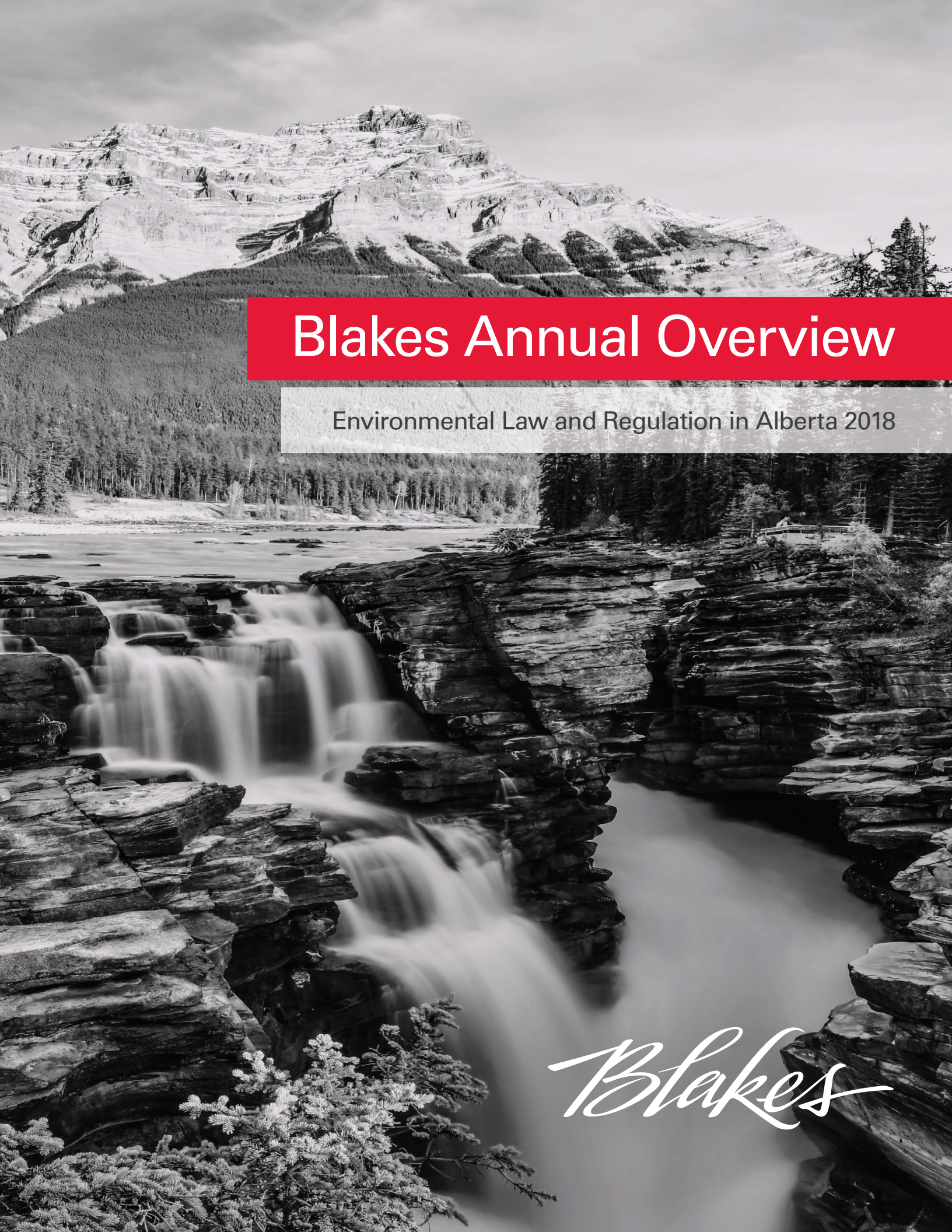

Blakes Annual Overview

Environmental Law and Regulation in Alberta 2018

Blakes

Blakes Annual Overview: Environmental Law and Regulation in Alberta 2018

Blakes Annual Overview: Environmental Law and Regulation in Alberta 2018 is intended as an introductory summary. Specific advice should be sought in connection with particular transactions. If you have any questions with respect to this Guide, please contact our Firm Managing Partner, Rob Granatstein, in our Toronto office by telephone at 416-863-2748 or by email at robert.granatstein@blakes.com. Blake, Cassels & Graydon LLP produces regular reports and special publications on Canadian legal developments. For further information about these reports and publications, please contact the Blakes Client Relations & Marketing Department at communications@blakes.com.

Contents

Blakes Calgary Environmental Group

The Blakes Calgary Environmental 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, brownfield development, transportation of dangerous goods
- Environmental due diligence training
- Endangered species
- Climate change regulation, carbon transactions and renewable fuels
- Renewable energy and clean technologies

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 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, including the remediation and reclamation of oil and gas wells and facilities, 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. The group has expertise pursuing and defending environmental actions involving contaminated sites, as well as advising clients on their liabilities and obligations pursuant to environmental protection orders.

Group members work closely with the Real Estate, Financial Services, Corporate & Commercial, Forestry, Oil & Gas, Energy, Power, Regulatory, Litigation, Aboriginal and Creditors' Rights groups within Blakes to provide environmental law advice to clients under a variety of circumstances. These include overseeing environmental site assessments and compliance reviews as part of major business transactions involving multiple properties across the country and around the world.

Duff Harper's environmental law practice is focused on environmental due diligence and liability issues, with a particular emphasis on complex environmental liability agreements and renewable energy matters. He is also a litigator and has acted as lead counsel in several litigation cases involving contaminated sites, both on behalf of contaminated property owners and potentially responsible parties.

Duff has appeared before numerous regulatory tribunals, including the Alberta Energy Regulator, Alberta Utilities Commission, National Energy Board, and *Canadian Environmental Assessment Act* tribunals. Duff also provides strategic regulatory environmental compliance, ghg emissions and environmental impact assessment advice to industrial clients, such as oil and gas and oil sands companies, mining companies, and liquefied natural gas proponents.

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Sandy Carpenter is widely recognized as one of the leading project development, aboriginal and regulatory lawyers in Canada. With over 25 years of experience acting for many of Canada's leading energy, oil and gas, and mining companies, Sandy brings together a unique combination of skills, understanding and insight that allow him to offer practical, timely and effective advice in a wide range of settings. Sandy is a past president of the Canadian Energy Law Foundation, has taught environmental law at the University of Calgary and is a frequent lecturer on current topics in resource development.

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Sarah Nykolaishen's practice focuses on energy regulation, as well as environmental, aboriginal and administrative law. Sarah has appeared and represented clients before the Alberta Court of Queen's Bench, the National Energy Board and the Alberta Surface Rights Board.

Sarah has also authored submissions for the Federal Court of Appeal, the Supreme Court of British Columbia, the Alberta Energy Regulator, the Alberta Utilities Commission, and the British Columbia Oil and Gas Appeal Tribunal.

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Terri-Lee Oleniuk's practice focuses on project-related issues concerning natural-resource development with a specialization in regulatory, environmental and Aboriginal law issues. She acts for a variety of companies in environmental assessments and regulatory proceedings to obtain approvals for major developments in the oil and gas, pipeline, mining (including metal, potash and diamonds), natural-gas processing, petrochemical, electricity transmission, hydro, solar and wind sectors.

Terri-Lee has appeared before the National Energy Board, the Alberta Energy Regulator, the Alberta Utilities Commission, the Alberta Natural Resources Conservation Board, the Mackenzie Valley Environmental Impact Review Board, the Mackenzie Valley Land and Water Board, and federal-provincial joint review panels in respect of environmental assessment proceedings.

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Lars Olthafer advises and represents upstream oil and gas producers, pipeline companies, and electrical generation and transmission companies on regulatory and environmental compliance and approval processes, public and aboriginal consultation, and land rights acquisition and compensation, in the context of both provincially and federally regulated projects, including northern and offshore developments. Lars regularly appears before energy boards and other regulating bodies in Alberta and B.C., as well as the National Energy Board and the National Energy Board Act Pipeline Arbitration Committee. He has also appeared before the Alberta Court of Queen's Bench, the Alberta Court of Appeal, and the Federal Court of Canada.

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Katie Slipp has advised and represented oil and gas developers, pipeline companies, electric generation and transmission companies and alternative energy companies in respect of regulatory and environmental approvals and compliance issues, public consultation matters, aboriginal issues, and surface land rights and compensation matters. She has experience in provincial (primarily Alberta and British Columbia) and federal environmental and regulatory regimes.

Katie has assisted clients before provincial regulators in Alberta and British Columbia, the National Energy Board and a Joint Review Panel, as well as all levels of courts in Alberta and at the Federal Court of Appeal.

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Nicole Bakker's practice focuses on energy regulation, as well as environmental and administrative law. Nicole has experience in reviewing and applying for regulatory and environmental approvals, regulatory compliance issues, public consultation matters, corporate matters, and surface land rights matters.

Nicole has assisted clients in matters before the National Energy Board, Alberta Energy Regulator, Alberta Utilities Commission, Alberta Surface Rights Board, British Columbia Oil and Gas Commission and British Columbia Surface Rights Board.

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Lindsey Mosher's practice focuses on energy regulation, as well as environmental and administrative law. She has experience in a broad range of regulatory matters, including regulatory compliance issues, regulatory approvals and hearings, and corporate matters.

Prior to joining Blakes, Lindsey obtained industry experience working in the legal department of a large Canadian oil and gas company, Alberta's utilities regulator and a large Canadian telecommunications company.

Lindsey has appeared before Alberta's utilities regulator, the Provincial Court of Alberta and the Court of Appeal of Alberta.

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Josh Smith's practice focuses on energy regulation and renewables as well as commercial, environmental and administrative law. Josh has a range of experience in regulatory matters, including regulatory and environmental compliance, emission and greenhouse gas regulation, regulatory approvals and hearings, and regulatory aspects of commercial transactions.

Josh has assisted with matters that have gone before the Alberta Utilities Commission, the National Energy Board, the Alberta Energy Regulator, the Court of Queen's Bench of Alberta, the Court of Appeal of Alberta and the Supreme Court of Canada.

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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 as to 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 environment. Environmental legislation in Canada is not only complex, but also often discretionary in the manner in which it is enforced. Courts have been active in developing new standards and principles for interpreting environmental legislation. In addition, civil environmental lawsuits (including class actions) are now commonplace in Canadian courtrooms, involving claims over contaminated land, 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, property and civil rights, or natural resources. For many matters falling under the broad label known as the "environment," both the federal and provincial governments can and do exercise regulatory responsibilities. This is referred to as "concurrent jurisdiction," which, in practical terms for business managers, means compliance with both provincial and federal legislation and regulations. 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.

Environmental laws frequently create offences for non-compliance that can lead to substantial penalties, including significant 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, which are fines that can be levied by the government regulators and boards, instead of courts. 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.

There are a number of agreements between the federal government and the provinces, which aim to create greater cooperation between the parties, improve information flow, and in some cases streamline regulatory requirements in areas of overlapping jurisdiction. An example of this is the Canada-Alberta Agreement on Environmental Assessment Cooperation (2005) and the Pan-Canadian Framework on Clean Growth and Climate Change (2016).

Most activities and projects in Alberta, including those involving natural resources and renewable-energy development, need to consider and address the potential impacts to aboriginal rights, which are constitutionally protected in Canada. The law has been rapidly

developing in this area over the last decade and impacts both provincial and federal governments and regulators. While it is beyond the scope of this overview to discuss these considerations in depth, governments must carry out consultation with First Nations on proposed activities on government land and, where necessary, accommodate the interests of First Nations. The scope and meaning of which will depend on the nature of the potential impact to a First Nation's rights.

This overview is designed to assist the reader in understanding the environmental regulatory maze in Alberta, but it is not intended to provide legal or other professional advice.

Readers should seek specific legal advice on particular issues with which they are concerned. For more information on how we can help you meet your business objectives, visit our website at www.blakes.com, or contact any member of the Blakes Calgary Environmental group.

The law is stated as of August 1, 2018.

2. Key Recent Legislative/Regulatory Developments

2.1 Alberta

2.1.1 Climate Leadership Plan

The Alberta government has launched the Climate Leadership Plan, designed for Alberta's unique economy, in order to address greenhouse gas (GHG) emissions coverage. The Climate Leadership Plan is anticipated to cover 78-90 per cent of Alberta's emissions. Several key aspects of the plan are:

- Implementing a new carbon price on greenhouse gas emissions
- Ending pollution from coal-generated electricity by 2030
- Developing more renewable energy
- Capping oil sands emissions to 100 megatonnes (Mt) per year
- Reducing methane emissions by 45 per cent by 2025

2.1.2 Carbon Levy and Rebates

Alberta currently imposes a carbon levy on heating and transportation fuels such as diesel, gasoline, natural gas and propane. The revenue generated from the levy is reinvested into the economy to fund efforts to reduce GHG emissions, develop renewable energy projects and green infrastructure, research and innovation, and rebates for Albertans to offset cost increases.

The rate of the carbon levy is currently C$30 per tonne. The rate is based on the amount of carbon pollution released by the fuel when it is combusted, not on the mass of the fuel itself.

As an alternative to the levy, large industrial emitters (facilities that emit 100,000 tonnes or more of GHG emissions per annum and certain facilities that emit between 50,000-100,000 tonnes per annum and have opted into the large-emitters program) are subject to the Carbon Competitiveness Incentive Regulation (CCIR) enacted under the *Climate Change Emissions Management Act*. The CCIR mandates that large industrial emitters reduce their annual emissions intensity to comply with sector-specific assigned benchmarks. Facilities can comply by:

- Making operational improvements to reduce emissions
- Using emission-performance credits generated at other large industrial emitters that achieved more than their required emissions reductions
- Purchasing Alberta-based carbon offset credits
- Contributing to Alberta's Climate Change and Emissions Management Fund (Fund) at a cost of C$30 per tonne of GHG emissions.

On-site combustion in conventional oil and gas will be addressed starting January 1, 2023 while that sector works to reduce methane under the government's new joint initiative on methane reduction and verification.

2.1.3 Oil Sands Emissions Limit Act and the Carbon Competitiveness Incentive Regulation

The Oil Sands Emissions Limit Act (OSELA) sets a cumulative GHG emissions limit for all oil sands sites of 100 Mt per year. The regulatory regime required to enforce this emissions limit is expected to be described pursuant to the CCIR.

2.1.4 Coal Phase-Out and Transition to Renewable Energy

Alberta committed to end emissions from coal-fired electricity under the Climate Leadership Plan and replace coal-fired power generation with renewable energy by 2030. This is expected to achieve cumulative GHG emission reductions of 67 Mt by 2030, and GHG emissions in 2030 will be at least 14 Mt below what is forecast under the status quo. This reduction is the equivalent of taking 2.8 million cars off the road. This move is intended to improve air quality and the health of Albertans and other Canadians, and ensure reliability, encourage private investment, and provide price stability for all Albertans.

2.1.5 Energy Efficiency Alberta Act

The *Energy Efficiency Alberta Act* (EEAA) establishes Energy Efficiency Alberta as a corporation with the mandate to raise awareness of energy use and consequences, deliver programs for energy efficiency, conservation and development of micro-generation and small-scale energy systems, and promote development of an energy-efficiency-services industry. While a number of the programs support consumer use, there are also incentives to encourage organizations to choose high-efficiency products. All business, non-profit and institutional customers serviced by an Alberta electric utility are eligible, except for new construction projects, federal and provincially owned buildings, and large industrial emitters, as defined under Alberta's CCIR.

2.2 Canada

2.2.1 Climate Change

Canada is a signatory to the Paris Agreement, which committed Canada to meeting nationally determined GHG contributions that are re-established every five years. Canada also signed a memorandum of understanding on climate change and energy collaboration with Mexico and the United States in February 2016.

Canada's plan to address climate change is through the Pan-Canadian Framework. This involves four main pillars: pricing carbon pollution; complementary measures to further reduce emissions across the economy; measures to adapt to the impacts of climate change and build resilience; and actions to accelerate innovation, support clean technology, and create jobs. Thus far, the federal government has committed to imposing a carbon levy on provinces that have not otherwise adequately priced carbon at an amount equivalent to the federal rate. The federal rate will involve the imposition of a levy of C$10 per tonne in 2018, which will rise by C$10 per tonne per year until 2022, when it will become C$50 per tonne. Although Alberta was initially a signatory, in late August of 2018 it pulled out of the Framework. Both Saskatchewan and Ontario are currently challenging the constitutional validity of the Framework and it is unclear what role the Framework will eventually have in the regulation of climate change matters.

2.2.2 Canadian Regulatory Review

The federal government established expert panels to consult with stakeholders and the public on the *Canadian Environmental Assessment Act* and the National Energy Board. Additional reviews of the *Fisheries Act* and *Navigation Protection Act* have also been undertaken. New legislation addressing each of the expert panels and review reports is expected to be forthcoming in late 2018 or 2019.

2.2.3 Administrative Monetary Penalties (AMP)

The Environmental Violations Administrative Monetary Penalties Regulations (AMPs Regulations) address violations under six acts and their associated regulations:

- *Antarctic Environmental Protection Act*
- *Canada Wildlife Act*
- *Canadian Environmental Protection Act, 1999, Parts 7 and 9 only*
- *International River Improvements Act*
- *Migratory Birds Convention Act*
- *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*

The AMPs Regulations specify the method used to calculate the amount of an AMP, including baseline penalty amounts for different types of violations and violators, and aggravating factors that, if applicable, increase the amount of the penalty.

3. Alberta Environmental Law and Regulation

3.1 Environmental Protection Act

The main source of environmental regulation in Alberta is the *Environmental Protection and Enhancement Act* (EPEA). The EPEA aims to protect air, land and water and sets out a process for environmental assessments, approvals and registrations, and supports a streamlined "single window" approach to approvals. Enforcement of the EPEA in the context of non-energy resource matters is by Alberta Environment and Parks (AEP). Energy-resource aspects, such as upstream oil, oil sands, natural gas, and coal development are administered by the Alberta Energy Regulator (AER). The AER's mandate includes all regulatory environmental functions pertaining to upstream oil and gas development as well as all energy-related and resource extraction issues.

3.1.1 Environmental Approvals

The EPEA requires an approval for five main categories of activity:

- Waste management
- Substance release
- Conservation and reclamation
- Miscellaneous (pesticides, designated materials, water wells)
- Potable (drinking) water

Where a project involves more than one activity, a blanket approval may be issued. Approvals are issued for a maximum of 10 years, but the director may set a shorter term. All major amendments and changes to an activity are subject to the approval process. An approval

may be suspended or cancelled, and may only be transferred on written consent of the director.

Individuals whose work could affect the environment may be required to obtain qualification certificates. A certificate of qualification is needed for work related to pesticides, potable water, substance releases, or wastewater and storm drainage.

An environmental assessment is required where the complexity and scale of a proposed project, technology, resource allocation, or siting considerations create uncertainty about the exact nature of potential environmental effects, or result in a potential for significant adverse environmental effects. This process allows companies and government decision-makers to examine the effects that a proposed project may have on the environment. AEP continues to maintain a single register of all Alberta environmental assessment activity information.

3.1.2 Air Emissions

Air emissions are addressed through Alberta's Air Quality Management System. AEP has adopted the Clean Air Strategic Alliance (CASA) vision, which is: "The air will have no adverse odour, taste, or visual impact and have no measurable short- or long-term adverse effects on people, animals or the environment."

The Industrial Release Limits Policy is EPEA's specific policy for industrial air emission release limits, under which:

- Ambient Air Quality based limits are derived by calculating how much of a given pollutant can be released under normal source operations and worst-case environmental conditions, while still meeting ambient air, water and soil quality guidelines. Chemical-specific, whole effluent toxicity, biological assessment techniques, dispersion modelling and ground level concentrations are used to set limits that maximize ecological protection.
- Technology limits are release limits that require the use of the most effective demonstrated pollution prevention and control technologies. Sector-specific technology limits may also be developed.

A facility must also meet the standard of the National Base-Level Industrial Emissions Requirements, which may be more stringent than Alberta standards for certain parameters.

3.1.3 Waste Management

The EPEA is the main Act dealing with waste management, which includes the Waste Control Regulation (WCR). The WCR addresses both hazardous and non-hazardous wastes, waste-disposal facilities and recycling facilities. The Alberta government is currently undergoing a review of the WCR and associated documents to improve and modernize the waste-management regime.

3.1.4 Spills and Releases

The EPEA defines release as including "to spill, discharge, dispose of, spray, inject, inoculate, abandon, deposit, leak, seep, pour, emit, empty, throw, dump, place and exhaust." Releases of substances must be reported by anyone who releases, causes or permits the release of a substance into the environment that may cause an adverse effect. In addition, the person responsible for the substance must take all reasonable measures to clean up the substance and restore the environment. Failure to report or remediate a release is an offence under the EPEA.

3.1.5 Pesticides (Ministerial) Regulation

The EPEA controls the sale, use, application, handling, storage, transport, and disposal of pesticides in Alberta. Alberta has further subdivided the federal classes of pesticides into four categories based on the potential hazard to human health or the environment.

To sell pesticides in Alberta, a person or company must generally either hold a Pesticide Vendor Registration or a valid Agrichemical Warehousing Standards Association (AWSA) certification of compliance, although sales of certain household pesticides may be exempt. AWSA certificates of compliance holders are deemed registered and do not need to obtain a Pesticide Vendor Registration. There are two classes of registrations: wholesale and retail.

3.1.6 Potable Water Regulation

Alberta's drinking water is generally regulated by the *Potable Water Regulation* under the EPEA. It mandates design standards and water-treatment requirements so that water-quality requirements are met. It also sets requirements for water treatment plant operation and maintenance. Additionally, a certified operator must perform or direct the operation of a water-treatment plant or distribution system.

3.1.7 Oil Sands Environmental Monitoring Program Regulation

This regulation establishes the Oil Sands Environmental Monitoring Program and provides rules, provisions and stipulations enabling the collection of monitoring fees from oil sands operators, access to the land for monitoring, and for providing records necessary for the determination of an assessment. Participation is mandatory if a person has a subsisting oil sands approval or an active oil sands application.

3.1.8 Enforcement

Enforcement of the EPEA generally involves quasi-criminal charges, AMPs or environmental protection orders (EPOs). If charged with a quasi-criminal violation of the EPEA and found guilty, corporations can face up to C$1-million in fines. Additional fines may occur if additional monetary benefits arose from the offence. Furthermore, directors and officers may be liable if they authorized, assented, acquiesced, or participated in the commission of the offence. If an individual is charged and convicted, he/she may be subject to fines of up to $100,000 and/or imprisonment for up to two years. Available defences include due diligence.

Corporations and other persons may be subject to AMPs in lieu of quasi-criminal charges. The maximum AMP amount that can be imposed is C$5,000 per day or part of a day on which the contravention occurs. The director may also impose a one-time amount to address the economic benefit associated with the violation. Unlike quasi-criminal charges, there is no explicit due diligence defence to an AMP.

In addition to, or in lieu of, quasi-criminal charges or AMPs, corporation and other persons may be subject to an EPO. An EPO can be issued by the AEP or AER and may include provisions requiring persons to stop certain activities and/or remediate impacted areas. Because an EPO is activity-specific, compliance with it may result in a significant monetary outlay prior to compliance. In a manner similar to AMPs, there is no explicit due diligence defence once a person is named in an EPO.

3.2 Alberta Water Act

The Water Act (WA) mandates usage of water, prioritizing household water as a statutory right. It protects existing water licences that are in good standing and existing traditional agricultural uses of water through a concept predicated upon “first in time, first in right”. In times of water shortages, the most recently issued water licences are the first to be curtailed prior to the curtailment of older water licences, without any imposition of pro-rata water sharing.

The WA provides a one-window licensing and approval process for water-related activities and diversions and covers any activity: that alters the flow or water level; could cause siltation or erosion; affects aquatic life; or alters the location of water. A “diversion of water” is defined in the WA as the impoundment, storage, consumption, taking or removal of water for any purpose. A licence is typically required to commence or continue a diversion of water or operate a works to divert. It is onerous to obtain a licence to export outside of Canada or to transfer water between major river basins. Water licences may be transferred to increase flexibility of water management. There is currently a moratorium on the issuance of new water licences in the South Saskatchewan River basin.

There are a wide range of enforcement measures under the WA, including inspections, seizures without warrants, or enforcement orders including stopping or shutting down any activity. If a corporation is guilty of an offence, it can be subject to a fine up to C$1-million. There may be additional fines if a person received monetary benefits from the offence. Additionally, directors, officers and agents may be liable if they directed, authorized, assented to, acquiesced in, or participated in the commission of the offence. If convicted he/she may be subject to fines of up to $100,000 and/or imprisonment of up to two years. Available defences include due diligence.

3.3 Soil Conservation Act

Landholders are required to prevent soil loss or deterioration from taking place or to stop loss or deterioration from continuing under the Soil Conservation Act (SCA). Authority is delegated to local municipalities and the SCA outlines the powers and duties of the designated officers.

Where a landholder fails to meet the requirements of the SCA, the landowner may be served with a notice directing him or her to take remedial action within a specified time — usually 30 days. If the landholder fails to comply with the directions given in the notice, a person authorized by the local authority may enter upon the land and take remedial action at the landholder’s expense.

3.4 Cumulative Impacts

3.4.1 Alberta Land Stewardship Act

In addition to EPEA’s environmental assessments, projects may be assessed on a cumulative impact basis pursuant to the *Alberta Land Stewardship Act* (ALSA). This framework permits the Alberta government to give direction on the province’s economic, environmental and social objectives, and to create policy that enables sustainable development through cumulative effects management. A holistic approach is taken and development decisions are considered in light of the overall impacts to a region. The types of cumulative effects considered may include (among other things) water withdrawals, air emissions, land-based environmental impacts and overall habitat degradation.

Alberta is divided into seven regions under the ALSA: Lower Peace, Upper Peace, Lower Athabasca, Upper Athabasca, North Saskatchewan, South Saskatchewan and Red Deer Region. Each region is or will be subject to a separate regional plan based on its particular environmental, economic and social needs. Regional plans are ultimately approved by cabinet and thus form part of the government's policy for the area. Consequently, regional plans may be viewed as top-down policy directives governing the interpretation and implementation of all legislation in Alberta including, where appropriate, statutes whose primary focus is not the environment.

Currently two regional plans have been finalized, including:

- Lower Athabasca Regional Plan (LARP), which encompasses significant portions of the Alberta oil sands regions. The LARP has been in force since September 1, 2012.
- South Saskatchewan Regional Plan (SSRP), which encompasses the south-central part of the province including Calgary. The SSRP has been in force since September 1, 2014.

3.5 Transportation

3.5.1 Dangerous Goods Transportation and Handling Act

Alberta Transportation is responsible for safety on provincial roads and railways. The primary goal is to reduce the number of highway fatalities and serious injuries. A component of that is the transportation of dangerous goods. Alberta Transport has agreements with AEP and the AER as a contact point for contraventions, spills and complaints.

Alberta Transport has dually appointed provincial and federal Dangerous Goods Inspectors who inspect dangerous goods facilities, monitor highway tank facilities and respond to incidents involving dangerous goods. The *Dangerous Goods Transportation and Handling Regulation* sets safety standards and shipping requirements for thousands of dangerous goods, in addition to providing a means of communicating the nature and level of danger associated with various chemicals and other products.

The Dangerous Goods and Rail Safety section investigates issues of non-compliance or suspected incidents of non-compliance involving individuals, facilities and carriers that handle, transport or offer to transport dangerous goods. This includes facilities that manufacture, modify, assemble, repair, inspect and test means of containment that are used for the transportation of dangerous goods.

3.5.2 Railway (Alberta) Act

Intra-provincial railways are regulated by the *Railway (Alberta) Act* (RA). Alberta Transportation's Dangerous Goods and Rail Safety branch is responsible for administering the RA and its associated rules, regulations and standards. Rail Safety is responsible for conducting compliance reviews of operations, including training, procedures and company inspections, conducting inspections of rolling stock, crossing signals, dangerous goods loading racks and tracks, investigation of incidents, legislative review and enforcement. Approvals are required for construction and to authorize new railway tracks being placed into operation. The RA also mandates requirements for crossings and fences.

3.5.3 Pipeline Act

Alberta's Pipeline Act and its associated Pipeline Regulation set requirements for the design, construction, operation and maintenance of intra-provincial pipelines, including their discontinuation and abandonment.

Pipeline is defined to mean a pipe used to convey a substance or combination of substances, including installations associated with the pipe. The AER generally has jurisdiction over pipelines, except for water pipelines not associated with an oil and gas or coal facility, pipelines that convey gas at or below a maximum operating pressure of 700kPa, or pipelines that convey sewage.

Gas utility pipeline is defined in the *Gas Utilities Act*. The Alberta Utilities Commission (AUC) has jurisdiction over gas utility pipelines, and performs all of the same functions and duties of the AER for these pipelines. The exception involves pipeline inspection. For both the oil and gas and the utilities pipelines, inspections are conducted by the AER to determine potential risks of pipelines based on factors such as the fluid carried, location, line size, failure history and the operator's compliance history. An investigation includes inquiries into the control of pollution and conservation of the environment. After a serious incident, the AER conducts comprehensive incident investigations to determine the cause of a pipeline failure and what can be done to prevent a similar situation in the future.

A licence is required to construct a pipeline, which is transferrable upon consent of the AER/AUC. Approvals are also required for water or irrigation crossings. If a leak or break occurs in a pipeline, the licensee is immediately required to inform the regulator of the location. The regulator can also direct the clean up by the person whom the regulator considers could be responsible.

3.6 Natural Resources Legislation

3.6.1 Forests Act, Forest and Prairie Protection Act and Safety Codes Act

The *Forests Act* (FA) provides a mechanism for allocation and disposal of timber and specifies the method of disposal of Crown timber through forest-management agreements, quota certificates and timber permits. Additionally, the FA and its regulations outline timber damage assessment requirements for industrial disturbances.

The *Forest and Prairie Protection Act* (FPPA) enables the protection of Alberta's forests and prairies from wildfire. It establishes the fire season and enables cost-recovery and fire-control orders. The FPPA also identifies firefighting responsibilities and describes the authority of forest officers and fire guardians. It provides conditions for conducting industrial operations and other human activities and identifies offences and penalties.

Alberta's *Safety Codes Act* (SCA) is relevant to environment legislation due to the Fire Code Regulation enacted thereunder. The Fire Code Regulation is one of the primary regulations governing the construction and installation of above ground storage tanks and grants extensive authority to safety code officers.

3.6.2 Mines and Minerals Act

Mining activities are governed by Alberta's *Mines and Minerals Act* which, together with the regulations, provides for the exploration, development and closure of mines. A closure certificate is granted by the Minister if the lessee has completed requirements such as abandoning wells and facilities, complied with reclamation under the EPEA, and captured carbon dioxide with no significant risk of future leakage. Regulations set additional requirements for specific activities, for example the *Exploration Regulation* details requirements for abandonment of test holes.

3.6.3 Oil and Gas Conservation Act

The *Oil and Gas Conservation Act* (OGCA) establishes the regulatory regime for the development of oil and gas resources and related facilities in Alberta. It is administered by the AER, and includes the *Oil and Gas Conservation Rules* (Rules). The OGCA empowers the regulator to suspend or abandon a well or facility if necessary to protect the public or the environment. Broad powers are also given to the AER to do anything else necessary to ensure the safety of the public and the environment in the case of an escaped substance.

The Rules establish licensing and production standards for oil and gas extraction to encourage the efficient development and conservation of Alberta's oil and gas resources. In that regard they govern well licensing and abandonment, drilling spacing units, blocks, projects, and holdings, and other oil and gas production operations. The Rules also establish administrative standards for recording, collecting, and reporting oil and gas well data. Additionally, they mandate that operators install equipment that protects the environment from releases, including blow out preventers and equipment at batteries.

3.6.4 Oil Sands Conservation Act

The *Oil Sands Conservation Act* (OSCA) creates the regulatory framework administered by the AER for oil sands resources and related facilities, including both in-situ and mining. The OSCA restricts wasteful operations, which are defined as activities that could result in lost oil sands production or producing without the capability of getting the oil sands production to market.

The *Oil Sands Conservation Rules* provide requirements related to mining operations, in-situ operations, processing plants and other general matters. They include requirements pertaining to burning gas, flaring, waste, spills, fire or other damage.

3.7 Fish and Wildlife Legislation

3.7.1 Fisheries (Alberta) Act

Fishing in Alberta is managed by the AEP under the *Fisheries (Alberta) Act* (FA). The FA controls licences for fishing, transportation of fish, fish stocking and the handling, marketing, processing, storage, preservation, sale and disposition of fish. It also prohibits the possession, importation and sale of prescribed invasive organisms without approval, and provides unique protections for fish that allow action to be taken to prevent the spread of ecological threats to fish, including fish parasites, diseases and genetic contamination.

Regulations enacted under the FA establish licences to authorize fishing, fish culture, research, import of aquatic species, fish stocking, salvage fishing and competitive fishing events. Licence requirements are designed to conserve wild fish stocks, protect them from exposure to diseases and parasites, prevent invasive species from becoming established, prevent illegal introductions and ensure edible fish are properly handled and preserved for human consumption. The regulations also set out record-keeping requirements for fish-culture facilities and contain unique measures to prevent invasive species from becoming established.

3.7.2 Alberta's Wildlife Act

Alberta's *Wildlife Act* (WA) provides for the protection and conservation of wild animals in Alberta. It defines controls for hunting and trapping of wildlife and possession of wildlife and

wildlife parts, as well as the sale, import and export of wildlife, controlled animals and endangered species. Commercial activities such as guiding, buying fur, taxidermy, tanning and zoos are required to operate under licences or permits issued under the WA. The WA and its regulations regulate many activities in relation to hunting, safety, commercial operators, protecting wildlife from disease outbreaks and dealing with wildlife damage to property. Wildlife sanctuaries and other special areas where wildlife are protected from the activities of people are also created under the WA.

The Endangered Species Conservation Committee (Committee) is enabled by the WA. The Committee's purpose is to advise the Minister on species to list as endangered, recovery plans, biodiversity conservation and other matters. Endangered species recovery plans may include population goals and identification of critical habitats and of strategies to enable populations to recover. Under the WA, disturbance of wildlife habitation is an offence unless there is authorization; therefore, habitat conservation can affect many major projects.

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 Aboriginal land. CEPA establishes a system for evaluating and regulating toxic substances, imposes requirements for pollution-prevention planning and emergency plans and contains broad public participation provisions. CEPA is administered by Environment Canada.

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) mercury from chlor-alkali mercury plants; and (4) vinyl chloride from vinyl chloride and polyvinyl chloride plants. The current trend is for Environment Canada to focus on substance-specific regulations, some of which, like chlorofluorocarbons, are considered air pollutants.

CEPA establishes a system for obtaining a permit from Environment Canada to dispose of waste at sea. Permits typically govern timing, handling, storing, loading, placement at the disposal site, and monitoring requirements. The permit assessment phase involves public notice, an application that provides detailed data, a scientific review and payment of fees.

The *Multi-Sector Air Pollutants Regulations* have been introduced, which create compulsory air-pollutant limits on major industrial facilities. They aim to limit the amount of (1) nitrogen oxide emitted from new and existing-fuel-fired non-utility boilers and heaters; (2) nitrogen oxides emitted from modern and pre-existing stationary spark-ignition gaseous-fuel-fired engines used by many industrial facilities; and (3) nitrogen oxides and sulphur dioxide emitted from cement kilns. The new regulations are part of the federal government's contribution to the implementation of the Air Quality Management System. They will apply to various industries including oil and gas, oil sands, power plants and chemical facilities. They will be implemented over a number of years.

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 by 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. Indeed, the U.S. climate change policies may change dramatically during President Donald Trump's administration.

In December 2011, the Canadian government formally withdrew from the Kyoto Protocol (pursuant to which Canada had international commitments to reduce GHG emissions). However, as highlighted in the Key Legislative/Regulatory Developments section of this Guide, Canada is now a signatory to the Paris Agreement, negotiated at the 21st Conference of the Parties in December 2015 and will be implementing a minimum price on carbon of C$10 per tonne throughout the country beginning in 2018. The price would increase by C$10 per tonne per year to C$50 per tonne by 2022.

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.

4.1.5 Environmental Emergencies

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

4.1.6 Enforcement

Maximum penalties under CEPA are C$1-million and/or three years' imprisonment for individuals and C$6-million for large corporations. In addition, courts can levy fines equal to profits earned as a result of the commission of the offence. The Act gives enforcement officers the authority to issue Environmental Protection Compliance Orders to stop illegal activity or require actions to correct a violation. The *Environmental Violations Administrative Monetary Penalties Act* (discussed below) allows for administrative monetary penalties for non-compliance with CEPA.

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

In part as a response to the tragic events of Lac-Mégantic in Quebec in 2013 when runaway railcars resulted in 47 deaths and the destruction of several blocks of the downtown area, the federal government has updated the Workplace Hazardous Material Information System (WHMIS) and the transportation of dangerous goods regime to incorporate new standards for classification and labelling of chemicals, containers that transport them, and emergency-response-assistance plans.

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*.

A new federal "protective direction" will require railway operators to provide more data on the shipment of dangerous goods that travel through Canadian cities. Protective Direction No. 36 calls for railways to share more information with municipalities and first responders to help them with emergency planning and risk assessment. The information provided to municipalities will be available to the general public through Canada's Open Government Portal website. Protective directions are issued by government in circumstances requiring immediate action to deal with an emergency that involves a danger to public safety. They take immediate effect on the date they are signed.

Maximum penalties under the TDGA are C$100,000 and/or two years' imprisonment. In addition, any property which had been seized by a federal inspector in relation to the offence may be forfeited to the government. TDGA also provides for court orders to refrain from doing anything regulated by the TDGA for up to a year, for compensation to anyone damaged by the commission of an offence, for rehabilitation of the environment, and to pay money towards research and development. Further, in the event of an accidental release, orders can be made requiring the removal of dangerous goods to an appropriate place, requiring that certain activities be undertaken to prevent the release or reduce the danger, and requiring that certain persons refrain from doing anything that may impede the prevention or reduction

of danger. If non-compliance with the TDGA is anticipated, a person may apply for either a permit of exemption or a permit of equivalent level of safety.

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, which is intended for use in a workplace in Canada. Prohibited, restricted and controlled products are defined in the regulations and are collectively referred to as "hazardous products." Maximum penalties under the HPA are C$5-million and/or two years' 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' imprisonment. Enforcement officers can shut down activities and require measures necessary to prevent health or environmental risks.

4.5 Canadian Environmental Assessment Act

The *Canadian Environmental Assessment Act, 2012* (CEAA 2012) is intended to identify and mitigate against significant adverse environmental effects prior to project approvals, and provide for meaningful opportunities for public participation. Under CEAA 2012, the review

process is carried out by three federal bodies: the Canadian Nuclear Safety Commission (CNSC), the National Energy Board (NEB) and the Canadian Environmental Assessment Agency (CEA Agency). There is also a provision allowing the Minister to add other responsible authorities.

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

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

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

The federal *Species at Risk Act* (discussed in 4.12 below) require the CEA Agency, the CNSC or the NEB to ensure that species at risk which may be impacted by a designated project are considered in the environmental assessment, and that any proposed mitigation strategies are consistent with recovery strategies and action plans.

Once an environmental assessment is completed by the CEA Agency or the CNSC, a decision is made as to whether the proposed project should be allowed to proceed. If there are no significant environmental effects, then the Minister of Environment and Climate Change Canada or the CNSC are empowered to make the decision. If significant environmental impacts are predicted to occur, then the decision to let the project proceed is made by the Governor in Council (i.e., the federal Cabinet). For projects reviewed by the NEB, both the determination of significant environmental impact and whether the project may proceed, is made by the Governor in Council. A "decision statement" is then issued under CEAA 2012, approving the project and stipulating conditions that will mitigate any environmental effects. These conditions are binding and enforceable, and subject to a penalty for non-compliance of up to C$400,000 per day. Projects cannot proceed without a decision statement.

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

CEAA 2012 allows for the delegation of federal environmental assessment to provincial governments or agencies, or the substitution of a provincial review process when there is an equivalent assessment by another jurisdiction. Canada has an agreement with Alberta that coordinates the environmental assessment process for projects that are subject to both jurisdictions.

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

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 also an offence for anyone to carry on a work, undertaking or activity that results in serious harm to fish that are part of a commercial, recreational or Aboriginal fishery, or to fish that support such a fishery. Serious harm to fish includes harm to fish and permanent alteration or destruction of fish habitat. Because of the manner in which commercial, recreational or Aboriginal fishery is defined this prohibition applies to most coastal and internal waters in Canada. The DFO may issue authorizations to permit serious harm to fish (and fish habitat). The application process is set out in the *Application for Authorization under Paragraph 35(2)(b) of the Fisheries Act Regulations*. Failing to comply with conditions of an authorization is also an offence.

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, and where a detriment to fish habitat or fish may reasonably be expected to occur, the persons responsible are obligated to notify the DFO or Environment Canada. The Act also requires reporting the occurrence of a serious harm to fish (which includes fish habitat) or a serious or imminent danger thereof. There is also a requirement to provide written reports after both of these notifications are made, and a concurrent duty to take measures to prevent the occurrence of a serious harm to fish or a deposit, 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 for equivalency or delegation of administrative functions. The federal government has entered into three *Fisheries Act* equivalency agreements (Saskatchewan, Quebec and the Yukon). Through equivalency agreements, the provisions under the laws of a province are deemed equivalent in effect to provisions of corresponding federal legislation. These equivalency agreements allow for the substitution of *Fisheries Act* regulations addressing municipal waste (sewage) systems by the provincial equivalents.

The changes to the *Fisheries Act* also created the *Regulations Establishing Conditions for Making Regulations under Subsection 36(5.2) of the Fisheries Act*, which allow the Minister of Fisheries and Oceans to make regulations allowing deposits of deleterious substances in

circumstances that include deposits that are authorized under other federal or provincial laws or guidelines.

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' 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, which 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. Maximum fines for offences under the Act are C$100,000.

4.9 Navigation Protection Act

The *Navigation Protection Act* (NPA) 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 NPA prohibits the unauthorized construction or placement of a "work" on, over, under, through or across any navigable waters that are listed in a schedule to the Act. This list includes Canada's major rivers, lakes and the three oceans it borders. Where a project falls

into the definition of “work” and is on a prescribed water body, the federal government must approve it before it is undertaken.

“Work” includes:

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

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 NPA prohibits the deposit of materials (such as stone) which 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 NPA are C$50,000. In addition, an owner may be liable for the costs of removal and destruction of works. Where the materials are deposited by a vessel, the vessel is liable for the fine and may be detained until it is paid. The Act also allows for the imposition of administrative penalties of up to C$40,000.

4.10 Oceans Act

Under the *Oceans Act*, the Minister of Fisheries and Oceans fulfils a coordinating 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

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

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 which has been identified in any of the plans required under the Act. Such plans include recovery strategies and action plans for endangered or threatened species and management plans for species of concern. Plans are currently being developed by Environment Canada in partnership with the provinces, territories, wildlife management boards, First Nations, landowners and others. SARA allows for compensation for losses suffered by any person as a result of any extraordinary impact of the prohibition against the destruction of critical habitat. SARA provides for considerable public involvement, including a public registry and a National Aboriginal Council on Species at Risk which provides input at several levels of the process. Maximum penalties under SARA are C$2-million and/or five years' imprisonment.

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

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 will be implemented in provinces and territories that do not have carbon emission standards that align with federal requirements by 2019. The federal carbon-pricing system will be composed of a carbon levy or tax on fossil fuels (to be administered by the Canada Revenue Agency) and an output-based pricing system for emissions-intense industrial facilities (to be administered by Environment and Climate Change Canada).

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 13 pieces of federal legislation, including CEPA, the MBCA, the *Canada National Parks Act* and the *Canada National Marine Conservation Areas Act.* Maximum penalties are C$5,000 for an individual and C$25,000 for other accused entities. AMPs are an alternative to the more traditional 'penal' route for enforcement, and if the government proceeds with an AMP for a violation, it is precluded from prosecuting it as an offence. However, not all environmental violations may be handled under the EVAMP Act; only those which have been identified in regulations. The EVAMP Act allows accused entities to request a review of an AMP, but the defences of due diligence and reasonable mistake of fact are not available. 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 which 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 National Energy Board Act

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

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

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

Maximum fines under the Act are C$1-million and/or imprisonment not exceeding five years. Under the *Administrative Monetary Penalties Regulations*, contravention of an order or decision made under the Act, or failure to comply with a term of a certificate, licence or permit is a violation subject to an AMP. The maximum AMPs for individuals and companies are C$25,000 and C$100,000, respectively.

Blakes Calgary 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 the *Canadian Environmental Assessment Act* and Alberta's *Environmental Protection and Enhancement 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
- Renewable fuels
- 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
- Oil and gas practices and regulatory compliance
- 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
- Electricity market rules advice
- Project development and permitting (conventional and renewable energy)
- Compliance with climate change regulations
- Climate change fiscal measures advice
- 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
- Electricity market notice of disputes (defence)

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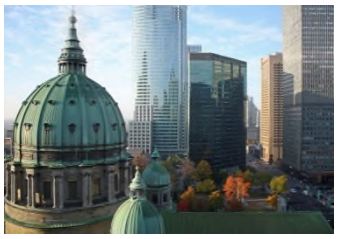

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