BLAKES OVERVIEW OF ENVIRONMENTAL LAW AND REGULATION IN ALBERTA © 2005

ENVIRONMENTAL LAW GROUP

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AUGUST 2005

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This publication provides a general overview of the provincial and federal environmental regimes affecting businesses and individuals in Alberta. This overview is not intended to provide legal or other professional advice and readers should seek specific legal advice on any particular issue or matter of concern.

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THE ENVIRONMENTAL LAW GROUP

Members of Blakes Calgary Environmental Law Group provide an extensive range of legal services in all aspects of environmental law, including:

- Corporate/commercial transactions and environmental due diligence
- Project approvals and permitting
- Litigation, prosecutions, hearings and appeals
- Environmental compliance reviews and assessments, particularly in oil & gas and power arenas
- Natural resource management
- Contaminated sites
- Brownfield development
- Environmental crisis management
- Transportation and handling of dangerous goods
- Occupational health and safety
- Insurance claims.

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. They have been involved in the development of major construction projects in various industries, the redevelopment of old industrial lands, the disposal of hazardous waste, and the clean up of contaminated sites. Recognising the importance of the natural resource sector to Alberta's economy, our environmental lawyers have developed an in-depth knowledge of the environmental aspects of the oil and gas, power and mining industries.

The Group's members are called on to defend corporations and individuals charged with environmental offences under federal and provincial legislation.

Our multi-disciplinary group members also work on oil & gas, power, real estate, financial services, business, First Nations and creditor rights issues. They provide environmental law advice to clients involved in business and real estate acquisitions, land leasing, and the financing of commercial transactions. The Environmental Group's lawyers have been responsible for overseeing environmental site assessments and compliance reviews as part of major business transactions. Our lawyers also provide ongoing advice regarding environmental management and compliance programs, due diligence procedures, environmental training and environmental permit requirements. Not surprisingly, the Calgary Environmental Law Group specialises in oil & gas and power-related environmental issues.

Blakes environmental lawyers bring a depth of education and experience to the practice, enhancing their ability to identify problems and deal effectively with complex environmental issues.

Our Group consists of:

- **Ken Mills**, a partner in the Litigation Group with 19 years of experience, and lead counsel to one of the most complex site contamination cases heard by the Alberta Environmental Appeal Board to date.
- **Paul Jeffrey**, a lawyer with over 16 years of experience appearing before administrative and regulatory tribunals exclusively on the energy and environmental sectors, who has actively participated in the development of federal environmental legislation and co-ordinated the successful defence of the largest environmental prosecution of a pipeline project in Canadian history.
- **Dalton McGrath,** a partner in the Litigation Group in the Calgary office, who frequently appears as counsel in all levels of court in Alberta and was recently appointed to the Alberta Civil Practice Advisory Committee. He is also a contributing author of *Barristers & Solicitors In Practice* (Butterworths), a practice oriented textbook for lawyers. Dalton's extensive experience includes defence of complex class action proceedings involving environmental and product liability claims. Dalton was counsel in striking out the largest reported representative action in Alberta.
- **David Tupper**, a partner in the Litigation Group in the Calgary office, who frequently appears as counsel in all levels of court in Alberta, and in the Federal Court and the Court of Appeal in matters ranging from applications to lengthy trials. He has acted as counsel in cases involving gas station contamination, lead contamination and oil spills on waterways.
- **Ryan DuRussel**, a litigation associate experienced in environmental, oil & gas and commercial law, advising and representing clients on contaminated sites, directors' and officers' liability, and assisting in government relations with environmental regulators.

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 Blakes Calgary Environmental Law Group.

AN OVERVIEW OF ENVIRONMENTAL LAW AND REGULATION IN ALBERTA

In Alberta, there are a number of provincial statutes and regulations aimed at environmental protection which regulate activities in the province. This statutory framework includes a number of licensing and approval schemes, administered by various provincial agencies, which protect natural resources and work to prevent environmental pollution or emergencies. Moreover, in the event pollution or an emergency occurs, there are regulatory measures aimed at remediation.

In addition to provincial regulation, there is federal regulation which may impact upon certain activities carried out in Alberta. Activities which fall within federal jurisdiction must comply with the federal statutes and regulations.

Under the *Canada-Alberta Agreement on Environmental Assessment Cooperation*, renewed in 2005, federal and Albertan authorities will cooperate where federal and provincial legislation overlap respecting environmental assessments.

Below is a summary of primary pieces of federal and provincial legislation which deal with environmental protection.

A. PROVINCIAL ENVIRONMENTAL LAW AND REGULATIONS

Below is a summary of the primary pieces of environmental legislation. Other provincial statutes, such as the *Public Lands Act*, *Wildlife Act* and the *Forests Act* may also relate to environmental issues, depending on the circumstances.

Environmental Enhancement and Protection Act (EPEA)

Alberta's *Environmental Enhancement and Protection Act* (EPEA) is a comprehensive statute aimed at promoting "the protection, enhancement and wise use of the environment." It is based on these principles:

- The importance of protecting the environment for the well-being of society;
- Carrying out Alberta's economic growth in an environmentally responsible manner;
- The principle of sustainable development;
- Preventing and mitigating the environmental impact of development and of the government policies;
- The need for government leadership in this area;

- The responsibility of all Alberta citizens for environmental protection;
- Opportunities for citizens to provide advice on decisions affecting the environment;
- Co-operation with governments of other jurisdictions to minimize transboundary environmental impacts;
- The "polluter pays" principle; and
- The important role of comprehensive and responsive action in administering this Act.

EPEA vests powers in a "Director" (appointed by the Minister), for such things as the issuing of approvals and registrations, issuing of enforcement orders or environmental protection orders, designating contaminated sites and requiring payment of administrative penalties in certain circumstances. The province has been broken into three regions, each with an office of the Director. A number of individuals have either been appointed to these offices, or serve as acting Directors.

The Act also establishes an Environmental Appeal Board to hear appeals from: the issuance (or refusal) of an approval; issuance of an enforcement order or environmental protection order; designation of a site as a contaminated site; or a requirement to pay an administrative penalty.

Since EPEA is comprehensive, it regulates several aspects of environmental protection, including the process for environmental assessments, approvals and registrations. EPEA designates certain activities as requiring an environmental assessment, but it also grants the Director discretion to require an assessment of other activities.

Activities necessitating an environmental assessment are set out in the *Environmental Assessment (Mandatory and Exempted Activities) Regulation*. By way of example only, an environmental assessment is necessary for the "construction, operation or reclamation" of oil sands mines, oil refineries, certain manufacturing plants, dams over 15 metres high, coal processing plants, and landfills that accept hazardous waste. When deciding whether to require an assessment of other activities, the Director will consider the size, nature and location of the proposed activity; the complexity of the activity; public concern; similar activities in the same area; and the criteria in regulations.

EPEA also regulates the release of specific substances and imposes a reporting obligation on any person who "releases or causes or permits the release of [one of these substances] into the environment". EPEA regulates the issuance of reclamation certificates and authorises the issuance of environmental protection orders (EPO). The Director may issue an EPO requiring whatever measures it deems necessary where a release of a substance may/has occurred, and may/has caused an adverse effect.

Finally, EPEA also regulates the use and storage of hazardous substances and pesticides, as well as dealing with waste management.

Regulations

Twenty-five regulations have been enacted under the EPEA, only a few of which are explored here. For example, the *Environmental Protection and Enhancement (Miscellaneous) Regulation* defines and clarifies provisions of the EPEA. The *Ozone-Depleting Substances and Halocarbons Regulation* prohibits the release of ozone-depleting substances, and defines those activities exempt from this prohibition, such as the use of fire fighting equipment. The *Release Reporting Regulation* sets out the reporting requirements for various types of releases.

For a complete list of the regulations enacted under this Act, please refer to Section D of this Overview.

Offence Provisions

EPEA makes certain activities a prosecutable offence. These offences include:

- providing false or misleading information to an authority;
- failing to provide required information by an authority; or
- contravening a term of an approval, reclamation certificate, enforcement order, or EPO.

The maximum penalty under the EPEA for an individual is a fine of $100,000 and/or imprisonment for no more than two years; the maximum penalty for a corporation is a $1,000,000 fine.

Directors and officers of a corporation who direct, authorize, assent to, acquiesce or participate in the offence may be liable for the offence, whether or not the corporation is prosecuted. The continuation of an offence attracts liability for each day that the offence continues.

Prosecution of the offences outlined in EPEA must commence within two years of the date that the Offence was committed or the date that the Director became aware of the offence.

Climate Change and Emissions Management Act (CCEM)

The goal of CCEM is to manage the emission of specified gases in order to protect Alberta's environment. Alberta's emission reduction system includes emissions trading systems, mandatory reporting and the creation of a fund for implementing new technologies, and programs and measures for reducing emissions.

Specifically, the purpose of CCEM is to reduce specified gas emissions (such as carbon dioxide and methane) relative to the Gross Domestic Product, to an amount equal to or less than 50% of 1990 levels by December 31, 2020. To that end, it grants the Lieutenant Governor in Council the authority to make regulations regarding interim targets. The Minister may enter into agreements with representatives of different sectors of the Alberta economy to establish minimum energy efficiency levels for operations, establish maximum emissions levels, create a schedule for meeting the emission target, and impose reporting requirements. If a person releases gas in excess of permissible levels, it is mandatory to report the release.

As of August 15 2005, only the provisions relating to reporting and the *Specified Gas Reporting Regulation* were in force.

Regulations

The *Specified Gas Reporting Regulation* authorizes the department of Alberta Environment to set and amend the permissible levels of specified gases. Where a person releases or permits the release of a specified gas above these levels, that person must submit a report of the release. All records, data and other information used to prepare the report must be retained for at least 3 years after the report is submitted.

Offence Provisions

If a person contravenes a provision of CCEM, the Minister may impose, by notice in writing, an administrative penalty in the amount set out in the notice for each contravention. If this penalty is not paid, the Minister may file the notice at the Court of Queen's Bench.

A director or officer of a corporation who assents to, acquiesces or participates in committing an offence under the CCEM is liable, whether or not the corporation is prosecuted.

A person who contravenes the *Specified Gas Reporting Regulation* and does not submit a report, submits a non-compliant report, or does not retain the information used to create a report is guilty of an offence and is liable to a fine of not more than $50,000 in the case of an individual and not more than $500,000 in the case of a corporation.

Water Act (WA)

The WA supports and promotes the conservation and management of water while recognising the need for Alberta's economic growth and prosperity. The definition of "water" in the WA is broad and includes all water on or under the surface of the ground, whether in liquid or solid state. The property in, rights to, diversion and use of all water in Alberta are vested in the Provincial Crown; however, duties are owed to downstream and riparian interests.

The WA requires the designated Director to create a water management plan and water guidelines. The water management plan establishes water management principles for various areas in Alberta and the guidelines set out how these principles will be implemented. However, the central function of the WA is to establish an approvals, priority and licensing regime.

With the exception of deemed licence holders, exempt agricultural uses, and household and riparian owner or occupants, a person must have approval before it commences an activity or a licence before it diverts water. The definition of "activity" is expansive. Essentially, any activity that can possibly disturb either ground or surface water may require an approval from the Director. Consequently, an approval is needed for any activity that alters flow or water level that could cause siltation or erosion, affects aquatic life, or alters the location of water.

Any person, with some exceptions, wishing to commence or continue a diversion of water or operate a work to divert water must apply to the Director for a licence. The WA defines a "diversion" as the impoundment, storage, consumption, taking or removal of water for any purpose.

Applications for approvals and licences must be submitted to Alberta Environment. Alberta Environment will usually review the applications, identify any issues resulting from the public notice of the application, and communicate any deficiencies to the applicant. Next, the application will either be approved or declined by the Director. If approved, the Director may attach conditions to the approval or licence. If declined, the applicant has the right to appeal the Director's decision to the Environmental Appeal Board.

Both approvals and licences may need to be renewed and the applicant may have to subsequently file a certificate of completion or compliance.

The WA allows inspectors and/or investigators to:

- enter into premises;
- seize documents; and
- stop vehicles or vessels in furtherance of a review and assessment of an approval or licence holder's activities.

Regulations

For a list of the relevant regulations applicable to environmental law under this Act, please refer to Section D of this Overview.

Offence Provisions

If the Director believes that any person is contravening the WA, the Director can issue an enforcement order that suspends or cancels an approval or licence.

Beyond enforcement orders, a person committing an offence under the WA may be subject to a significant fine or imprisonment. In the case of a corporation, the maximum fine is $1,000,000 for each offence, as well as an amount equal to the court's estimation of an offending party's monetary benefits that accrue as a result of the commission of the offence. A corporate officer or director may be found guilty of an offence whether or not his or her associated corporation is convicted of an offence. Furthermore, an offending party could be subjected to court orders and administrative penalties.

Government Organization Act, Schedule 5 (GOA)

Schedule 5 of the GOA establishes ministerial procedures regarding the acquisition of land for environmental protection, the declaration of states of emergency to prevent or stop environmental damage, and the establishment of parts of Alberta as a "Restricted Development Area" or "Water Conservation Area".

The Minister may purchase or expropriate land for projects related to environmental protection. The acquired land is administered under the *Public Lands Act*, unless otherwise directed. The Minister may also declare a state of emergency where the environment has, is, or will likely be damaged and where prevention or control of this damage requires urgent co-ordinated action. This authorises the Minister to enlist the services of government employees, municipal corporations, or any other person to prevent or control the damage.

A Minister may establish a "Restricted Development Area" or a "Water Conservation Area" in the public interest for various reasons, such as, retaining an environ-ment's natural state to propagate plant or animal life, confining activities to a specific area where they could adversely affect a natural resource, protecting a watershed, or controlling or stopping pollution of natural resources. The Minister has broad powers to govern the use and development of Restricted Development and Water Conservation Areas.

Regulations

Thirty-nine regulations have been enacted under the GOA; however, few relate to Schedule 5. Among the relevant regulations is the *Calgary Restricted Development Area Regulations*, which delineates those activities prohibited in Restricted Development Areas without Ministerial approval, such as the opening up, operation or abandonment of wells, quarries, mines, or telecommunication lines.

For a list of the relevant regulations applicable to environmental law under this Act, please refer to Section D of this Overview.

Offence Provisions

If a person refuses or neglects to provide required services when a state of emergency is declared the maximum fine is $300. Defaulting on the fine risks a maximum of 90 days imprisonment. If a person contravenes an obligation regarding a Restricted Development or Water Conservation area, the Minister may order this person to cease contravening the order, shut down operation of a plant temporarily or permanently, or any other order the Minister deems necessary. This order may be appealed to the Environmental Appeal Board.

If an individual knowingly contravenes an enforcement order, that individual is subject to a maximum fine of $100,000 or up to two years imprisonment; a corporation is subject to a maximum fine of $1,000,000. If the contravention is not done knowingly, the maximum fine is $50,000 for a person and $500,000 for a corporation.

Natural Resources Conservation Board Act (NRCBA)

The purpose of the NRCBA is to provide for an impartial process to review projects that may or will affect the natural resources of Alberta to determine whether the projects are in the public interest. Again, as with other statutory mandates, the Natural Resources Conservation Board (the "Board") must balance the economic effects of a project with its environmental impact.

The NRCBA only applies to projects that are defined as "reviewable projects". Those include projects such as forest industry projects, recreational or tourist projects, mining projects, and water management projects. A "water management" project is defined as a project to construct a dam, reservoir or barrier to store water, or a project to divert water.

The NRCBA requires the proponent of any reviewable project to apply to the Board for approval to carry on with the project, regardless of whether the applicant has already received a licence or approval under the *Water Act*. Any objections to the project will be addressed by the Board and, if such objections are not vexatious or are of little merit, the Board will hold a hearing to fully vet the concerns.

Once the Board's hearing is concluded, the Board has the ability to grant the approval on any terms it considers appropriate, refuse the approval, or defer consideration of the approval until the completion of any items the Board believes are necessary to facilitate the approval. The NRCBA provides for funding for interveners that cannot otherwise afford to participate.

The Board also has the power to issue restraining orders to stop any party from proceeding with a reviewable project before the Board has issued approval.

If a party is not satisfied with the decision of the Board, it has the right to appeal the matter to the Alberta Court of Appeal on a question of jurisdiction or law.

Regulations

The Rules of Practice of the Board are set out in a regulation, which includes further information on intervener funding. For a complete list of the regulations under this Act, please refer to Section D of this Overview.

Drainage Districts Act (DDA)

The purpose of the DDA is to establish Boards of Trustees that may construct, replace extend, modify, alter, dismantle, or operate and maintain drainage works in a specific drainage district. To execute this function, the Board of Trustees is granted specific rights to use space to construct drainage works and to make use of any adjoining land that is necessary for the purpose of carrying out the construction of such drainage work. Additionally, the Board of Trustees is granted the right to construct fences along its drainage works or along roadways adjacent to drainage works. As these items may impinge on private property, the Board of Trustees is also empowered to provide compensation to affected parties.

The Board of Trustees is also empowered to issue orders directing persons to remove anything that is causing or is related to an interference with a drainage work, or to cease and desist from activities that may result in damages to any drainage works. The Board of Trustees is also empowered to take whatever action is necessary to carry out its own orders.

One of the central functions of the Board of Trustees is to establish a general assessment of drainage costs and to create assessment roles and allocate these costs out to parties in the relevant drainage district. The Act allows parties to dispute these charges, and establishes a hearing process whereby the Board of Trustees can hear complaints in regard to particular assessments. If parties are not satisfied with the hearing before the Board of Trustees, there is a right to appeal the ruling to the Drainage Council.

Regulations

For a complete list of the regulations under this Act, please refer to Section D of this Overview.

Offence Provisions

Any person who hinders or interferes with the work of a Board of Trustees, who destroys or damages any drainage work, or who files a fraudulent assessment is guilty of an offence under the Act and is liable to a fine of not more than $5,000 for a first conviction, and not more than $10,000 for each subsequent conviction.

A person who is guilty of an offence under the Act is liable upon conviction to pay a fine in respect of each day or part of the day that the offence occurred or continued. The Act outlines the ability of courts to grant orders of specific performance to stop individuals from taking certain actions or to direct individuals to take remedial action to prevent damage to drainage works. A court may also direct offenders to compensate the Board of Trustees for the cost of any necessary remediation triggered by their actions, or direct the offender to pay compensation to any person damaged by their offending action.

B. FEDERAL ENVIRONMENTAL LAW AND REGULATION

The following is a summary of the primary federal statutes dealing with environmental protection.

Canadian Environmental Protection Act, 1999 (CEPA)

CEPA is the principal federal environmental statute and governs environmental activities within federal jurisdiction, such as cross-border air and water pollution, the dumping of substances into the oceans and navigable waterways, and the regulation of toxic substances. 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 (such as banks, airlines and broadcasting systems), federal land, and aboriginal land.

CEPA seeks to establish an efficient approach for evaluating toxic substances and incorporates a policy of "virtual elimination" for the most dangerous toxic substances. The Act also provides powers to enforce the Act and the regulations. It contains broad public participation provisions and imposes requirements for pollution prevention, planning and emergency plans.

CEPA is divided into a number of broad categories including:

- toxic substances
- public participation
- pollution prevention
- animate products of biotechnology
- protection of marine environment from land-based sources of pollution
- disposal of waste at sea (through the issuance of a permit)

- international air and water pollution
- control of the transboundary movement of hazardous waste, and
- environmental emergencies.

Where a proponent requires a disposal of waste at sea permit, Environment Canada must approve the project before the permit is issued. This approval effectively triggers the CEAA environmental assessment process (see discussion below under CEAA).

With respect to toxic substances, CEPA provides the federal government with cradle to grave regulatory authority. All substances currently on the Domestic Substances List must be assessed for bioaccumulation, persistence, and inherent toxicity (BPIT) within seven years, a process which began in 2001. The Ministers of the Environment and of Health are required, on their own initiative or at the written request of any person, to compile a Priority Substances List that specifies substances whose BPIT assessment should be given priority.

Once the substance has been assessed and is found to be "of concern", the Minister is required to add the substance to the Toxic Substances List and take action with respect to management of the substance within two years. Such actions may include preventive or control measures, such as voluntary agreements, economic instruments, pollution prevention plans or regulations. Substances that meet the criteria set out for evaluating the substance's BPIT and that 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. Since CEPA came into force in 2000, a number of substances have been added to the Toxic Substances List.

New substances not on the Domestic Substance List cannot be manufactured or imported until the Minister has been notified and a period for assessment has expired. In certain circumstances, manufacturers and importers must report new activities involving approved substances so they can be re-evaluated. CEPA also contains provisions governing the export of substances.

CEPA requires Environment Canada to keep and publish a "National Inventory of Releases of Pollutants" (the NIRP). Owners and operators of facilities meeting certain specified criteria are required to report the release of specified substances to Environment Canada. In 2001, the NIRP was expanded to indicate what are known as "criteria air contaminants" such as carbon monoxide, particulate, nitrogen oxides, sulphur dioxide and volatile organic compounds.

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

- an environmental registry, providing online information on the Act and its regulations, government policies, guidelines, agreements, permits, notices, inventories as well as identifying opportunities for public consultations and other stakeholder input;
- whistleblower protection for individuals who voluntarily report offences;
- 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; and
- confirmation of the common law right to sue for personal loss as a result of a violation of CEPA.

In addition, CEPA deals with international air and water pollution, giving the Minister of the Environment the power to take action to address sources of pollution that contribute to air and water pollution in another country or violate an international agreement binding on Canada. Before exercising these powers, the Minister must consult with provincial, territorial and aboriginal governments.

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

Offence Provisions

The Act gives enforcement officers search and seizure powers and grants them specific peace officer powers. Enforcement officers under CEPA may include employees of Environment Canada or provincial, territorial or aboriginal governments involved in the administration of an environmental protection law. CEPA provides the authority to issue Environmental Protection Compliance Orders to stop illegal activity or require actions to correct a violation.

Maximum penalties under CEPA are $1,000,000 and five years imprisonment. In addition, courts can levy fines equal to profits earned as a result of the commission of the offence. Where a corporation commits an offence, any officer, director or agent who directed, participated or assented to the violation can be liable. Directors and officers have a positive duty to take all reasonable care to ensure a corporation complies with the provisions of CEPA.

Canadian Environmental Assessment Act (CEAA)

The goal of CEAA is to ensure that government agencies and bodies take environmental concerns into consideration in their decision-making processes. Under CEAA environmental assessments must be conducted prior to a project proceeding where: a

federal authority (or "responsible authority") is the proponent of the project; federal money is involved; the project involves land in which a federal authority has an interest; or some aspect of the project requires federal approval or authorisation. The term "project" is defined broadly and includes the proposed construction, operation, modification, decommissioning, abandonment of a physical work and any proposed physical activity in relation to a physical work that is set out in the Regulations.

There are four types of assessments under the Act: screening; comprehensive study; panel review; or mediation. A screening assessment is generally the most basic process and is usually reserved for activities whose environmental effects are well-known. The comprehensive study involves a more in-depth assessment with the *Comprehensive Study List Regulations* prescribing a number of projects which are subject to such a process. Where warranted, the Minister can require further assessment of a project by way of a panel review or mediation process.

Upon completion of the environmental assessment, where the responsible authority decides that, taking into consideration any appropriate mitigation measures, a project is likely to cause a significant adverse environmental effect that cannot be justified in the circumstances, the responsible authority and all other federal authorities are prohibited from carrying out the project.

As a result of a review by the Minister of Environment in 2000, a number of changes to CEAA were implemented. These changes came into force in October 2003 and include: establishing a federal environmental assessment co-ordinator for projects undergoing a screening or comprehensive study assessment; modifying the comprehensive study process to prevent a second environmental assessment by a review panel; encouraging the use of mediation and other forms of dispute resolution; and requiring a follow-up program for projects that have undergone a comprehensive study or review panel.

In addition, the Canadian Environmental Assessment Registry was established, the purpose of which is to provide the public with access to information about the environmental assessment of specific projects.

Canada Shipping Act, 2001

The *Canada Shipping Act, 2001,* although not exclusively an environmental statute, contains a number of provisions which deal with environmental issues. Parts 8 and 9 of the Act contain provisions on pollution prevention under the responsibility of Fisheries and Oceans Canada and Transport Canada. In particular, the Act provides for the creation of regulations prohibiting, among other things, the discharge of specified pollutants from ships. In addition, where the Minister of Fisheries and Oceans believes that a ship has discharged, is discharging or is likely to discharge a pollutant, the Minister may take actions to repair, remedy, minimize or prevent the pollution damage from the ship, monitor measures taken by any person, direct a person to take measures, or prohibit a person from taking such measures.

The Act gives pollution prevention officers the power to, among other things, 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, pollution prevention 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 organisations in waters where the vessel navigates or engages in marine activity. In some cases, oil pollution prevention plans and oil pollution emergency plans are also required.

Offence Provisions

The maximum penalty for failing to comply with a direction of a pollution prevention officer is $100,000 or up to one year imprisonment. It is an offence to discharge a pollutant in contravention of a regulation, which carries a maximum penalty of $1,000,000 and/or up to 18 months imprisonment. In addition, it is an offence to fail to implement oil pollution prevention response or emergency plans, to follow directions resulting from a discharge of a pollutant, or to move a detained vessel. The maximum penalties for this offence is a fine of $1,000,000 and a term of imprisonment of up to three years.

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. Under the Act, it is an offence for anyone to carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat (HADD), or to deposit or permit the deposit of any type of deleterious substance in water frequented by fish without authorisation, either by permit or by regulation. The term "deleterious substance" is defined as any substance that would degrade or alter, or would contribute to the degradation or alteration, of the quality of water so as to render it deleterious to fish or fish habitat.

Where an activity will create a HADD, the Department of Fisheries and Oceans must approve the project before the work or undertaking commences. The application process for a HADD permit to carry on a work or undertaking includes providing the Minister with plans, specifications, studies and details of the proposed procedures. This triggers the CEAA environmental assessment process (see above discussion under CEAA).

The Act also imposes reporting requirements, for example, if there is a discharge of a deleterious substance into water frequented by fish, or if there is an imminent threat of such a discharge occurring. In addition, those persons must take all reasonable

measures to prevent the discharge from occurring, or to mitigate any damage if a discharge has already occurred.

Offence Provisions

Penalties for contravening the provisions of the Act can be significant. First time offenders are subject to a maximum fine of $1,000,000 for each day of the violation and/or a term of imprisonment not exceeding three years.

Marine Liability Act

The *Marine Liability Act* establishes compensation for pollution damage and implements international conventions on liability and compensation for oil pollution damage.

The Act imposes liability on the owner of a ship for oil pollution damage and provides that the owner is liable 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.

National Parks Act

Under the *National Parks Act* certain areas are designated as national parks. The *National Parks Wilderness Regulations* designates 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.

Navigable Waters Protection Act

The *Navigable Waters Protection Act* prohibits the unauthorised construction or placement of a "work" on, over, under, through or across any navigable water. The term "work" is defined to include:

- 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 project falls into the definition of "work", the Minister of Fisheries and Oceans must approve it before it is undertaken. This approval triggers the CEAA environmental assessment process, (see above discussion under CEAA).

Where a work is built or placed without the approval of the Minister, or is not built in accordance with the approval, the Minister may order the owner of the work to remove or alter the work or order a person to refrain from proceeding with the construction of the work. Where an owner fails to comply with an order to remove the work, the Minister may remove and destroy the work and dispose of the materials.

The Act also prohibits the depositing of floating materials that are liable to interfere with navigation in any water where any part of that water is navigable or where that water flows into navigable water. In addition, the Act prohibits the unauthorised deposit of material that is likely to sink to the bottom in any water which is navigable or which flows into navigable water where the water is not of a specified depth.

Offence Provisions

The maximum penalty for failing to comply with an order to remove, alter or stop a work is $5,000. In addition, where the Minister removes and destroys a work, the owner may be liable to the Minister for the costs of the removal and destruction.

Contravention of the prohibitions against depositing substances is an offence and carries a maximum penalty of $5,000. In addition, where the materials are deposited by a vessel, the vessel is liable for the fine and the vessel may be detained until the fine is paid.

Species At Risk Act (SARA)

The Act lists wildlife species at risk, categorizing them as threatened, endangered, extirpated or of special concern. The Committee on the Status of Endangered Wildlife in Canada (COSEWIC) is responsible for assessing and classifying the status of wildlife in Canada. COSEWIC's assessments will be made public and will form the basis for the Cabinet's decision regarding the listing of wildlife under the Act.

SARA provides for the identification of critical habitat which, once identified, will be protected by conservation agreements, provincial or territorial legislation, or federal prohibitions. It allows for compensation for losses suffered by any person as a result of any extraordinary impact related to the use of prohibitions against the destruction of critical habitat. SARA also requires the development of recovery strategies and action plans for endangered or threatened species and management plans for species of concern. Strategies and plans are to be developed in partnership with the provinces, territories, wildlife management boards, First Nations, landowners and others.

In addition, enforcement officers have inspection, investigation and seizure powers to enforce the protection provisions of the legislation. SARA prohibits a number of specific activities, such as killing or harming listed species, as well as destruction of their critical habitat.

Offence Provisions

Maximum fines for contraventions of SARA are $1,000,000 for a corporation or $250,000 for a non-profit corporation or individual. Individuals may also be sentenced to a term of imprisonment of up to five years. Subsequent offences can result in fines doubling the amounts set out above.

Transportation of Dangerous Goods Acts 1992 (TDGA)

The TDGA applies to all modes of inter-provincial and international 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 both to those who transport dangerous goods and to those who manufacture, ship, and package dangerous goods for shipment, or who manufacture the containment materials for dangerous goods. The TDGA and its 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 covers over 3,000 dangerous goods. These dangerous goods are specified in the regulations and arranged into classes. The Federal TDGA also applies to any product, substance or organism which "by its nature" is included within one of the classes.

The TDGA requires Emergency Response Assistance Plans before the transport or importation of prescribed goods. The plans must be approved by the Minister of Transport and such approval is revocable. In addition, the TDGA provides for court orders, including: orders to refrain from doing anything regulated by the TDGA for up to a year; orders for compensation to anyone damaged by the commission of an offence; orders for rehabilitation of the environment; and orders to pay money towards research and development.

The TDGA also provides for detention and compliance orders in the event of non-compliance. 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 and/or its regulations is anticipated, a person may apply for either a permit of exemption or a permit of equivalent level of safety. The availability of permits of exemption are limited to emergency situations and such permits will be revocable. Permits of equivalent level of safety are also revocable.

Offence Provisions

Failure to comply with any provision of the TDGA constitutes an offence and may result in a fine of up to $100,000 or imprisonment for a term not exceeding two years. In addition, any property which had been seized by a federal inspector in relation to the offence may be forfeited to the Crown. Maximum fines may be imposed for each day that the offence continues.

C. Regulations Associated with Alberta Acts

The list below summarizes the Acts currently managed through Alberta Environment, and the regulations associated with each Act.

Environmental Protection and Enhancement Act

- Activities Designation Regulation
- Administrative Penalty Regulation
- Approvals and Registrations Procedure Regulation
- Beverage Container Recycling Regulation
- Conservation and Reclamation Regulation
- Conservation Easement Registration Regulation
- Designated Material Recycling and Management Regulation
- Disclosure of Information Regulation
- Electronics Designation Regulation
- Environmental Appeal Board Regulation
- Environmental Assessment (Mandatory and Exempted Activities) Regulation
- Environmental Assessment Regulation
- Environmental Protection and Enhancement (Miscellaneous) Regulation
- Forest Resources Improvement Regulation
- Lubricating Oil Material Environmental Handling Charge Bylaw
- Lubricating Oil Material Recycling and Management Bylaw
- Lubricating Oil Material Recycling and Management Regulation
- Ozone-Depleting Substances and Halocarbons Regulation
- Pesticide (Ministerial) Regulation
- Pesticide Sales, Handling, Use and Application Regulation
- Potable Water Regulation

- Release Reporting Regulation
- Substance Release Regulation
- Tire Designation Regulation
- Waste Control Regulation
- Wastewater and Storm Drainage (Ministerial) Regulation
- Wastewater and Storm Drainage Regulation

Climate Change and Emissions Management Act

- Specified Gas Reporting Regulation

Water Act

- Oldman River Basin Water Allocation
- South Saskatchewan Basin Water Allocation Regulation
- Water (Ministerial) Regulation
- Water (Offences and Penalties) Regulation

Government Organization Act, Schedule 5

- Calgary Restricted Development Area Regulations
- Designation and Transfer of Responsibility Regulation
- Edmonton Restricted Development Area Regulations
- Edmonton-Devon Restricted Development Area Regulations
- Environment Grant Regulation
- Radiation Health Administration Regulation (electronic version only)
- Restricted Activity Authorization Regulation
- Sherwood Park West Restricted Development Area Regulations
- Storage Tank System Management Regulation
- Transportation Grants Regulation

Natural Resources Conservation Board Act

- Rules of Practice of the Natural Resources Conservation Board Regulation

Drainage Districts Act

- Compensation Regulation
- Drainage Districts Regulation

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