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  - completely repealed and replaced with *Canadian Environmental Assessment Act, 2012*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
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• 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*
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• 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!