



# Shaken and Stirred: Hot Topics

2012 Remediation Technologies Symposium  
(RemTech)

Pre-Conference Workshop: License to Spill? –  
Regulatory and Environmental Law Highlights

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## Changes to Federal Environmental Legislation

- Process:
  - First tabled in late April 2012 as part of budget bill (entitled *Jobs, Growth and Long-term Prosperity Act*)
  - If voted down results in ‘non-confidence’ vote:
    - Parliament prorogued
    - Election must be called

## Changes to Federal Environmental Legislation

- Budget bill was passed
- Changes to:
  - *Canadian Oil and Gas Operations Act*
  - *Nuclear Safety and Control Act*
  - *Species at Risk Act*
  - *Canadian Environmental Protection Act*

# Changes to Federal Environmental Legislation

- Significant changes to:
  - *National Energy Board Act*
  - *Fisheries Act*
  - *Canadian Environmental Assessment Act*

## Changes to *Federal Environmental Legislation*

- *Fisheries Act*
  - Intent: focus on protection of fish that support commercial, recreational or Aboriginal fisheries (newly created categories of fisheries)
  - addition of minimum prescribed penalties for certain offences

## Changes to *Federal Environmental Legislation*

- *Fisheries Act*
  - authorizes Cabinet to enact regulations excluding certain waters from prohibition on harmful alteration, damage or destruction of fish habitat or harm to fish

## Changes to *Federal Environmental Legislation*

- *Fisheries Act*
  - Result:
    - less protection for fish species and habitat which are not directly used by humans
    - more protection for ‘valued’ fish species and habitat
    - ecosystem impacts?

## Changes to Federal Environmental Legislation

- *Canadian Environmental Assessment Act*
  - completely repealed and replaced with *Canadian Environmental Assessment Act, 2012*
  - in force as of July 6, 2012
  - establishes a new federal assessment regime
  - substantively different than previous regime

## Changes to *Federal Environmental Legislation*

- *Canadian Environmental Assessment Act, 2012*
  - intent: focus on larger projects that have a greater potential for significant adverse effects
  - CEAA, 2012 only comes into play for “designated projects”
  - eliminates ‘comprehensive study’ environmental assessments

# Changes to Federal Environmental Legislation

- *Canadian Environmental Assessment Act, 2012*
  - Time limits imposed
    - 365 days for EAs by CEA Agency
    - 18 months for EAs by NEB
    - 24 months if EA handled by review panel or currently subject to comprehensive review
  - subject to extensions
  - only apply to ‘complete applications’

## Changes to *Federal Environmental Legislation*

- *Canadian Environmental Assessment Act, 2012*
  - public participation in review panel environmental assessments limited to “interested parties”
  - “interested parties” defined as person ‘directly affected’ by project or who has relevant information of expertise

## Changes to Federal Environmental Legislation

- *Canadian Environmental Assessment Act, 2012*
  - EAs now restricted to areas within federal jurisdiction
  - decidedly backs away from broad interpretation contained in *Red Chris* decision of Supreme Court of Canada

# Changes to Federal Environment Legislation

- *Canadian Environmental Assessment Act, 2012*

## Result:

- 492 federal environmental assessments cancelled in BC alone (Vancouver Sun – August 22, 2012)
- 2970 screenings cancelled across Canada (Edmonton Journal – August 24, 2012)
- Jobs, Growth and Long-term Prosperity?

# Changes to Federal Environmental Legislation

- *National Energy Board Act*
  - intent: to streamline regulatory process
  - also in force as at July 6, 2012
    - Establishes time limits for regulatory review
      - Can be altered by chair of NEB
  - transfers responsibility for final decision on pipelines to Cabinet

# Changes to Federal Environmental Legislation

- *National Energy Board Act / CEAA 2012*
  - Example:
    - changes applied to ongoing Northern Gateway Pipeline process
    - joint review panel under CEAA and NEB

# The World Is Not Enough

- Pipeline Concerns
  - recent publicized pipeline ruptures have raised concerns about aging pipelines
  - ERCB hired third party to review pipeline operations and safety measures

# The World Is Not Enough

- Pipeline Concerns
  - shared jurisdiction in Alberta
    - AESRD – under *Environmental Protection and Enhancement Act (EPEA)*, *Water Act* and *Public Lands Act*
    - ERCB – under *Pipeline Act*
    - NEB – if pipeline cross provincial or national boundaries

# The World Is Not Enough

- Pipeline Concerns

## AESRD

- Spills/releases and related reporting obligations under EPEA same as other types of industrial activity
- Prohibition on releasing substances which have caused, are causing, may cause adverse affects on the environment
- Obligation to report such releases

# The World Is Not Enough

- Pipeline Concerns

## ERCB

- *Pipeline Act* establishes authority
- *Pipeline Regulation* has specific technical requirements
  - *Basic requirements adopted from current Canadian Standards Association CSA Z662: Oil and Gas Pipeline Systems*

## The World Is Not Enough

- Pipeline Concerns

### ERCB

- Directive 077: Pipelines – Requirements and Reference Tools
- Number of other directives also applicable to pipelines

# The World Is Not Enough

- Pipeline Concerns

## ERCB

- Regulates design, construction, operation and maintenance
- Also regulates discontinuation and abandonment
- Requires development and implementation of integrity management programs

## The Man With The Golden Gun

- Federal Legislative Changes
  - new *Reduction of Carbon Dioxide Emissions from Coal-Fired Generation of Electricity Regulations*
  - implements emissions-intensity standards for new units and for end of life units
  - extensions for units incorporating carbon capture and storage contemplated as well as provincial equivalency agreements

## Quantum of Solace

- *Land Stewardship Act*
  - authorizes creation of Regional Plans for seven different regions
  - Lower Athabasca Regional Plan (LARP) recently approved by Cabinet
  - ‘trumps’ existing regulatory schemes

## Quantum of Solace

- Lower Athabasca Regional Plan (LARP)
  - encompasses Fort McMurray area
  - creates defined areas where certain activities will be (or will not be) carried out
  - cancels existing authorizations which do not conform to land use (with compensation)

## Quantum of Solace

- Additional Regional Plans
- South Saskatchewan Plan in consultation phase
  - more populated and historically impacted area of province
  - particular concerns over water (use, quantity, quality)



**QUESTIONS?**

**THANK YOU!**