Blakes

Blakes 26th Annual Overview of

Environmental Law and Regulation in British Columbia 2021

Blakes Means Business

A disciplined, team-driven approach focused squarely on the success of your business. Highly skilled lawyers in an integrated network of offices and practice areas. Among the world's most respected corporate law firms, with expertise in virtually every area of business law.

Blakes Means Business

Blakes 26th Annual Overview of Environmental Law and Regulation in British Columbia 2021

The *Blakes 26th Annual Overview of Environmental Law and Regulation in British Columbia 2021* 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, Bryson Stokes, in our Toronto office at 416-863-2179 or bryson.stokes@blakes.com. Blakes produces regular reports and special publications on Canadian legal developments. For further information about these reports and publications, please contact the Client Relations & Marketing department at communications@blakes.com.

Contents

Blakes Vancouver Environmental Group

The Blakes Vancouver group provides 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
- Renewable energy and clean technologies
- Environmental, social and governance issues

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.

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 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, mining and land development sectors. 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 provincial and local laws such as the *Fisheries Act* and the *Environmental Management Act.*

We have also been responsible for overseeing environmental site assessments and compliance reviews as part of major business transactions involving multiple properties.

Group members work closely with the Commercial Real Estate, Financial Services, Corporate & Commercial, Forestry, Oil & Gas, Energy, Power, Indigenous and Restructuring & Insolvency groups within Blakes to provide environmental law advice to clients across the country and around the world.

Tony Crossman has more than 25 years of experience practising environmental law and is widely viewed as a leader in the field. Tony advises clients on their day-to-day operations, identifying and managing environmental risks, and solving complex environmental issues. He has represented public and private companies, governments and regulators on environmental regulation and management, corporate compliance and due diligence, and litigation matters. He is recognized for his expertise in *Chambers Global: The World's Leading Lawyers in Business, The Best Lawyers in Canada, The Canadian Legal Lexpert Directory* and *Who's Who Legal*.

Email: tony.crossman@blakes.com; Telephone: 604-631-3333

Roy Millen has 16 years of experience and is the leader of the Blakes Indigenous group. Roy assists clients in navigating complex regulatory processes and defends proponents from litigation challenges. He has appeared as lead counsel before the Supreme Court of Canada and numerous other courts and tribunals. Roy is recognized for his expertise in *Chambers Canada: Canada's Leading Lawyers for Business*, *The Best Lawyer in Canada*, *The Legal 500 Canada*, *Benchmark Canada: The Definitive Guide to Canada's Leading Litigation Firms and Attorneys* and *The Canadian Legal Lexpert Directory*. Roy was also identified by *Lexpert* magazine as one of Canada's "Rising Stars: Leading Lawyers Under 40."

Email: roy.millen@blakes.com; Telephone: 604-631-4220

James Sullivan has 29 years of experience practising as an environmental litigator. He has acted for resource companies in successfully responding to, and resolving, some of Canada's largest catastrophic environmental events. Jim is recognized as one of the world's leading litigators in *Euromoney's LMG Guide to the World's Leading Litigation Lawyers* and 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

Sam Adkins has 12 years of experience advising on Indigenous and project development matters with a strong focus in the resource sector. He acts for clients across Canada on a wide range of environmental and Indigenous law issues, including consultation, negotiation and the regulatory process. Sam previously held a senior commercial position with an international energy company in which he was responsible for managing Indigenous consultation and negotiation on an LNG project in northwestern British Columbia.

Email: sam.adkins@blakes.com; Telephone: 604-631-3393

Rochelle Collette advises on environmental and commercial litigation. She has experience with provincial and federal environmental and regulatory regimes, environmental assessments, and regulatory prosecutions. Rochelle has appeared before the British Columbia Provincial Court and the British Columbia Supreme Court.

Email: rochelle.collette@blakes.com; Telephone: 604-631-3379

Paulina Adamson advises on environmental law, including corporate compliance and regulatory and litigation matters. She has experience with provincial and federal environmental and regulatory regimes, permitting, environmental assessments and appeals, and federal regulatory prosecutions. Paulina has appeared before the British Columbia Provincial Court and Supreme Court.

Email: paulina.adamson@blakes.com; Telephone: 604-631-3379

Sabrina Spencer advises on environmental, Indigenous and municipal law, and includes project development matters, real property matters, regulatory compliance, Indigenous consultation and accommodation, and commercial transactions and agreements. Sabrina has appeared before the British Columbia Provincial Court and Supreme Court.

Email: sabrina.spencer@blakes.com; Telephone: 604-631-3364

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 aimed at 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 also often discretionary in the manner 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, 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" that, 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 through their use of bylaw authority.

There are a number of agreements between the federal government and the provinces that aim to create greater cooperation between the parties, improve information flow and, in some cases, streamline regulatory requirements in areas of overlapping jurisdiction. Examples of these are the bilateral Canada-British Columbia Environmental Occurrences Notification Agreement and the multilateral Accord for the Protection of Species at Risk.

Environmental laws frequently create offences for non-compliance that can lead to substantial penalties, including million-dollar fines and/or imprisonment. Many laws provide that maximum fines are doubled for subsequent offences and can be levied for each day an offence continues, and some set high minimum penalties. 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 that are fines that can be levied by the government regulators and boards instead of courts. British Columbia and Canada both allow for tickets, similar to motor vehicle infractions, for non-compliance. Enforcement officers generally have rights to inspect premises, issue stop-work and other orders, investigate non-compliance, obtain warrants to enter and search property, and seize anything believed to be relevant to an alleged offence.

B.C. has a unique history in that most 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 B.C. will need to consider and address the potential impacts to Indigenous rights that 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, governments must consult and, where appropriate, accommodate Indigenous groups when the government has knowledge of the existence of potential or established Indigenous or treaty rights, and contemplate conduct that might adversely affect such rights (e.g., the issuance of a project permit or approval). The scope of this consultation will depend on the strength of the case supporting the Indigenous right or title and the seriousness of the potential impact to the right or title claimed. In addition, establishing a business relationship between Indigenous groups and a business operator or project proponent has become integral to the successful pursuit of such an activity or project in B.C.

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

The law is stated as of February 12, 2021.

2. Key Legislative/Regulatory Developments

2.1 British Columbia

2.1.1 Environmental Management Act

On February 1, 2021, amendments to the *Environmental Management Act* came into force, altering the process for identifying contaminated sites. The amendments require site disclosure statements (previously site profiles) to be submitted to the Ministry based on certain triggers, including decommissioning, foreclosure and local government applications. The Ministry has also announced changes (expected in fall 2021) to the regime for relocating contaminated soil. These amendments will remove the requirement for a contaminated soil relocation agreement and instead require a person relocating soil to analyze the soil and provide notice of the relocation.

2.1.2 Professional Governance Act

The *Professional Governance Act* received royal assent in 2018 and is currently being brought into force in phases. The new legislation aims to modernize and strengthen the roles and expectations of qualified professionals in British Columbia. It establishes an office of the superintendent of professional governance to ensure consistency and best practices are applied in the work of qualified professionals.

2.2 Canada

2.2.1 Climate Plan and Legislation

In November 2020, the federal government introduced Bill C-12, the *Canadian Net-Zero Emissions Accountability Act*. If passed, the bill will require the government to achieve net-zero emissions by 2050 and require annual reports on key measures the federal government has undertaken to manage climate-related risks. The federal government also introduced *A Healthy Environment and a Heathy Economy* (Climate Plan), a new federal plan to reduce emissions across Canada. The Climate Plan sets out the government's plan to increase the price of carbon to C$170 per tonne by 2030 and sets out policies and programs to achieve these new emission-reduction targets.

2.2.2 Impact Assessment Act

The federal government implemented the *Impact Assessment Act* in August 2019, which overhauls the federal assessment regime, repealing and replacing the *Canadian Environmental Assessment Act, 2012*. The act provides for a process for assessing the environmental, health, social and economic effects of designated projects with a view to preventing certain adverse effects and fostering sustainability. The new assessment process includes a planning phase and an assessment phase, with specified timelines for each. It also includes broader provisions for public participation and consultation with Indigenous people.

3. British Columbia Environmental Law and Regulation

3.1 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 and Climate Change Strategy (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 lifeform that is capable of being harmed.

Activities that 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 that may operate under a Code of Practice, as well as those that 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 that:

- Establish a specific regime for the handling of hazardous waste
- Establish rules regarding spills reporting and contingency planning
- 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
- Provide for orders in the event of an environmental emergency.

3.1.1 Hazardous Wastes

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

- Dangerous goods that 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
- Waste containing polycyclic aromatic hydrocarbons.

The *Hazardous Waste Regulation* establishes detailed siting and operational requirements and performance standards for facilities, including 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.

3.1.2 Spill Reporting

Under the EMA, a person who has possession, charge or control of substances listed on the *Spill Reporting Regulation* must report an escape or spill to the Ministry forthwith. Reports of spills of the listed substances to water must be made regardless of the quantity. Reports of spills to areas other than water must be made if the listed substance meets a prescribed quantity. Mandatory spill reports include:

- an immediate verbal report
- a written report as soon as practicable on request of the Minister
- written update reports every 30 days after the spill began, and any time the responsible person has reason to believe the information previously reported is inaccurate or incomplete
- an end-of-spill report within 30 days after the emergency response completion date for that spill

Entities with the duty to report a spill are also required to ensure that persons with the skills, experience, resources and equipment necessary to properly deal with a spill arrive at the site and implement an incident command system. The EMA also mandates response actions to prevent continuation of a spill; to identify immediate risks to the environment, human health or infrastructure; to stabilize, contain, remove and clean up; and to evaluate and mitigate long-term impacts.

3.1.3 Contingency planning and area-based response plans

Entities that handle quantities of substances prescribed in the *Spill Preparedness, Response and Recovery Regulation*, referred to as “regulated persons,” are required to carry out assessments to determine the magnitude of the risk to the environment, human health and infrastructure that would result from spills of the listed substances. Regulated persons are also required to prepare, test, update and carry out spill contingency planning based on the results of the risk assessments. The *Spill Contingency Planning Regulation* sets out the requirements for contingency plans. Regulated persons can be ordered by the Ministry to prepare, test, update and pay for geographic response plans. The EMA also establishes a framework for certified preparedness and response organizations funded by regulated persons.

3.1.4 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.

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*.

On February 1, 2021, amendments to the EMA came into force, altering the process for identifying contaminated sites. The amendments require site disclosure statements (previously site profiles) to be submitted to the Ministry based on certain legislated triggers, including decommissioning, foreclosure and local government applications. In most cases, the requirement to provide a site disclosure statement will trigger a required for a site investigation and the filing of a site investigation report with the Ministry. Municipalities can no longer opt out of the site disclosure statement process. The Ministry has also announced forthcoming changes to the contaminated soil relocation rules that will remove the requirement for a contaminated soil relocation agreement. Instead, a person relocating contaminated soil must analyze the soil and provide notice of the relocation to the Ministry.

The Ministry publishes a large suite of protocols that set out procedures for requirements under the EMA, such as site risk classification. The Ministry also publishes technical guidance documents for specific tasks, such as groundwater investigation and characterization. These protocols and technical guidance documents are updated periodically and can be found on the Ministry's website.

3.1.5 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 containers, electronic and electrical equipment, solvent and flammable liquids, pesticides, tires, gasoline and oil filters, lubricating oil, pharmaceuticals, paint, and packaging and paper products.

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.*

3.1.6 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 of 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 contravention. Under the *Administrative Penalties Regulation* a violation of the EMA or a number of prescribed regulations, may result in a penalty of up to C$75,000. Due diligence is not a defence to liability for penalties although it is relevant to the quantum. The Ministry publishes a quarterly list of convictions, tickets and administrative penalties on its website.

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 Sustainability 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 Sustainability Act, the Integrated Pest Management Act, the Wildlife Act, the Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act, and the Greenhouse Gas Industrial Reporting and Control Act.

3.2 Climate Change Legislation

The *Climate Change Accountability Act* sets a province-wide target of at least 40 per cent reduction in the 2007 level of greenhouse gas (GHG) emissions by 2030, at least 60 per cent reduction by 2040, and an 80 per cent reduction by 2050. While the act sets the targets, it does not yet impose requirements on the private sector to achieve the stated goals.

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 can retain fuel credits and/or GHG emission credits and carry forward a portion of their surplus to future years. The act also allows for a deferral of any deficiencies in renewable fuel obligations into the next compliance period. Procedurally, the act allows small fuel suppliers to apply for an exemption from the renewable requirements, and sets out the process for administering administrative penalties, and detail fuel-labelling requirements.

The *Greenhouse Gas Industrial Reporting and Control Act* establishes the regulatory regime for the implementation of intensity-based targets for GHG emissions, trading and use of offsets. The *Greenhouse Gas Emission Reporting Regulation* requires all British Columbia-based operations emitting 10,000 tonnes or more of carbon dioxide equivalent per year to report GHG emissions to the Ministry. Operations emitting over 25,000 carbon dioxide equivalent tonnes per year are required to have their emission reports independently verified. The regulation establishes the methodologies for quantifying and reporting emissions. Compliance reporting is also required for prescribed industries. At the moment, the targets and compliance reporting only applies to LNG operations. The *Greenhouse Gas Emission Control Regulation* establishes the BC Carbon Registry and requirements for emissions offset projects. The *Greenhouse Gas Emission Administrative Penalties and Appeals Regulation* establishes administrative monetary penalties for failing to submit emissions and compliance reports and prescribes decisions under the act that may be appealed to the Environmental Appeal Board.

The *Greenhouse Gas Reduction (Emissions Standards) Statutes Amendment Act* requires owners or operators of waste management facilities of certain classes to manage GHGs produced from waste handled in their facilities.

The *Carbon Tax Act* imposes a tax on carbon dioxide emissions that is then translated into a tax on the purchase of fossil fuels. On April 1, 2019, B.C.'s carbon tax rate rose from C$35 to C$40 per tonne of carbon dioxide equivalent emissions. Originally, the tax rate was to increase each year by C$5 per tonne until it reached C$50 per tonne in 2021. However, in light of the COVID-19 pandemic, the provincial government has held it at C$40 per tonne until further notice. As different fuels generate different amounts of GHG emissions, the carbon tax rate must be translated based on the type of fuel used. These 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.

3.3 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. The EAA provides for an early engagement phase that is intended to determine whether to commence the environmental assessment, exempt the project from the requirement for an assessment or terminate the assessment process. The Minister may also designate eligible projects (that would not otherwise be reviewable) as reviewable projects under the EAA, on application by any person or on the Minister's own initiative.

Under the EAA, the scope for each project review is determined by the chief executive assessment officer. This includes the scope of the requirement assessment matters and setting out the procedures and methods for conducting the assessment. Factors that must be considered when conducting assessments include the effects of the project on current and future generations, disproportionate effects on distinct human populations, greenhouse gas emissions and the impact of the project on B.C.'s ability to meet its reduction targets.

The EAA also contains provisions allowing for class assessments for specified categories of "reviewable projects," as well as regional assessments.

The EAA sets out a process for Indigenous nations to provide notice to the chief executive assessment officer that the Indigenous nations intend to participate in the assessment of a reviewable project. The EAA also contains an obligation for the chief executive assessment officer to seek to achieve consensus with participating Indigenous nations on key decisions during the environmental assessment process. Consensus is not defined in the EAA. If consensus is not reached, it will trigger a dispute resolution process set out in the yet-to-be-developed *Dispute Resolution Regulation*.

"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. In addition to the *Reviewable Projects Regulation*, several other regulations establish the parameters for assessment and the administrative penalties that may be issued for non-compliance with the EAA. Transitional regulations also govern existing projects, many of which will continue under the old *Environmental Assessment Act* (2002). Several regulations are currently in development, including the *Dispute Resolution Regulation*, *Capacity Funding Regulation* and *Regional/Strategic Environmental Assessment Regulation*.

3.4 Riparian Areas Protection Act

The *Riparian Areas Protection Act* provides authority to the government to establish regulations regarding the protection of riparian areas that may be subject to residential, commercial or industrial development. The *Riparian Areas Protection Regulation* (RAR) establishes a system of site-specific assessment of the effect of proposed development on fish habitat on prescribed areas of the province. 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. Local governments are precluded from issuing development approvals until RAR assessments are concluded.

3.5 Forest and Range Practices Act

The *Forest and Range Practices Act* (FRPA) 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.

3.5.1 Enforcement Provisions

Contraventions of the FRPA are divided into those that are offences and those that are not offences but that 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
- 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 stop work 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 stop work 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 Indigenous 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.

3.5.2 FRPA Regulations

The key regulation under the FRPA is the *Forest Planning and Practices Regulation* (FRPA Regulation). The FRPA Regulation defines specific objectives that 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.

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 of imprisonment.

3.6 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.

3.7 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 Indigenous 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 of 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.

3.8 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.

3.9 Protected Areas of British Columbia Act

The *Protected Areas of British Columbia Act* (PAA) establishes a number of parks, ecological reserves and places that 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. 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.

3.10 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 ticket-able offences, resulting in fines of C$500.

The *Administrative Penalties Regulation* under IPMA allows for penalties up to C$75,000 to be assessed. Due diligence is not a defence with respect to liability for a penalty, although it may be relevant to quantum.

3.11 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 of imprisonment. Maximum penalties are doubled for subsequent offences. Contravention of the reporting provisions is an offence that has a maximum penalty of a fine of up to C$10,000 and/or a term of imprisonment of up to one year.

3.12 Water Sustainability Act

The *Water Sustainability Act* (WSA) vests property and the right to the use and flow of all the water in any stream or aquifer in British Columbia, and the use, percolation and flow of groundwater 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, lakes, rivers, creeks, springs, ravines, swamps, gulches and glaciers.

In addition to establishing British Columbia's water licencing scheme, the WSA provides for the protection of the province's fresh-water bodies, and has mechanisms to ensure long-term sustainability of the water resource.

The WSA is complemented through extensive regulations, including:

- Water Sustainability Regulation (WSR)

- Water Sustainability Fees, Rentals and Charges Tariff Regulation
- Groundwater Protection Regulation
- Dam Safety Regulation

The WSA establishes the licensing regime for surface water and groundwater use whereby holders of licences are permitted to divert and use water for the "purpose" specified in the licence; and to 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. Certain users are exempted from the requirement to have a licence to use groundwater, including domestic users and specified oil and gas operations using "deep water" wells.

The information required for surface and groundwater licence applications is set out in the WSA, which also prescribes the criteria for licencing decisions. These include consideration of environmental flow needs of streams, and mitigation measures to address potential impacts.

Water licences must be associated with, or appurtenant to land. Priority over water rights is established using the First in Time, First in Right or FITFIR rule, and the government has the authority to deny an application for a water licence on the basis that a given water source is "oversubscribed."

The WSA also allows for the grant of a "use approval" rather than a licence where a diversion or use of water is required for a term of less than 24 months.

The WSA requires changes to be made in and about a stream to be approved by the Ministry of Forests, Lands and Natural Resource Operations and Rural Development. Applicants for change approvals are required to submit detailed plans that include measures to mitigate harm to the environment. There are some exemptions from the requirement to obtain a change approval in relation to construction or modification of roads authorized under other listed legislation such as the *Mines Act,* the *Forest and Range Practices Act* and the *Oil and Gas Activities Act.*

The WSA prohibits new dams on protected rivers, and allows for the designation of sensitive streams. It imposes additional requirements on proponents of projects affecting designated streams to provide information to the decision maker, and to take measures to ensure no significant adverse impact on the aquatic ecosystem occurs or is compensated for. Protected rivers and sensitive streams are designated under the WSR.

The WSA also prohibits the introduction of foreign matter to streams in a quantity or manner that would cause a significant adverse impact.

The WSA provides the authority to the government to restrict water use through the making of significant water shortage declarations and critical environmental flow or fish population protection orders. It also establishes mechanisms for long-term water sustainability plans that, once established, may inform decisions on future licencing as well as actions to be taken by the government in times of drought.

The maximum penalty for offences under the WSA 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. Fines may be increased to reflect a monetary benefit acquired by a person as a result of the offence. The WSA also enables the use of administrative monetary penalties.

3.13 Water Protection Act

The purpose of the *Water Protection Act* (WPA) is to foster sustainable use of British Columbia's water resources. The WPA 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 WPA provides for continuing offences and provides a maximum fine of C$200,000 for each day that the offence continues.

3.14 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 DWPA 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 that 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 DWPA provides for a maximum fine of C$200,000 for each day that the offence continues.

3.15 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 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$1-million. Due diligence is a defence to an allegation of a contravention of the UCA.

The *Mandatory Reliability Standards 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.

3.16 Clean Energy Act

The *Clean Energy Act* sets out British Columbia's energy objectives and requires BC Hydro to submit integrated resource plans describing what it intends to do in response to those objectives. It also requires BC Hydro to achieve electricity self-sufficiency by the year 2016. One of British Columbia's energy objectives is to generate at least 93 per cent 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.

3.17 Metal Dealers and Recyclers Act

The *Metal Dealers and Recyclers Act* regulates the purchase and sale of regulated metal, including 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.

3.18 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. The act also provides for royalty agreements for petroleum and natural gas produced from a specified location or class of locations.

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.

3.19 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 wide 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 Regulation*; C$100,000 under the *Geophysical Exploration Regulation*; C$250,000 under the *Oil and Gas Road Regulation*; and C$500,000 under the *Emergency Management Regulation*.

Administrative penalties are in addition to monetary fines that the courts can impose that 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. Administrative appeal and review processes are also provided for under the act.

Regulations passed under the act, include 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, including advising BC One Call of the proposed site of the activity. The Commission must be notified if any physical contact with the pipeline occurs. The *Oil and Gas Road Regulation* governs permitting, construction, maintenance, use and deactivation of oil and gas roads. The *Emergency Management Regulation* governs response contingency plans and emergency response programs required from permit holders under the act. The *Liquefied Natural Gas Facility Regulation* establishes construction and operational requirements for LNG facilities.

3.20 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 and 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.

The act allows the Lieutenant Governor in Council, by regulation and on any terms and conditions considered necessary or advisable, to exempt one or more classes of persons, or a person or a ministry of the government, respecting one or more classes of work in, on or about a mine, from the

requirement to hold a permit. The terms and conditions imposed may include those respecting environmental protection and reclamation and public health and safety.

A person who contravenes a provision of the act or the Regulations is liable for a maximum fine of C$1-million and/or three year's imprisonment. The act also authorizes the use of administrative monetary penalties. The *Administrative Penalties (Mines) Regulation* establishes potential penalties of up to C$500,000 for violations of the act.

3.21 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 also has specific protections for raptors and their habitats, and for managing alien species such as snakes and tigers, as well as protecting public and native wildlife. The act has some limited protections for species considered to be a risk. Maximum fines for a first offence under the *Wildlife Act* are C$250,000 and/or a maximum imprisonment term of two years.

3.22 Natural Resource Compliance Act

The *Natural Resource Compliance Act* authorizes the Minister of Forests, Lands and Natural Resource Operations and Rural Development 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 corresponding *Natural Resource Officer Authority Regulation* sets out the powers and duties that NROs may exercise and perform.

3.23 Professional Governance Act

The *Professional Governance Act* received royal assent on November 27, 2018, and is being brought into force by the government in phases to provide time for the regulated bodies to transition to the new regime. It seeks to strengthen the role of qualified professionals in British Columbia, increase public access to natural-resource information and provide greater oversight to the management of British Columbia's natural resources. It also establishes an office of the superintendent of professional governance to ensure consistency and best practices are applied in the work of qualified professionals. The act will also standardize codes of ethics, increase public participation in regulation and standardize the duty for professionals to report certain practices. Currently, it will apply to the Applied Science Technologists and Technicians of B.C., the Association of B.C. Forest Professionals, the Association of Professional Engineers and Geoscientists of B.C., the B.C. Institute of Agrologists and the College of Applied Biology.

3.24 Local Government Regulation of the Environment

Court decisions 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 bylaws and many more are currently in the planning stages. For example, a number of municipalities have bylaws prohibiting the use of pesticides for "cosmetic" purposes and idling of vehicles. A number of others have stream protection bylaws.

Through the EMA, the government delegates the regulation of the introduction of air contaminants in Greater Vancouver to the Greater Vancouver Regional District (GVRD, also known as Metro Vancouver). 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.

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

4. Federal Environmental Law and Regulation

4.1 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 Indigenous 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.

4.1.1 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 to 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 and Climate Change Canada or the Minister of Health.

4.1.2 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.

4.1.3 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) carbon-dioxide emissions from the natural-gas-fired generation of

electricity, and (4) the release of a halocarbon. The current trend is for Environment Canada to focus on substance-specific regulations, some of which, like halocarbons, 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.

4.1.4 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 per cent below 2006 levels by the year 2020, and 60 per cent to 70 per cent 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 Minister of Environment and Climate Change Canada announced a new target to reduce GHG emissions 17 per cent 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 were shelved indefinitely in the U.S. and Canada.

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 did not backtrack on Canada's domestic emission reduction targets. In the absence of an emissions trading system, the federal government took steps to reduce GHG emissions through regulations under CEPA. Sector-based regulations already include those for light-duty vehicles and renewable fuel content (*Energy Efficiency Regulations).* The *Reduction of Carbon Dioxide from Coal-fired Generation of Electricity Regulations* establish emissions-intensity targets for coal-fired power generation units and require phasing out of older units on a prescribed schedule.

Canada ratified the Paris Agreement in October 2016 and subsequently released the *Pan-Canadian Framework on Clean Growth and Climate Change*. The main objective of the Framework was to have carbon pricing in effect in all Canadian jurisdictions by 2018 with a long-term goal of meeting Canada's 2030 reduction target. Under the Framework the provinces are the first choice for imposing carbon pricing, with a federal back-stop if the provincial instruments do not align with federal standards. Between 2016 and 2018, all provinces except Saskatchewan signed on to the Framework. In 2018, the federal government passed the *Greenhouse Gas Pollution Pricing Act* (discussed below), which established a set of minimum national standards for greenhouse gas pricing.

In November 2020, the federal government introduced Bill C-12, the *Canadian Net-Zero Emissions Accountability Act*. If passed, the bill will require the government to achieve net-zero emissions by 2050 and require annual reports on key measures the federal government has undertaken to manage climate-related risks. In late 2020, the federal government introduced the Climate Plan to further reduce Canada's emission reduction targets. The Climate Plan sets out the government's intention to increase the price on carbon to C$170 per tonne by 2030 and various policies and programs to achieve the new emission-reduction targets.

4.1.5 Environmental Emergencies

The *Environmental Emergency Regulations, 2019* require those who own, or have charge, management or control of listed substances, to submit an environmental emergency plan to Environment Canada. The Regulations also establish reporting requirements in the event of spills of prescribed levels of substances.

4.1.6 Enforcement

Maximum penalties under CEPA are C$2-million and/or three years of imprisonment for individuals and C$12-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.

4.1.7 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
- 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 Indigenous governments on issues such as toxic substances and environmental emergency regulations.

4.2 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 Regulation also sets standard for containers used in road, marine, air and rail transportation. 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 over 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 that "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 Waste and Hazardous Recyclable Material Regulations*.

Maximum penalties under the TDGA are C$100,000 or two years of imprisonment. In addition, any property that 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.

4.3 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 that 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$5-million and/or two years of imprisonment.

The Workplace Hazardous Materials Information System (WHMIS) 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.

4.4 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 of imprisonment. Enforcement officers can shut down activities and require measures necessary to prevent health or environmental risks.

4.5 Impact Assessment Act

The *Impact Assessment Act* (IAA) is intended to provide a process for assessing the environmental, health, social and economic effects of designated projects with a view to preventing certain adverse effects and fostering sustainability. Under the IAA, the review process is carried out by the Impact Assessment Agency of Canada (Agency) with joint panel assessments for projects under the *Canadian Energy Regulator Act* and the *Nuclear Safety and Control Act*.

Projects subject to impact assessment under the IAA are those that propose physical activities that are designated in the *Physical Activities Regulations* and include activities that are “incidental” to the designated activities.

The IAA includes a planning phase and an assessment phase. The planning phase engages public consultation, other local jurisdictions and federal agencies, and Indigenous people prior to commencing an assessment. At the end of the planning phase, the Agency must determine whether an impact assessment of the designated project is required, taking into account several enumerated factors. The Minister may also direct the Agency, before the commencement of an assessment, not to conduct the assessment if the Minister determines the designated project would cause unacceptable effects.

Impact assessments will be conducted by the Agency or a review panel. The scope of effects that need to be taken into account in the assessment include changes to the environment or to health, social or economic conditions, the impact that the designated project may have on Indigenous groups and alternative means of carrying out the designated project, including best available technologies and the extent to which the effects of the designated project hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change.

After a decision is made by a review panel or the Agency, the ultimate decision remains with the Minister or the Governor in Council (GIC). The Minister or GIC’s decision must be based on five enumerated factors, including sustainability, Canada’s commitments in respect of climate change and

the impact that the designated project may have on any Indigenous group. The Minister must issue a "decision statement" to the proponent, which may stipulate conditions that will mitigate any environmental effects if the project is permitted to proceed.

The IAA allows for the delegation of parts of an impact assessment to a provincial government or Indigenous governing body, or the substitution of a provincial review process for a federal one when there is an equivalent assessment by another jurisdiction.

The *Information and Management of Time Limits Regulations* set out time limits for various parts of the impact assessment process. The planning phase is limited to 180 days and the assessment phase is limited to 300 days for an impact assessment conducted by the Agency and 600 days for an impact assessment conducted by a review panel. There are several provisions that allow these limits to be extended.

The *Designated Classes of Projects Order* designates classes of projects on federal lands that will only cause insignificant adverse environmental effects. Federal authorities may carry out or permit these activities without assessing the environmental impacts or providing public notice. However, major projects or projects that require approvals from other regulators will still be required to undergo an assessment by the federal authority.

4.6 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. The act applies to both coastal and inland waters, and is generally administered by the Fisheries and Oceans Canada (DFO), although the environmental protection parts of the act are administered by Environment and Climate Change Canada. The act has frequently been used by Environment Canada to punish those responsible for water-polluting activities.

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.

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 death to fish. Where an activity will create a HADD, the DFO must approve the project before the work commences. The application process is set out in the *Authorizations Concerning Fish and Fish Habitat Protection Regulations*. Failing to comply with conditions of an authorization is also an offence.

The act also establishes a system for the creation of fish habitat banks. This system is designed to offset impacts to fish habitat due to activities in one area by undertaking habitat conservation elsewhere but within the same vicinity. It allows a project proponent to propose a conservation project within the same area where it is proposing to carry out work that would impact fish habitat for which it will receive credit.

The 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, the persons responsible are obligated to notify the DFO or Environment Canada. The act also requires reporting where death of

fish or the harmful alteration, disruption or destruction of fish habitat or a serious and imminent danger thereof occurs. There is also a requirement to provide written reports after these notifications are made and a concurrent duty to take measures to prevent the occurrence of harm to fish habitat, death to fish and deposits or to counteract, mitigate or remedy the adverse effects of such harm or deposit once they occur.

The act allows for agreements with the provinces or Indigenous governing bodies for equivalency or delegation of administrative functions.

Penalties for offences under the act are a minimum of C$100,000 up to a maximum of C$12-million for large corporations. Fines for small corporations are a minimum of C$25,000 up to a maximum of C$8-million. Individuals may be liable for minimum fines of C$5,000 up to a maximum of C$2-million and/or three years of imprisonment. Fines are paid into the Environmental Damages Fund. There is a five-year limitation period for laying of charges.

4.7 Canada Shipping Act

The *Canada Shipping Act, 2001* (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. The act also provides some relief from liability for what would otherwise be violations of the *Fisheries Act* or the *Species at Risk Act* for the use of spill treating agents. 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 that allow authorities to impose penalties of up to C$25,000 outside of the more formal court process.

4.8 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 if those costs or expenses were related to an occurrence that causes pollution damage or creates a grave and imminent threat of causing pollution damage. Maximum fines for offences under the act are C$250,000.

4.9 Canadian Navigable Waters Act

The *Canadian Navigable Wasters Act* (CNWA) applies to all navigable waters in Canada, and creates a number of restrictions, and in some cases, requirements for approval. The act is administered by Transport Canada.

The CNWA prohibits the unauthorized construction or placement of a "work" on, over, under, through or across any navigable water, except in accordance with the CNWA. Where a project constitutes a "major work" in, on, over, under, through or across any navigable water, or is a major work or undesignated work in, on, over, under, through or across any scheduled navigable water, the federal government must approve it before it is undertaken.

"Work" includes:

- Any structure, device or other thing, whether temporary or permanent, that is made by humans, including a structure, device or other thing used for the repair or maintenance of another work
- Any dumping of fill in any navigable water, or any excavation or dredging of materials from the bed of any navigable water

Certain works require either approval from Transport Canada or the proponent to undertake public consultation. The act also allows for designation of specific works for which an approval is not required. For these works, conditions established by ministerial order under the act must be followed.

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.

The act prohibits the deposit of materials (such as stone) that are liable to interfere with navigation into navigable waters. It also prohibits dewatering of such waterways. These prohibitions apply to all navigable waters in Canada.

Maximum penalties under the CNWA are C$1-million. 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 act also allows for the imposition of administrative penalties of up to C$250,000.

4.10 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)

- Make recommendations to the federal Cabinet to make regulations prescribing MPAs and marine environmental quality requirements and standards.

The Minister also has the power to issue a ministerial order that will "freeze the footprint" of ongoing activities in a particular area, preventing any increase in human activities in that area. Contravening a regulation made for an MPA or a marine environmental quality requirement is an offence. Maximum penalties under the *Oceans Act* are C$12-million. 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.

4.11 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.

4.12 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 that 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 of 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 also allows for emergency orders in circumstances where there is an imminent risk of extirpation.

SARA has provisions that 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 is incidental. The conditions in SARA for permits are very strict, and as a result, it is very difficult to obtain one for industrial activities. The *Permits Authorizing an*

Activity Affecting Listed Wildlife Species Regulations establish the information that must be submitted for application for permits and time limits for consideration of such applications.

4.13 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.

Penalties for offences under the MBCA are a minimum of C$100,000 and up to a maximum of C$12-million for large corporations. Fines for small corporations are a minimum of C$25,000 and up to a maximum of C$8-million. Individuals may be liable for minimum fines of C$5,000, up to a maximum of C$2-million and/or three years of imprisonment. Fines are paid into the Environmental Damages Fund. Courts are required to order corporations to notify shareholders of the facts of the offence and details of the fines imposed.

4.14 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, Yoho, Waterton, Fundy, Vuntut and Nahanni 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.

4.15 Greenhouse Gas Pollution Pricing Act

The *Greenhouse Gas Pollution Pricing Act* establishes the legal framework and authority for the federal carbon pricing system. The main objective of the act is to have carbon pricing in effect in all Canadian jurisdictions by 2019 with a long-term goal of meeting Canada's 2030 carbon emissions reduction target. Under the act, a federal carbon pricing system has been implemented in provinces and territories that do not have carbon emission standards that align with federal requirements by 2019. The federal carbon pricing system is composed of a carbon levy or tax on fossil fuels (administered by the Canada Revenue Agency) and an output-based pricing system for emissions-intense industrial facilities (administered by Environment and Climate Change Canada). The act has been subject to constitutional challenges but has been upheld by provincial appeal courts, except in Alberta where the court of appeal found the carbon pricing scheme to be unconstitutional. Decisions rendered by the Ontario, Saskatchewan and Alberta courts are now under appeal to the Supreme Court of Canada. These appeals were heard in September 2020, and decisions have not yet been rendered. Effective April 1, 2020, New Brunswick is no longer subject to Part 1 of the act, thus the federal fuel charge no longer applies to it. However, the output-based pricing system under Part 2 of the act continues to apply.

4.16 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 14 pieces of federal legislation, including CEPA, the MBCA, the *Canada National Parks Act,* the *Greenhouse Gas Pollution Pricing 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 that 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. As of yet, no regulations have been registered implementing the penalty regime.

4.17 Criminal Law

The *Criminal Code* contains provisions that address corporate liability and potentially create avenues for charges to be brought against corporations in the event of activities that 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.

4.18 Canadian Energy Regulator Act

The *Canadian Energy Regulatory Act* established the Canadian Energy Regulator (CER), a federal agency that regulates interprovincial and international energy projects. The CER 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 CER grants certificates approving pipelines and power lines within the CER's jurisdiction, issues licences for the import and export of oil, gas and electric power, and regulates rates, tariffs and tolls. The CER's responsibility also includes ensuring environmental protection during the various phases of CER-regulated energy projects, including planning, construction, operations and abandonment.

Pipelines regulated by the CER that are also "designated projects" under the proposed IAA are subject to an impact assessment. The CER does not have jurisdiction to conduct impact assessments. If the application for a certificate relates to a designated project and is subject to an impact assessment, the Commission's powers, duties and functions regarding a recommendation to the Minister shall be exercised by a review panel established under the IAA. One member of the review panel must be appointed from the roster of persons who are commissioners under the act.

Subject to certain exceptions, the CER has authority to conduct public hearings with respect to the issuance, revocation or suspension of a certificate or leave to abandon the operation of a pipeline. Furthermore, the CER may hold a public hearing in respect of any other matter if it considers it advisable to do so.

Maximum fines under the act are C$1-million and/or imprisonment not exceeding five years. The act also provides for administrative monetary penalties. The maximum administrative monetary penalties for individuals and companies are C$25,000 and C$100,000, respectively.

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

Blakes | Blakes Means Business