Amendment Act* was introduced and amends certain provisions of the *Wildlife Act*. The amendments are designed to cover regulatory gaps for managing alien species such as snakes and tigers, as well as protecting public and native wildlife. A new authority has been created to regulate ownership of harmful alien species and fines have doubled for wildlife violations. Maximum fines for a first offence under the *Wildlife Act* are C$250,000 and/or a maximum imprisonment term of two years.

2.24 *Ministry of Environment Act*

The *Ministry of Environment Act* establishes the Ministry, sets out its purposes and functions, and authorizes its Minister to enter into agreements with the federal and provincial governments on behalf of the Province of British Columbia. The Act also authorizes the Minister to disclose certain information with respect to a person who is convicted of an offence, has paid or is liable to pay an administrative penalty or is subject to another sanction under the Act under the Minister's administration (e.g., their name and the provision of the enactment they contravened). In accordance with this power, the Ministry publishes a quarterly list of convictions, tickets and administrative penalties on its website. In June 2011, the Act was amended to expand the type of information the Minister is authorized to disclose to include, where a fine or penalty is overdue, the date it was due and the outstanding amount.

2.25 *Natural Resource Compliance Act*

The *Natural Resource Compliance Act* authorizes the Minister of Forests, Lands and Natural Resource Operations (MFLNRO) to designate persons as "natural resource officers" (NROs) to enforce a broad range of legislation across the natural resource sector and to specify limits, terms and conditions on the designation. The intention is that NROs will allow for faster and more efficient responses to violations spanning the range of natural resource legislation. The corresponding *Natural Resource Officer Authority Regulation* sets out the powers and duties which NROs may exercise and perform.

2.26 Local Government Regulation of the Environment

Court decisions over the past few years have confirmed that, depending upon the powers given to them by the province, municipalities may pass bylaws regulating the environment. The *Community Charter* provides specific power to local governments to pass bylaws for the protection of human health or the environment. Such bylaws must be approved by the appropriate provincial ministry. The *Spheres of*

Concurrent Jurisdiction–Environment and Wildlife Regulation provides specific direction to local governments on environmental matters they may (or may not) regulate. Many local governments have such by-laws and many more are currently in the planning stages. For example, a number of municipalities have by-laws prohibiting the use of pesticides for "cosmetic" purposes, and idling of vehicles. A number of others have stream protection by-laws.

Through the EMA, the government delegates the regulation of the introduction of air contaminants in Greater Vancouver to the Greater Vancouver Regional District (GVRD). Through the Air Quality Management Bylaw No. 1082, 2008, the GVRD controls air contaminants either by issuing permits or, for some industries, through setting regulatory standards.

The *Local Government (Green Communities) Statutes Amendment Act, 2008* amends the *Community Charter*, the *Greater Vancouver Sewerage and Drainage District Act*, the *Greater Vancouver Water District Act*, the *Local Government Act* and the *Vancouver Charter*. Certain notable amendments include:

- the introduction of a requirement that local governments include GHG emission targets, policies and actions in their Official Community Plans and regional growth strategies;
- the granting of permission to local governments to use development permits in support of energy and water conservation and the reduction of GHGs; and
- the encouragement of alternative transportation options for off-street parking.

A full examination of "environmental" by-laws in British Columbia is beyond the scope of this Overview, however, business and individuals with commercial and industrial activities need to be aware that local government involvement in regulating environmental matters is increasing.

2.27 First Nations Considerations

British Columbia has a unique history in that the vast majority of its land base is subject to unresolved land claims by First Nations (there are a few treaties in certain parts of the province). As a result, any natural resource development activities in British Columbia will need to consider and address the potential impacts to aboriginal rights, which are constitutionally protected in Canada. The law has been rapidly developing in this area over the last decade and it is both a matter of provincial and federal government authority. While it is beyond the scope of this Overview to discuss these considerations, suffice it to say that government must carry out consultation with First Nations on proposed activities on government land and, where necessary, accommodate the interests of First Nations. The scope and meaning of this will depend on the nature of the potential impact to a First Nation's rights. In addition, establishing a business relationship between First Nations and a business operator or project proponent, has become integral to the successful pursuit of such an activity or project in British Columbia.

3. FEDERAL ENVIRONMENTAL LAW AND REGULATION

3.1 *Canadian Environmental Protection Act*

The *Canadian Environmental Protection Act, 1999* (CEPA) is the principal federal environmental statute governing environmental activities within federal jurisdiction such as the regulation of toxic substances, cross-border air and water pollution and dumping into the oceans. It also contains specific provisions to

regulate environmental activity on lands and operations under the jurisdiction of federal departments, agencies, boards, commissions, federal Crown corporations, federal works and undertakings like banks, airlines and broadcasting systems, federal land, and aboriginal land. CEPA establishes a system for evaluating and regulating toxic substances, imposes requirements for pollution prevention planning and emergency plans and contains broad public participation provisions. CEPA is administered by Environment Canada.

Toxic Substances

CEPA provides the federal government with "cradle-to-grave" regulatory authority over substances considered toxic. The regime provides for the assessment of "new" substances not included on the Domestic Substances List, a national inventory of chemical and biotechnical substances. The Act requires an importer or manufacturer to notify the federal government of a new substance before manufacture or importation can take place in Canada. Consequently, businesses must build in a sufficient lead time for the introduction of new chemicals or biotechnology products into the Canadian marketplace. In certain circumstances, manufacturers and importers must also report new activities involving approved new substances so they can be re-evaluated.

If the government determines that a substance may present a danger to human health or the environment, it may add the substance to a Toxic Substances List. Within two years of a substance being added to the List, Environment Canada is required to take action with respect its management. Such actions may include preventive or control measures, such as securing voluntary agreements, requiring pollution prevention plans or issuing restrictive regulations. Substances that are persistent, bioaccumulative, and result primarily from human activity must be placed on the Virtual Elimination List, and companies will then be required to prepare virtual elimination plans to achieve a release limit set by the Minister of Environment or the Minister of Health.

National Pollutant Release Inventory

CEPA requires Environment Canada to keep and publish a "National Pollutant Release Inventory" (the NPRI). Owners and operators of facilities that manufacture, process or otherwise use one or more of the NPRI-listed substances under certain prescribed conditions, are required to report releases or off-site transfers of the substances to Environment Canada. The information is used by Environment Canada in its toxics management programs and is made publicly available to Canadians each year.

Air and Sea Pollution

While most air emission regulation is conducted at the provincial level of government, a number of industry-specific air pollution regulations exist under CEPA that limit the concentration of such emissions as: 1) asbestos emissions from asbestos mines and mills; 2) lead emissions from secondary lead smelters; 3) mercury from chlor-alkali mercury plants; and 4) vinyl chloride from vinyl chloride and polyvinyl chloride plants. The current trend is for Environment Canada to focus on substance specific regulations, some of which, like chlorofluorocarbons, are considered air pollutants.

CEPA establishes a system for obtaining a permit from Environment Canada to dispose of waste at sea. Permits typically govern timing, handling, storing, loading, placement at the disposal site, and

monitoring requirements. The permit assessment phase involves public notice, an application that provides detailed data, a scientific review and payment of fees.

Climate Change

While the reduction of GHGs such as carbon dioxide has, since the early 1990s, been a priority of the Canadian government, implementation of a mandatory reduction system is still under development. In April 2007, the government released its Regulatory Framework for Air Emissions (the Framework), which set targets for reduction in GHGs of 20% below 2006 levels by the year 2020, and 60% to 70% below 2006 levels by 2050. In 2008, the federal government released further details of the Framework, including guidelines for the Credit for Early Action Program and the domestic offset system.

In 2009, the federal government indicated that the Framework would be redesigned to reflect a common North American approach to GHG management, including the implementation of a cap-and-trade system and targets that are consistent with emission reduction targets established by the U.S. In 2010, the federal Environment Minister announced a new target to reduce GHG emissions 17% from 2005 emission levels by 2020, matching the target in the proposed U.S. climate change legislation. This target is expected to be adjusted to reflect any changes to the final target established by the U.S. However, plans for a cap-and-trade system have been shelved indefinitely in the U.S. This means that plans for a Canadian cap-and-trade system have also been shelved indefinitely.

In December 2011, the Canadian government formally withdrew from the Kyoto Protocol (pursuant to which Canada had *international* commitments to reduce GHG emissions). Despite this, the Canadian government has not indicated any intent to backtrack on Canada's domestic emission reduction targets. In the absence of an emissions trading system, it is anticipated that the Canadian federal government will move to reduce GHG emissions through regulations. Sector-based regulations already include those for light-duty vehicles and renewable fuel content.

Environmental Emergencies

The *Environmental Emergency Regulations* require those who own, or have charge, management or control of listed substances, to submit an environmental emergency plan to Environment Canada.

Enforcement

Maximum penalties under CEPA are C$1-million and/or three years' imprisonment for individuals and C$6-million for large corporations. In addition, courts can levy fines equal to profits earned as a result of the commission of the offence. The Act gives enforcement officers the authority to issue Environmental Protection Compliance Orders to stop illegal activity or require actions to correct a violation. The *Environmental Violations Administrative Monetary Penalties Act* (discussed below) allows for administrative monetary penalties for non-compliance with CEPA. However, these penalties are not yet available, as the necessary regulations have not been created.

Public Participation and Consultation

CEPA provides for a number of public participation measures designed to enhance public access to information, and to encourage reporting and investigation of offences, such as:

- an environmental registry, providing online information on the Act and its regulations, government policies, guidelines, agreements, permits, notices, and inventories as well as identifying opportunities for public consultations and other stakeholder input;
- whistleblower protection for individuals who voluntarily report CEPA offences; and
- a mechanism through which a member of the public can request an investigation of an alleged offence and, in the event that the Minister fails to conduct an investigation, launch an environmental protection action against the alleged offender in the courts.

CEPA also contains provisions for mandatory consultation with provincial, territorial and aboriginal governments on issues such as toxic substances and environmental emergency regulations.

3.2 *Transportation of Dangerous Goods Act*

The *Transportation of Dangerous Goods Act, 1992* (TDGA) applies to all facets and modes of transportation of dangerous goods in Canada. The objective of the TDGA is to promote public safety and to protect the environment during the transportation of dangerous goods, including hazardous wastes. The TDGA applies to those who transport or import dangerous goods, manufacture, ship, and package dangerous goods for shipment, or manufacture the containment materials for dangerous goods.

The TDGA and the *Transportation of Dangerous Goods Regulations* (TDG Regulations) establish a complex system of product classification, documentation and labelling; placarding and marking of vehicles; hazard management, notification and reporting; and employee training. The TDGA requires Emergency Response Assistance Plans before the offering for transport or importation of prescribed goods. The plans must be approved by the Minister of Transport, or the designated person, and such approval is revocable. The TDGA also enables a prevention program and a government response capability in the event of a security incident involving dangerous goods.

Dangerous goods are specified in the TDG Regulations and arranged into nine classes and 3,000 shipping names. The classes include: explosives, compressed gases, flammable and combustible liquids and solids, oxidizing substances, toxic and infectious substances, radioactive materials, corrosives and numerous miscellaneous products prescribed by regulation. The TDGA also applies to any product, substance or organism which "by its nature" is included within one of the classes. The TDG Regulations have equivalency provisions with respect to such international rules as the International Maritime Dangerous Goods Code, the International Civil Aviation Organization Technical Instructions and Title 49 of the U.S. Code of Federal Regulations.

In the case of the transportation of hazardous or dangerous wastes, a prescribed "waste manifest" must be completed by the shipper, the carrier and the receiver. Where an international or trans-border consignment of hazardous waste will take place, from or into Canada, advanced notice and the waste manifest must be provided to Environment Canada. In the case of the export of hazardous waste from Canada, notification must also be made to the environmental authorities in the country of destination. Detailed import and export requirements, based on the Basel Convention, are contained in the *Export and Import of Hazardous Wastes Regulation*.

Maximum penalties under the TDGA are C$100,000 and/or two years' imprisonment. In addition, any property which had been seized by a federal inspector in relation to the offence may be forfeited to the

government. TDGA also provides for court orders to refrain from doing anything regulated by the TDGA for up to a year; for compensation to anyone damaged by the commission of an offence; for rehabilitation of the environment; and to pay money towards research and development. Further, in the event of an accidental release, orders can be made requiring the removal of dangerous goods to an appropriate place; requiring that certain activities be undertaken to prevent the release or reduce the danger; and requiring that certain persons refrain from doing anything that may impede the prevention or reduction of danger. If non-compliance with the TDGA is anticipated, a person may apply for either a permit of exemption or a permit of equivalent level of safety.

3.3 *Hazardous Products Act*

The *Hazardous Products Act* (HPA) prohibits the advertising, sale or importation of prohibited products and restricts the advertising, sale or importation of restricted products except as authorized by regulation. The Act also prohibits, in certain circumstances, suppliers from importing and/or selling a controlled product, which is intended for use in a workplace in Canada. Prohibited, restricted and controlled products are defined in the regulations and are collectively referred to as "hazardous products". Maximum penalties under the HPA are C$1-million and/or two years' imprisonment.

The Workplace Hazardous Materials Information System is a national program designed to protect workers from exposure to hazardous material that is enabled under the HPA. This system is similar to what is known in other jurisdictions as "Worker Right to Know" legislation. In Canada it consists of both federal and provincial legislation, reflecting the limited constitutional power of the federal government over worker safety and labour relations. In 1987, the federal government took the lead role in developing regulations that require manufacturers and importers to use standard product safety labelling and to provide their customers at the time of sale with standard Materials Safety Data Sheets (MSDS). Provincial occupational health and safety regulations require employers to make these MSDS, along with prescribed training, available to their workers.

The classification of hazardous materials or "controlled products" is similar to that used under the TDGA. Test procedures determine whether a product or material is hazardous and in some cases the procedures are extremely complicated and require the exercise of due diligence in obtaining reasonable information on which to base the classification. A significant amount of information must be disclosed on an MSDS, including a listing of hazardous ingredients, chemical toxicological properties and first aid measures.

3.4 *Pest Control Products Act*

The *Pest Control Products Act, 2002* (PCPA) prohibits the manufacture, possession, distribution or use of a pest control product that is not registered under the Act or in any way that endangers human health or the safety of the environment. Pest control products are registered only if their risks and value are determined to be acceptable by the Minister of Health. A risk assessment includes special consideration of the different sensitivities to pest control products of major identifiable groups such as children and seniors, and an assessment of aggregate exposure and cumulative effects. New information about risks and values must be reported, and a re-evaluation of currently registered products must take place. The public must be consulted before significant registration decisions are made. The public is given access to information provided in relation to registered pest control products.

Maximum penalties under the PCPA are C$1-million and/or three years' imprisonment. Enforcement officers can shut down activities and require measures necessary to prevent health or environmental risks.

3.5 *Canadian Environmental Assessment Act, 2012*

On April 26, 2012, the federal government introduced amendments to key environmental and energy regulatory statutes. Bill C-38, the *Jobs, Growth and Long-term Prosperity Act* (Bill C-38) was part of the federal government's policy to streamline and improve the processes for environmental assessment and regulatory review of natural resource projects. Among other things, Bill C-38 replaced the 1992 *Canadian Environmental Assessment Act* with the *Canadian Environmental Assessment Act*, *2012* (CEAA 2012), which established a new federal environmental assessment regime. CEAA 2012, along with several implementing regulations, came into force on July 6, 2012. The new environmental assessment regime is significantly different from the previous one.

CEAA 2012 is intended to identify and mitigate against significant adverse environmental effects prior to project approvals, and provide for meaningful opportunities for public participation. Under CEAA 2012, the review process is carried out by three federal bodies: the Canadian Nuclear Safety Commission (CNSC), the National Energy Board (NEB) and the Canadian Environmental Assessment Agency (CEA Agency). There is also a provision allowing the Minister to add other responsible authorities.

Projects subject to environmental assessment under CEAA 2012 are those which propose physical activities that are designated in *Regulations Designating Physical Activities* and include activities that are "incidental" to the designated activities.

Designated projects under the authority of the CEA Agency are required to undergo an initial screening to determine if they may cause significant environmental effects. "Environmental effects" is defined in the Act and includes changes that may be caused to components of the environment within federal jurisdiction, such as aquatic species, migratory birds, interprovincial or international effects, changes on federal lands, and those that may impact Aboriginal Peoples.

Once the initial screening is completed and a designated project is determined by the CEA Agency to have a potential to cause significant environmental effects, it will be subject to a comprehensive environmental assessment. The Environment Minister is granted the power to divert a project from a standard assessment to a review panel. There are also provisions for joint review panels between agencies or with other jurisdictions. For designated projects under the authority of the NEB or the CNSC, the screening step is not carried out and the proposed project goes straight to an environmental assessment.

Once an environmental assessment is completed by the CEA Agency or the CNSC, a decision is made as to whether the proposed project should be allowed to proceed. If there are no significant environmental effects, then the Minister of Environment or the CNSC are empowered to make the decision. If significant environmental impacts are predicted to occur, then the decision to let the project proceed is made by the Governor in Council (i.e., the federal Cabinet). For projects reviewed by the NEB, both the determination of significant environmental impact and whether the project may proceed, is made by the Governor in Council. A "decision statement" is then issued under CEAA 2012, approving the project and stipulating conditions that will mitigate any environmental effects. These conditions are binding and enforceable,

and subject to a penalty for non-compliance of up to C$400,000 per day. Projects cannot proceed without a decision statement.

Express time limits are provided within which environmental assessments are to be concluded, although these are subject to "off ramps" for gathering of information. A decision on an environmental assessment is required within 365 days from the issuance of a notice of commencement. In projects under review by a panel, a decision statement must be issued no later than 24 months from the date the review panel is established.

CEAA 2012 allows for the delegation of federal environmental assessment to provincial governments or agencies, or the substitution of a provincial review process for the federal when there is an equivalent assessment by another jurisdiction.

The *Prescribed Information for the Description of a Designated Project Regulations* sets out information that must be included in a proponent's project description, and the *Cost Recovery Regulations* provide for cost recovery that the CEA Agency can recover from a proponent undergoing an assessment.

3.6 *Fisheries Act*

The primary purpose of the *Fisheries Act* is to protect Canada's fisheries as a natural resource by safeguarding both fish and fish habitat. While much of the Act is aimed at regulating harvesting, it also provides protection for waters "frequented by fish" or areas constituting fish habitat. The Act applies to both coastal and inland waters, and is generally administered by the Department of Fisheries and Oceans (DFO), although the environmental protection parts of the Act are administered by Environment Canada. The Act has frequently been used by Environment Canada to punish those responsible for water-polluting activities.

Bill C-38, discussed above, also made changes to the *Fisheries Act*, primarily designed to streamline the number of approvals and authorizations that are required to be obtained under the Act. The changes to the *Fisheries Act* are being brought into force through a staged approach. Consequently, some of the amendments are already in force, while others are awaiting changes to government policies key to their interpretation.

It is an offence under the *Fisheries Act* for anyone to carry on any work, undertaking, or activity that results in the harmful alteration, disruption or destruction of fish habitat (HADD), unless the DFO has approved the project before the work commences. The application process for a HADD approval includes providing the DFO with plans, specifications, studies and details of the proposed procedures. Failing to comply with the conditions of a HADD is an offence.

There are further amendments to the HADD provisions which are not yet in force. If brought into force, the prohibitions against the killing of fish and HADD will be repealed and replaced by a single prohibition which will prohibit any work, undertaking or activity that results in serious harm to fish that are part of a commercial, recreational or aboriginal fishery, or to fish that support such a fishery. The term "serious harm" is key to this prohibition, as it includes the death of fish or any permanent alteration or destruction of fish habitat.

It is an offence for anyone to deposit or permit the deposit of any type of deleterious substance in water frequented by fish without a permit or under a regulation. "Deleterious substance" is defined in the Act to include any substance that would degrade or alter or contribute to the degradation or alteration of the quality of water so as to render it deleterious to fish or fish habitat. There are a number of regulations under the Act that limit wastewater or effluent discharges from certain industrial facilities including pulp and paper mills, petroleum refineries and meat and poultry processing plants.

Under Bill C-38, the authorization mechanisms for HADD and deposits of deleterious substances have been amended to both clarify and expand them, but the regulations required to enact these changes have not been completed.

The *Fisheries Act* also imposes reporting requirements. Where a deposit of a deleterious substance into water frequented by fish or a serious and imminent danger thereof occurs, and where a detriment to fish habitat or fish may reasonably be expected to occur, the persons responsible are obligated to notify the DFO or Environment Canada. The Act also requires reporting the occurrence of a HADD or a serious or imminent danger thereof. There is also a requirement to provide written reports after both of these notifications are made, and a concurrent duty to take measures to prevent the occurrence of a HADD or deposit, or to counteract, mitigate or remedy the adverse effects of a HADD or deposit once they occur.

The *Fisheries* Act allows for agreements with the provinces for equivalency or delegation of administrative functions.

Maximum penalties under the *Fisheries Act* are C$1-million and/or three years' imprisonment. The new provisions under Bill C-38 which are yet to come into force will impose higher fines.

3.7 *Canada Shipping Act*

The *Canada Shipping Act* (CSA), although not exclusively an environmental statute, contains a number of provisions that deal with environmental issues. In particular, the Act provides for the creation of regulations prohibiting the discharge of specified pollutants from ships. In addition, the Minister of Transport may take actions to repair, remedy, minimize or prevent pollution damage from a ship, monitor measures taken by any person, direct a person to take measures, or prohibit a person from taking such measures.

The Act gives officers the power to direct any Canadian ship or, in certain circumstances, any other ship to provide information pertaining to the condition of the ship, its equipment, the nature and quantity of its cargo and fuel, and the manner and locations in which the cargo and fuel of the ship are stowed. In addition, officers have the power to board any Canadian ship and inspect the ship for the purposes of determining whether the ship is complying with the Act and its regulations, and to detain a ship where the officer believes that an offence has been committed. The Act requires certain vessels to have arrangements with emergency response organizations. In some cases, oil pollution prevention plans and oil pollution emergency plans are also required. Maximum penalties under the CSA are C$1-million and/or 18 months' imprisonment. In April 2008, the *Administrative Monetary Penalties Regulations* came into force, which allows authorities to impose penalties of up to C$25,000 outside of the more formal court process.

3.8 *Marine Liability Act*

The *Marine Liability Act* includes provisions to implement international conventions on liability and compensation for oil pollution damage. The Act imposes liability on the owner of a ship for the costs and expenses incurred in respect of measures taken to prevent, repair, remedy or minimize oil pollution damage from the ship, including measures taken in anticipation of a discharge. The owner of the ship may be liable for costs and expenses incurred by the government or any other person in respect of measures she/he was directed to take or prohibited from taking. Maximum fines for offences under the Act are C$100,000.

3.9 *Navigable Waters Protection Act*

The *Navigable Waters Protection Act* (NWPA) prohibits the unauthorized construction or placement of a "work" on, over, under, through or across any navigable water. The Act is administered by Transport Canada. Where a project falls into the definition of "work", the federal government must approve it before it is undertaken.

"Work" includes:

- any bridge, dam, dock, pier, tunnel or pipe and any other works necessary for or connected to construction or placement of the work;
- the dumping of fill or excavation of materials from the bed of a navigable water;
- any telegraph, power cable or wire; and
- any structure or thing similar in nature to the above which may interfere with navigation.

Where a work is built or placed without an approval, or is not built in accordance with the approval, the Minister of Transport may order the owner of the work to remove or alter the work, or refrain from proceeding with construction. Where an owner fails to comply with an order to remove the work, the Minister may remove and destroy it and dispose of the materials. Maximum penalties under the NWPA are C$50,000. In addition, an owner may be liable for the costs of removal and destruction of works. Where the materials are deposited by a vessel, the vessel is liable for the fine and may be detained until it is paid.

The NWPA allows for exemptions from the requirement for an approval if the work falls into a class of works or the navigable water falls into a class of navigable waters established by Ministerial regulation, which may also include conditions for such works. There are also provisions regarding removal of existing works and approval of works already started. The exemption from the approval requirements under the NWPA means that an environmental assessment for such approval is no longer required.

On October 18, 2012, the federal government introduced Bill C-45, the *Jobs and Growth Act, 2012* (Bill C-45). Under Bill C-45, the NWPA was renamed the *Navigation Protection Act* (NPA) and substantially amended. The most significant amendment relates to its requirements for approval of construction of works associated with navigable waters. The NPA will no longer prohibit works over all navigable waters without approval, but rather, will only prohibit works on navigable waters that are

listed in the Schedule to the Act, which includes a relatively short list of major lakes and rivers across the country. The amendments to the NWPA are not yet in force.

3.10 *Oceans Act*

Under the *Oceans Act*, the Minister of Fisheries and Oceans fulfils a co-ordinating and facilitating role among the various governmental agencies concerned with the environmental protection of the oceans. In particular, the Minister is required to:

- lead and facilitate the development and implementation of a national strategy for the management of Canadian waters;
- lead and facilitate the development and implementation of plans for the integrated management of all activities or measures in or affecting estuaries, coastal waters and marine waters;
- lead and co-ordinate the development and implementation of marine protected areas (MPAs); and
- make recommendations to the federal Cabinet to make regulations prescribing MPAs and marine environmental quality requirements and standards.

Contravening a regulation made for an MPA or a marine environmental quality requirement is an offence. Maximum penalties under the *Oceans Act* are C$500,000. A court may also order the offender to pay an additional fine in an amount equal to the monetary benefits accrued to the person as a result of the commission of the offence.

3.11 *Canada National Marine Conservation Areas Act*

The *Canada National Marine Conservation Areas Act* provides the Minister of Canadian Heritage with the authority to establish national marine conservation areas with the objective of protecting and conserving a variety of aquatic environments for the benefit, education and enjoyment of the people of Canada and the world. The Act also creates a range of regulatory powers relating to the protection of living and non-living marine resources and to ensuring these resources are managed and used in a sustainable manner. Penalties under the Act for a corporation convicted of its first offence are a fine of not less than C$500,000 and not more than C$6-million. The maximum penalty for a breach of most regulations under the Act is C$500,000.

3.12 *Species At Risk Act*

The *Species at Risk Act* (SARA) identifies wildlife species considered at risk, categorizing them as threatened, endangered, extirpated or of special concern, and prohibits a number of specific activities related to listed species, including killing or harming the species, as well as the destruction of critical habitat which has been identified in any of the plans required under the Act. Such plans include recovery strategies and action plans for endangered or threatened species and management plans for species of concern. Plans are currently being developed by Environment Canada in partnership with the provinces, territories, wildlife management boards, First Nations, landowners and others. SARA allows for compensation for losses suffered by any person as a result of any extraordinary impact of the prohibition against the destruction of critical habitat. SARA provides for considerable public involvement, including

a public registry and a National Aboriginal Council on Species at Risk which provides input at several levels of the process. Maximum penalties under SARA are C$2-million and/or five years' imprisonment.

The protections in SARA currently apply throughout Canada to all aquatic species and migratory birds (as listed in the *Migratory Birds Convention Act*) regardless of whether the species is resident on federal, provincial, public or private land. This means that if a species is listed in SARA and is either an aquatic species or a migratory bird, there is a prohibition against harming it, or its residence and the penalties for such harm can be substantial. For all other listed species, SARA's protections only apply on federal lands, including National Parks and First Nations Reserves. However, SARA also contains provisions under which it can be extended to other species throughout Canada, if the federal government is of the view that the provinces or territories are not adequately protecting a listed species.

SARA has provisions which allow for permits to conduct work impacting species, their residences or their critical habitat, provided the work is for the purpose of scientific research, for the benefit of the species or the impact to the species incidental. The conditions in SARA for permits are very strict, and as a result, it is very difficult to obtain one for industrial activities.

3.13 *Migratory Birds Convention Act*

The *Migratory Birds Convention Act* (MBCA) enacts an international agreement between Canada and the U.S. for the protection of migratory birds. Although most of the statute regulates harvesting or hunting, it also contains some environmental protection provisions. The MBCA prohibits the deposit of oil, oil waste or other substances harmful to migratory birds in any waters or areas frequented by migratory birds, except as authorized by regulation. It also prohibits the disturbance of the nests of migratory birds. Maximum penalties under the MBCA are C$1-million and/or three years' imprisonment. There are also minimum penalties for violations by large vessels, ranging from C$100,000 to C$500,000. Please note that the *Environmental Enforcement Act* (see section 3.15 below) raises the maximum penalties under the MBCA to C$1-million for offences by individuals and C$6-million for offences by large corporations. However, the revised penalty scheme for the MBCA is not yet in force.

3.14 *Canada National Parks Act*

The *Canada National Parks Act* provides procedures for the creation of new parks and the enlargement of existing ones, adds several new national parks and park reserves, and includes provisions for the enhancement of protection measures for wildlife and other park resources. The *National Parks Wilderness Area Declaration Regulations* designate wilderness areas in Banff, Jasper, Kootenay and Yoho National Parks. The effect of these designations is to restrict activity in the designated area to activities including park administration, public safety, and the carrying out of traditional renewable resources harvesting.

3.15 *Environmental Enforcement Act*

The *Environmental Enforcement Act* (EEA) amended nine existing statutes that are administered by Environment Canada and the Parks Canada Agency. The EEA raised maximum fines to as high as C$6-million million and established minimum fines for serious offences which range between C$5,000 for individuals and C$500,000 for large corporations. The EEA also provided enforcement officers with expanded powers to deal with environmental offenders by:

- specifying aggravating factors such as causing damage to wildlife or wildlife habitat, or causing damage that is extensive, persistent or irreparable;
- doubling fine ranges for repeat offenders;
- authorizing the suspension and cancellation of licences, permits or other authorizations upon conviction;
- enabling administrative monetary penalties under regulation for less serious violations of environmental laws;
- requiring corporate offenders to report convictions to shareholders; and
- mandating the reporting of corporate offences on a public registry.

The new penalty schemes are not yet in force under the *Canada Wildlife Act*, the MBCA and the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*.

3.16 *Environmental Violations Administrative Monetary Penalties Act*

The *Environmental Violations Administrative Monetary Penalties Act* (EVAMP Act) establishes a system for administrative monetary penalties (AMPs) for the enforcement of 10 pieces of federal legislation, including CEPA, the MBCA, the *Canada National Parks Act* and the *Canada National Marine Conservation Areas Act.* Maximum penalties are C$5,000 for an individual and C$25,000 for other accused entities. AMPs are an alternative to the more traditional 'penal' route for enforcement, and if the government proceeds with an AMP for a violation, it is precluded from prosecuting it as an offence. However, not all environmental violations may be handled under the EVAMP Act: only those which have been identified in regulations. The EVAMP Act allows accused entities to request a review of an AMP, but the defences of due diligence and reasonable mistake of fact are not available. Although public consultation on the purposed regulations occurred in 2011, regulations have not yet been created; therefore there are no AMPs actually available.

3.17 Criminal Law

The *Criminal Code* contains provisions which address corporate liability and which potentially create avenues for charges to be brought against corporations in the event of activities which cause harm to the environment and where negligence or fault can be proved. Three provisions expand criminal responsibility so that it can be attributable to organizations in addition to individuals. First, for negligence offences, criminal intent will be attributable to an organization where one of its representatives (directors, partners, employees, members, agents or contractors) is a party to the offence and its senior officers depart markedly from the standard of care that could reasonably be expected to prevent the commission of the offence. Second, in respect of offences where fault must be proven, an organization is a party to an offence if one of its senior officers is a party to the offence, or, acting within the scope of their duty, directs other representatives of the organization to commit the offence, or fails to take all reasonable measures to stop the commission of the offence by a representative of the organization. Another provision imposes a legal duty on those who direct how another person does work to take reasonable steps to prevent bodily harm to that person or any other person.

3.18 *National Energy Board Act*

The *National Energy Board Act*, first enacted in 1959, establishes the NEB, a federal agency that regulates interprovincial and international energy projects. The NEB has jurisdiction over the interprovincial and international import and export of oil, gas, and electric power, and the construction of interprovincial and international pipelines and power lines. The NEB grants certificates of public convenience and necessity (CPCN) approving pipelines and power lines within the NEB's jurisdiction, issues licences for the import and export of oil, gas and electric power, and regulates rates, tariffs and tolls. The NEB's responsibility also includes ensuring environmental protection during the various phases of NEB-regulated energy projects, including planning, construction, operations and abandonment.

The NEB is one of three responsible authorities charged with carrying out environmental assessment under CEAA 2012. Environmental assessments are consolidated with the hearings currently held by the NEB for applications for a CPCN. Pursuant to the Act, the NEB must consider matters of public interest that may be affected by the issuance of the CPCN or dismissal of the application. Safety and the environment are among matters of public interest. Specifically, the NEB's report setting out its recommendations as to whether or not a CPCN should be issued, must also set out the NEB's environmental assessment prepared under CEAA 2012, if the proponent's application relates to a designated project within the meaning of that Act.

Subject to certain exceptions, the NEB has authority to conduct public hearings with respect to the issuance, revocation or suspension of a CPCN or leave to abandon the operation of a pipeline. Furthermore, the NEB may hold a public hearing in respect of any other matter if it considers it advisable to do so. Maximum fines under the *National Energy Board Act* are C$1-million and/or imprisonment not exceeding five years.

Bill C-38 also effected various amendments to the *National Energy Board Act*. Amendments which are currently in force relate to final decision-making on the CPCNs, time limits for review, and export licence applications. Amendments which are not yet in force relate to authorizations for the construction of pipelines or power lines near utilities, facilities and/or crossing navigable waters, offence provisions related to construction or other activities near pipelines, and the ability to impose AMPs.

The *National Energy Board Act* has a series of corresponding regulations, including the *National Energy Board Pipeline Crossing Regulations Parts 1 and 2,* and the *Onshore Pipeline Regulations.*

BLAKES VANCOUVER ENVIRONMENTAL LEGAL SERVICES

Environmental – Commercial and Regulatory

- Environmental aspects of commercial transactions, including due diligence and risk review of purchase and sale agreements, financings and indemnities
- Procuring permits and approvals, including environmental assessments for major projects under *Canadian Environmental Assessment Act* and British Columbia *Environmental Assessment Act*
- Regulatory negotiations
- First Nations relationships and negotiations (Impact and Benefit Agreements)
- Lender and receiver liabilities
- Securities disclosure requirements for environmental liabilities
- Contaminated sites management
- Brownfield development
- Product stewardship and recycling regulations
- Transportation of dangerous goods
- Occupational health and safety regulations (asbestos/indoor mould)
- Waste management
- Species at risk and endangered species regulation, compliance and operational and development impact management
- Cross-border issues
- Environmental management systems and policy development and review
- Operations due diligence training
- Forest practices and regulatory compliance
- Renewable energy practices and regulatory compliance
- Mining practices and regulatory compliance
- Crisis management (spills)
- Directors' and officers' liability

Energy – Commercial and Regulatory

- Regulatory negotiations
- Power purchase and supply agreements
- Project development and permitting (conventional and renewable energy)
- Compliance with climate change regulations
- Climate change due diligence
- Emissions trading agreements

- Greenhouse gas reporting
- Offset project development
- Environmental and climate change disclosure
- Commercial transactions in compliance and voluntary carbon markets
- Cross-border issues

Environmental and Energy – Litigation

- Inspections, investigations, search warrants
- Prosecutions (defence)
- Administrative penalties (defence)
- Class actions (defence)
- Environmental protest management (injunctions and private prosecutions)
- Climate change litigation (defence)
- Cross-border litigation (plaintiff/defence)
- Contaminated sites litigation (plaintiff/defence)
- Regulatory hearings (permit appeals, environmental assessment hearings)
- Mediations and arbitrations

OFFICE LOCATIONS

MONTRÉAL
600 de Maisonneuve Boulevard West
Suite 2200
Montréal, Quebec H3A 3J2
Telephone: 514-982-4000
Facsimile: 514-982-4099
Email: montreal@blakes.com

OTTAWA
45 O'Connor Street
Suite 2000, World Exchange Plaza
Ottawa, Ontario K1P 1A4
Telephone: 613-788-2200
Facsimile: 613-788-2247
Email: ottawa@blakes.com

TORONTO
199 Bay Street
Suite 4000, Commerce Court West
Toronto, Ontario M5L 1A9
Telephone: 416-863-2400
Facsimile: 416-863-2653
Email: toronto@blakes.com

CALGARY
855 - 2nd Street S.W.
Suite 3500, Bankers Hall East Tower
Calgary, Alberta T2P 4J8
Telephone: 403-260-9600
Facsimile: 403-260-9700
Email: calgary@blakes.com

VANCOUVER
595 Burrard Street, P.O. Box 49314
Suite 2600, Three Bentall Centre
Vancouver, British Columbia V7X 1L3
Telephone: 604-631-3300
Facsimile: 604-631-3309
Email: vancouver@blakes.com

NEW YORK
Blake, Cassels & Graydon (U.S.) LLP
126 East 56th Street, Suite 1700, Tower 56
New York, New York U.S.A. 10022–3613
Telephone: 212-893-8200
Facsimile: 212-829-9500
Email: newyork@blakes.com

CHICAGO
Blake, Cassels & Graydon (U.S.) LLP
181 West Madison Street, Suite 3925
Chicago, Illinois U.S.A. 60602–4645
Telephone: 312-739-3610
Facsimile: 312-739-3611
Email: chicago@blakes.com

LONDON
23 College Hill, 5th Floor
London, England EC4R 2RP
Telephone: +44-20-7429-3550
Facsimile: +44-20-7429-3560
Email: london@blakes.com

BAHRAIN
Blake, Cassels & Graydon LLP in association with
Dr. Saud Al-Ammari Law Firm
5th Floor, GB Corp Tower
Bahrain Financial Harbour, P.O. Box 11005
Manama, Kingdom of Bahrain
Telephone: +973-17-15-15-00
Facsimile: +973-17-10-49-48
Email: bahrain@blakes.com

AL-KHOBAR*
Dr. Saud Al-Ammari Law Firm in association with
Blake, Cassels & Graydon LLP
Apicorp Building, P.O. Box 1404
Al-Khobar 31952, Kingdom of Saudi Arabia
Telephone: +966-3-847-5050
Facsimile: +966-3-847-5353
Email: saud.ammari@blakes.com

BEIJING
7 Dong Sanhuan Zhonglu
Suite 901, Office Tower A
Beijing Fortune Plaza, Chaoyang District
Beijing 100020, People's Republic of China
Telephone: +86-10-6530-9010
Facsimile: +86-10-6530-9008
Email: beijing@blakes.com

SHANGHAI*
1376 Nan Jing Xi Lu
Suite 718, Shanghai Centre
Shanghai 200040, People's Republic of China
Telephone: +86-10-6530-9010
Facsimile: +86-10-6530-9008
Email: robert.kwauk@blakes.com

www.blakes.com

*** Associated Office**

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