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BLAKES GUIDE TO ENVIRONMENTAL LAW IN CANADA

*Environmental Law in Canada* is intended as an introductory summary of the principal laws and regulations in Canada and the provinces of British Columbia, Alberta, Quebec and Ontario, concerning environmental protection and conservation. Specific advice should be sought in connection with particular matters or transactions. If you have any questions with respect to *Environmental Law in Canada*, please contact one of our environmental lawyers listed in this guide.

Blakes regularly produces reports and special publications on Canadian legal developments. For further information about these reports and publications, please visit www.blakes.com.

This guide is current to September 2012.

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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 and corresponding activity intent upon protecting the environment.

Indeed, the environment has become such an important issue, it is imperative that anyone in a business venture be fully informed on what the relevant environmental laws allow and prohibit, and how to respond to the demands of both 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 and regulation is not only complex, but all too often exceedingly vague, providing environmental regulators with considerable discretion in the enforcement of the law.

Consequently, courts have been active in developing new standards and principles for enforcing environmental legislation. In addition, civil environmental lawsuits are now commonplace in Canadian courtrooms involving claims over chemical spills, contaminated land, noxious air emissions, noise and major industrial projects. The result has been a proliferation of environmental rules and standards to such an extent that one needs a “road map” to work through the legal maze.

The environment is not named specifically in the Canadian Constitution and consequently neither federal nor provincial governments have exclusive jurisdiction over it. Rather, jurisdiction is based upon other named “heads of power”, such as criminal law, fisheries or natural resources. For many matters falling under the broad label known as the “environment”, both the federal and provincial governments can and do exercise regulatory responsibilities.

This is referred to as “concurrent jurisdiction”, which, in practical terms for business managers, means that both provincial and federal regulations must be complied with. Historically, the provinces have taken the lead with respect to environmental conservation and protection. However, the federal government continues to have a role in this area and some municipalities are also becoming more active, as is evidenced, for example, by their use of bylaws to regulate such matters as the development of contaminated land, the discharge of liquid effluent into municipal sewage systems, and reporting on the emission of chemical substances in the course of business operations.
Environmental statutes create offences for non-compliance that can impose substantial penalties, including million-dollar fines and/or imprisonment. Many provide that maximum fines are doubled for subsequent offences and can be levied for each day an offence continues. 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 escape environmental liability on the basis that they took all reasonable steps to prevent the offence from occurring. However, in a growing number of cases, liability may be absolute if a spill or discharge of a contaminant occurs.

Some statutes create administrative penalties, which are fines that can be levied by government regulators as opposed to the courts. There are also some jurisdictions that allow for tickets, similar to motor vehicle infractions, to be issued for non-compliance. Enforcement officers generally have rights to inspect premises, issue stop-work orders, investigate non-compliance and obtain warrants to enter and search property, and seize anything that is believed to be relevant to an alleged offence. A number of jurisdictions also have administrative tribunals to handle appeals of decisions made by such inspectors and other government officials.

1. Federal Environmental Law and Regulation

1.1 Canadian Environmental Protection Act, 1999 (CEPA)

CEPA is the principal federal environmental statute, which governs a variety of environmental activities falling within federal jurisdiction such as the regulation of toxic substances, cross-border air and water pollution, and waste disposal or “dumping” into the oceans. CEPA also contains specific provisions for the regulation of environmental activities that take place on lands and operations owned by, or under the jurisdiction of, federal agencies, including banks, airlines and broadcasting systems, and aboriginal lands. CEPA establishes a system for evaluating and regulating toxic substances, imposes requirements for pollution prevention planning and emergency plans, and regulates the inter-provincial and international movement of hazardous wastes and recyclable materials. CEPA is administered by Environment Canada. Some of the more important CEPA regulatory provisions are discussed below.

1.1.1 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.

All existing substances included on the Domestic Substances List are in the process of being assessed by Environment Canada for bioaccumulation, persistence and inherent toxicity (BPIT). Environment Canada has collected information and conducted risk assessments with respect to a series of “Batches” as part of the “Challenge to Industry” program, which
addressed approximately 200 high-priority substances. The government has identified approximately 500 substances, which it has divided into nine groups, as the next priority for assessment over the next five years. This initiative is known as the Substances Grouping Initiative, which will include information gathering, risk assessment, risk management, research and monitoring.

If the government determines that a substance may present a danger to human health or the environment, it may add the substance to the Toxic Substances List, which currently lists upwards of 100 toxic substances or groups of substances. 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 that may provide for the phase-out or outright banning of a substance. 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 or the Minister of Health. Listed toxic substances include PCBs, CFCs and chlorinated solvents, to name but a few.

1.1.2 National Pollutant Release Inventory

CEPA requires Environment Canada to keep and publish a National Pollutant Release Inventory (NPRI). Owners and operators of facilities that manufacture, process or otherwise use one or more of the numerous NPRI-listed substances under certain prescribed conditions are required to report releases or off-site transfers of the substances to Environment Canada.

1.1.3 Air Pollution and Greenhouse Gases

While most air emission regulation is conducted at the provincial level of government, a number of industry-specific air pollution regulations exist under CEPA. They 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 trend is for Environment Canada to focus on substance-specific regulations, some of which, like CFCs, are considered air pollutants.

New standards for air quality and industrial air emissions are currently in the process of being developed. In May 2008, the federal government agreed to work with provinces, territories and stakeholders to develop a proposal, known as the Comprehensive Air Management System, for air emissions. Subsequently, in October 2010, the Canadian Council of Ministers of the Environment agreed to move forward to finalize a new air quality management system based on the proposal. The new framework, known as the Air Quality Management System (AQMS), is currently in development and its implementation is expected to begin in 2013.

The federal government has also recently been focusing attention on regulations aimed at reducing greenhouse gas (GHG) emissions such as carbon dioxide. The regulations are part of the federal government’s strategy to reach its target of achieving a 17% GHG emission reduction from 2005 levels by 2020. In the fall of 2010, the government released the Passenger Automobile and Light Truck Greenhouse Gas Emission Regulations and a Notice of Intent
outlining its commitment to continue working with the U.S. towards the development of
tighter standards for vehicles for 2017 and later model years. The Passenger Automobile and
Light Truck Greenhouse Gas Emission Regulations apply to vehicles for 2011 to 2016 model
years, and are aligned with mandatory national standards of the U.S. They are expected to
reduce emissions per vehicle by 25% from those sold in 2008. Plans are also underway to
regulate GHG emissions from heavy-duty trucks within the next three years.

The federal government also recently passed the Renewable Fuel Regulations, which require an
average renewable fuel content of 5% in gasoline and 2% for diesel fuel and heating distillate
oil. It also recently announced its intention to reduce GHG emissions in the electricity sector
by moving forward with regulations mandating the gradual phasing out of coal-fired
electricity generation.

1.1.4 Movement of Hazardous Waste and Hazardous Recyclable Material

A number of regulations exist under CEPA that regulate the movement of waste and
recyclable material in, out and across the country. Waste movement is also regulated by the
provincial levels of government within their individual boundaries. The Export and Import of
Hazardous Waste and Hazardous Recyclable Material Regulations implement Canada’s
obligations under the Basel Convention and certain other international treaties or agreements
aimed at controlling the international movement of such materials. Section 185 of CEPA
requires that the Minister be notified of any intended international shipment of hazardous
wastes or hazardous recyclable materials. An international movement may consist of an
export from Canada, an import into Canada, a transit through Canada, or a transit through a
country other than Canada.

The notification requirements are set out in the Regulations and include providing
information such as: the nature and quantity of the hazardous waste or hazardous recyclable
material involved; the addresses and sites of the exporters, importers, and carriers; the
proposed disposal or recycling operations of the hazardous waste or hazardous recyclable
material; proof of written contracts between the exporters and importers; and proof of
insurance coverage. With this information, Environment Canada is able to determine
whether the proposed shipment of hazardous wastes or hazardous recyclable materials
complies with regulations for the protection of human health and the environment.

If the notification requirements set out in the Regulations are met, Environment Canada
notifies the authorities in the jurisdiction of destination. If any authority (including those in
any transit countries) objects to the proposed shipment, the shipment cannot proceed until
the objection is lifted. A permit may be granted following a review of the notice and approval
from the authorities in the jurisdiction of destination. Various requirements, including
prescribed liability insurance, also apply to any shipment.

The PCB Waste Export Regulations, 1996 allow Canadian owners of PCB waste to export such
wastes to the U.S. for treatment and destruction (excluding landfilling) when these wastes are
in concentrations equal to or greater than 50 parts per million. The Regulations require that
advance notice of proposed export shipments be given to Environment Canada. If the PCB
waste shipment complies with the Regulations for the protection of human health and the
environment, and authorities in any countries or provinces through which the waste will
transit do not object to the shipment, a permit is sent from Environment Canada to the applicant authorizing the shipment to proceed.

The *Inter-provincial Movement of Hazardous Waste Regulations* maintain a tracking system, based around a prescribed waste manifest, for the movement of hazardous waste and hazardous recyclable material between provinces and territories, which was formerly set out in the *Transportation of Dangerous Goods Regulations* (see below).

**1.1.5 Waste Disposal at Sea**

CEPA also contains a mechanism for obtaining a permit from Environment Canada to dispose of waste at sea, also known as “dumping”. 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. Application for such a permit may trigger an environmental assessment process (see discussion below under CEAA 2012).

**1.1.6 Environmental Emergencies**

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

**1.1.7 Enforcement**

Under CEPA, enforcement officers have broad powers of investigation. They may issue compliance orders to stop illegal activity, or require actions to correct a violation, among other powers. They may also carry out inspections and, in certain circumstances, search and seizure.

The ranges of fines payable for a first offence under CEPA are as follows:

- for individuals, between C$5,000 to C$1-million, and/or a term of imprisonment of up to three years;
- for small-revenue corporations, between C$25,000 to C$4-million; and
- for all other persons and corporations, between C$100,000 to C$6-million.

In all cases, the range of fines payable doubles for repeat offenders.

When imposing penalties, courts are required to consider specified aggravating factors to ensure that penalties reflect the gravity of the offence. CEPA imposes broad liability on officers and directors who “directed or influenced” the corporation’s policies or activities in respect of conduct that is the subject matter of the corporation’s offence. A public registry is used to maintain details of convictions of corporate offenders.

In addition to the enforcement provisions contained in CEPA, the federal government also has the authority to assess administrative monetary penalties, pursuant to the *Environmental Violations Administrative Monetary Penalties Act*. The stated purpose of this Act is “to establish, as an alternative to the existing penal system and as a supplement to existing enforcement
measures, a fair and efficient administrative monetary penalty system” for the enforcement of certain federal environmental protection statutes, including CEPA. The amounts of the administrative penalties that may be assessed in response to a violation of the underlying statute may be up to C$5,000 in the case of an individual, or up to C$25,000 in the case of a corporation.

1.1.8 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. These include:

- 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; and

- Confirmation of the common law right to sue for personal loss as a result of a violation of CEPA.

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

1.2 Canadian Environmental Assessment Act, 2012 (CEAA 2012)

The CEAA 2012 came into force on July 6, 2012. It replaces the Canadian Environmental Assessment Act (CEAA). The CEAA 2012 is designed to ensure that federal government agencies and bodies take environmental concerns into consideration in their decision-making processes. The CEAA 2012 is a self-assessment regime whereby environmental assessments must be conducted prior to a designated project proceeding. “Designated Projects” are defined broadly to mean one or more physical activities that are carried out in Canada or on federal lands; are designated by regulations; or are linked to the same federal authority as specified in those regulations, as well as the activities incidental to those physical activities.

The assessments will consider whether designated projects are likely to cause significant adverse environmental effects on components of the environment that are within the legislative authority of the federal government. Assessments will be conducted by the Canadian Environmental Assessment Agency, by the Canadian Nuclear Safety Commission (for projects that are regulated under the Nuclear Safety and Control Act), and by the National Energy Board (for projects that are regulated under the National Energy Board Act or the Canada Oil and Gas Operations Act). Time
limits are set in the CEAA 2012 for assessments. Unless otherwise modified, a decision on a standard environmental assessment will generally be required within 365 days from the issuance of the Notice of Commencement. In cases that involve a public review panel, unless otherwise modified, a decision statement from the Minister must be issued not later than 24 months from the date the review panel was established.

The end product of a federal environmental assessment will include a “decision statement” to be issued under the CEAA 2012, approving a project and stipulating conditions that will mitigate any environmental effects that are directly linked or necessarily incidental to the power exercised by the federal authority. These conditions will be binding and enforceable.

The CEAA 2012 constitutes a radical change from the previous CEAA, under which there were four types of assessments, namely: screening, comprehensive study, panel review (public hearing), or mediation. The federal government indicated that the intention of the CEAA 2012 was to strengthen and streamline the environmental assessment process. The following describes how the federal environmental assessments which had already commenced under CEAA have been affected by CEAA 2012:

- Panel reviews have been transferred to the process and timelines under CEAA 2012;
- Comprehensive studies have been continued under the process in CEAA, with the addition of new timeline requirements; and
- Screenings have been continued under the process in CEAA only if they were included in a special order from the Minister of the Environment on July 6, 2012. All other federal screening assessments have been permanently suspended as of July 6, 2012, regardless of where they were in the process.

The CEAA 2012 has resulted in a dramatic reduction in the number of projects being subject to formal environmental assessment at the federal level, which was a key commitment made by the federal government in implementing CEAA 2012. As of July 6, 2012, including the screenings which were transitioned under the Minister’s Order, there are a total of 70 projects currently subject to federal environmental assessment.

1.3 Transportation of Dangerous Goods Act, 1992 (TDGA)

The TDGA applies to all facets and modes of inter-provincial and international transportation of dangerous goods in Canada. The objective of the TDGA is to promote public safety and to protect the environment during the transportation of dangerous goods, including hazardous wastes. The TDGA applies 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 establish a complex system of product classification, documentation and labelling; placarding and marking of vehicles; hazard management, notification and reporting; and employee training. The TDGA requires an Emergency Response Assistance Plan, security training and an implemented security plan before the offering for transport or importation of prescribed goods. An Emergency Response Assistance Plan must be approved by the Minister of Transport, or the designated person, and
such approval is revocable. A security plan must include measures to prevent the dangerous goods from being stolen or unlawfully interfered with in the course of importing, offering for transport, handling, or transporting.

Dangerous goods are specified in the TDG Regulations and arranged into nine classes and over 2,000 shipping names. The classes include: explosives, compressed gases, flammable and combustible liquids and solids, oxidizing substances, toxic and infectious substances, radioactive materials, corrosives and numerous miscellaneous products prescribed by regulation. The TDGA also applies to any product, substance or organism that “by its nature” is included within one of the classes. The TDG Regulations have equivalency provisions with respect to such international rules as the International Maritime Dangerous Goods Code, the International Civil Aviation Organization Technical Instructions and Title 49 of the U.S. Code of Federal Regulations.

Maximum penalties under the TDGA are C$100,000 or two years’ imprisonment. In addition, any property that had been seized by a federal inspector in relation to the offence may be forfeited to the government. 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.

1.4 **Hazardous Products Act (HPA) and Canada Consumer Product Safety Act (CCPSA)**

The HPA prohibits suppliers, in certain circumstances, from importing and/or selling hazardous “controlled products” that are intended for use in a workplace in Canada. The legislation identifies six classes of controlled products, namely compressed gas, flammable and combustible material, oxidizing material, poisonous and infectious material, corrosive material, and dangerously reactive material.

The Workplace Hazardous Materials Information System is a national program designed to protect workers from exposure to hazardous material that is established in part by the Controlled Products Regulations 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 employees 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.

Maximum penalties under the HPA are C$1-million and/or two years’ imprisonment.
Prior to June 20, 2011, in addition to regulating “controlled products”, the HPA also defined and regulated certain “restricted” and “prohibited” products. On June 20, 2011, the provisions relating to restricted and prohibited products were repealed and were replaced by the new CCPSA which now regulates the importation, advertisement and sale of consumer products, including consumer products previously regulated under the HPA. The purpose of the CCPSA is to protect the public by addressing or preventing dangers to human health or safety that are posed by consumer products in Canada. Under the legislation, the term “consumer product” is broadly defined to include any product, including its components, parts or accessories, that may reasonably be expected to be obtained by an individual to be used for non-commercial purposes, and includes its packaging.

The new legislation brings Canada’s consumer product safety regime more into line with that in the U.S. Among other things, the legislation prohibits the manufacture, importation, advertisement or sale of any consumer product that is a “danger to human health or safety”, defined as any unreasonable hazard – existing or potential – that is posed by a consumer product during or as a result of its normal and foreseeable use and that may reasonably be expected to cause death or an adverse effect on health. The legislation also prohibits the manufacture, importation, advertisement or sale of “prohibited products” previously regulated under Part I of the HPA, and prohibits the manufacture, importation, advertisement or sale of certain consumer products unless they meet regulatory requirements. In addition, the CCPSA imposes a number of new obligations on manufacturers, importers, advertisers, sellers and testers of consumer products, including mandatory record-keeping and document retention requirements and mandatory reporting of any “incidents” related to a consumer product.

1.5  **Pest Control Products Act, 2002 (PCPA)**

The 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. A court may also order the offender to pay an additional fine in an amount equal to three times the monetary benefits accrued to the person as a result of the commission of the offence. Enforcement officers can shut down activities and require measures necessary to prevent health or environmental risks.

1.6  **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. While much of the *Fisheries Act* is aimed at regulating harvesting, it also provides protection for waters “frequented by fish” or areas constituting fish habitat. The Act applies to both coastal and inland waters, and is generally administered by the
Department of Fisheries and Oceans (DFO), although the environmental protection parts of the Act are administered by Environment Canada.

The *Fisheries Act* was amended on July 6, 2012. The amendments were made to increase the oversight by the federal government of activities impacting fish-bearing waters and fish habitat. This includes extending the power to order works to mitigate harm, allowing government officials to shut down operations permanently and increasing responsibilities on individuals and corporations to report potentially harmful activities.

There are two key prohibitions in the *Fisheries Act*, namely a prohibition against the deposit of deleterious substance into waters frequented by fish, and the harmful alteration, disruption or destruction (HADD) of fish habitat. The Act requires reporting the occurrence of a HADD or a serious or imminent danger thereof. The requirement to notify of a deposit requires such a report if a detriment to fish or fish habitat may reasonably be expected to occur. The amendments to the Act also impose a new requirement to provide a written report after notifications are made to fisheries officers, inspectors, or others prescribed by the regulations. The notification requirements and the duty to take measures apply broadly to anyone who owns or has charge, management or control of the activity that causes the HADD or deposit; causes or contributes to the HADD or deposit; or, in the case of a deposit, owns or has charge, management or control of the substance.

Future amendments contemplated to the *Fisheries Act* are expected to result in a requirement not to cause serious harm to fish, which includes killing fish, and the permanent alteration or destruction of fish habitats that are part of aboriginal, commercial and recreational fisheries. The federal government has indicated that these amendments will not be brought into force until the DFO has revised its habitat policies to guide how the prohibition is to be interpreted and how activities impacting habitat can be appropriately mitigated.

Where an activity will create a HADD, the DFO must approve the project before the work commences. The application process for a HADD approval includes providing the DFO with plans, specifications, studies and details of the proposed procedures. This may trigger an environmental assessment under CEAA 2012.

Offences under the *Fisheries Act* include the failure to: report a HADD or deposit; take measures to address a HADD or deposit; comply with any conditions of authorizations; supply information required by the Minister; or comply with directions from inspectors or fisheries officers. The limitation period for laying of charges under the *Fisheries Act* has been extended from two to five years.

Maximum fines for large corporations are up to C$6-million for offences which are prosecuted under indictment and C$4-million for summary matters. Perhaps more significantly, there will also be requirements for the courts to impose minimum fines on corporations. In the case of large companies, the minimum fine for a first offence is C$100,000 for summary convictions and C$500,000 for matters that proceed by indictment. All maximums and minimums are doubled for subsequent offences.
1.7 **Canada Shipping Act**

The *Canada Shipping Act*, 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 Fisheries and Oceans 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. Maximum penalties under the Act are generally C$1-million and/or 18 months’ imprisonment, although in the case of intentional or reckless acts which cause environmental disasters or a risk of death or harm to humans, the penalties are an unlimited fine and/or five years’ imprisonment.

1.8 **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.

A ship carrying more than 2,000 metric tons of oil must not enter or leave a port in Canada’s waters or exclusive economic zone without a certificate showing that a contract of insurance or other security satisfying the requirements of the Civil Liability Convention is in force. Similarly, if such a ship is registered in Canada, that ship must not enter or leave a port in any other state, or an offshore terminal in any other state’s internal waters, territorial sea, or exclusive economic zone, without a certificate showing a contract of insurance or other security.
1.9 **Navigable Waters Protection Act (NWPA)**

The NWPA prohibits the unauthorized construction or placement of a “work” in, on, over, under, through or across any navigable water. The Act is administered by Transport Canada. Where a project falls into the definition of “work”, the federal government must approve it before it is undertaken. This approval may trigger the CEAA 2012 environmental assessment process. “Work” includes:

- Any man-made structure, device, or thing, whether temporary or permanent, that may interfere with navigation; and

- Any dumping or filling of any navigable water, or any excavation of materials from the bed of any navigable water, that may interfere with navigation.

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 sell, give away or otherwise dispose of the materials.

The NWPA allows for exemptions from the requirement for an approval if the work falls into a class of works or the navigable water falls into a class of navigable waters established by Ministerial regulation, which may also include conditions for such works. There are also provisions regarding removal of existing works and approval of works already started.

The maximum penalty under the NWPA is C$50,000 or imprisonment for a term of up to six months, or both. 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.

1.10 **Oceans Act**

Under the *Oceans Act*, the Minister of Fisheries and Oceans fulfils a co-ordinating and facilitating role among the various governmental agencies concerned with the environmental protection of the oceans. In particular, the Minister is required to:

- Lead and facilitate the development and implementation of a national strategy for the management of Canadian waters;

- Lead and facilitate the development and implementation of plans for the integrated management of all activities or measures in or affecting estuaries, coastal waters and marine waters;

- Lead and co-ordinate the development and implementation of marine-protected areas (MPAs); and

- 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. The maximum penalty under the Act is C$1-million. A court may also order the offender to pay an additional fine in an amount equal to the monetary benefits accrued to the person as a result of the commission of the offence.

1.11 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 legislation 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, with a focus on recreation, tourism, education and research. The maximum penalty under the Act is C$6-million for a first offence and C$12-million for subsequent offences.

1.12 Species at Risk Act (SARA)

SARA identifies wildlife species considered at risk, categorizing them as threatened, endangered, extirpated or of special concern, and prohibits a number of specific activities related to listed species, including killing or harming the species, as well as the destruction of critical habitat that has been identified in any of the plans required under the Act.

These include recovery strategies and action plans for endangered or threatened species and management plans for species of concern. Plans are developed by Environment Canada in partnership with the provinces, territories, wildlife management boards, First Nations, landowners and others. Currently, approximately 160 recovery strategies have been created or are under consideration, 72 management plans are in place and 13 action plans have been finalized or are under consideration. 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 that provides input at several levels of the process.

The protections in SARA apply throughout Canada to all aquatic species and migratory birds (as listed in the Migratory Birds Convention Act, 1994) regardless of whether the species are 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 protect other species throughout Canada, if the federal government is of the view that the provinces or territories are not adequately protecting a listed species.

Maximum penalties under SARA for a first-time offence are C$1-million for a corporation and C$250,000 and/or five years’ imprisonment for an individual. 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.
1.13 **Migratory Birds Convention Act, 1994 (MBCA)**

The MBCA enacts an international agreement between Canada and the U.S. for the protection of migratory birds. Although most of the statute focuses on the regulation of 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 except as authorized by regulation.

Maximum penalties were recently changed by the amendments under the *Environmental Enforcement Act* such that large corporations may face maximum penalties, for more serious offences, of C$6-million for a first offence and C$12-million for subsequent offences. A court may also order the offender to pay an additional fine in an amount equal to the court’s estimation of the value of any property, benefit or advantage accrued to the person as a result of the commission of the offence. In addition, there are substantial minimum fines for oil spills involving large vessels.

1.14 **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* designates wilderness areas in Banff, Jasper, Kootenay, Yoho, Waterton Lakes, Fundy and Vuntut national parks, as well as Nahanni National Park Reserve. 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.

Large corporations may face maximum penalties, for more serious offences under the Act, of C$6-million for a first offence and C$12-million for subsequent offences. A court may also order, in addition to any fines or penalties, other measures, including remediation or education initiatives, at a cost to the corporation.

1.15 **Criminal Law**

The federal *Criminal Code* contains provisions that address corporate liability and provide a basis for criminal charges to be brought against corporations in the event that an activity causes harm to persons or property and negligence or fault can be proven. 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.
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.

A specific criminal environmental offence is provided for by section 274 of CEPA and section 253
of the Canada Shipping Act, 2001 where, in committing an offence under the Act, the offender
intentionally or recklessly causes an environmental disaster or shows wanton or reckless
disregard for the lives or safety of other persons and thereby causes death or bodily harm to
another person.

1.16 Energy Efficiency Act

The primary purpose of the Energy Efficiency Act is to improve Canadian energy efficiency by
regulating certain energy-using products. For qualifying products, enumerated in the Energy
Efficiency Regulations, the federal government establishes testing, reporting, and labelling
requirements that dealers of those products must follow. No dealer may, for the purpose of a sale
or lease, ship an energy-using product from the province where it was manufactured to another
province unless it complies with the energy efficiency standard and is labelled according to the
regulations.

Maximum penalties under the Energy Efficiency Act are C$200,000. In addition, a court may make
an order directing the dealer to compensate the Minister for the costs of examining and testing
any energy-using products that were the basis for the offence.

The regulations made under that Act allow for energy-efficiency standards to be set for a variety
of products that affect energy consumption, which the government anticipates will build on its
plan to reduce GHG emissions.

2. Provincial Environmental Law and Regulation

This overview discusses the laws as they relate to the environment for four provinces in Canada.
These discussions are brief and are designed to alert the reader to the principal laws governing
the environment in those provinces. Readers should consult the more detailed overviews of
environmental law and regulation in each of these provinces, which are posted to the Blakes

2.1 Alberta

2.1.1 Alberta Land Stewardship Act (LSA)

The LSA was enacted in the fall of 2009. It provides a statutory framework that allows the
provincial government to give direction with respect to the economic, environmental and
social objectives of Alberta, and to create policy that enables sustainable development
through cumulative effects management.

The LSA is the statutory underpinning of Alberta’s Land-Use Framework, which was initially
published in December 2008. Prior to the enactment of the LSA, previous decisions with
respect to growth in Alberta were considered on a case-by-case basis. Under the LSA and the
Land-Use Framework, a more 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.

The LSA divides Alberta into seven regions: Lower Peace, Upper Peace, Lower Athabasca, Upper Athabasca, North Saskatchewan, Red Deer Region, and South Saskatchewan. Each region 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 region. Accordingly, these 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.

Presently, a draft plan has been prepared for the Lower Athabasca (northeastern Alberta) Region. Terms of reference have been released for the South Saskatchewan (southern Alberta) Region.

The LSA has procedures in place respecting property rights and compensating rights holders. Due process is ensured through public consultation and presentation to the Legislative Assembly before a regional plan can be adopted or amended by Cabinet. Individual rights holders may seek variances to a regional plan, and adversely affected parties may request a review of the plan.

2.1.2 Environmental Protection and Enhancement Act (EPEA)

Alberta’s EPEA is a comprehensive statute aimed at promoting “the protection, enhancement and wise use of the environment”. The EPEA delegates authority to both the Minister of Environment and to directors, inspectors and investigators designated by the Minister to deal with certain matters.

The EPEA endeavours to balance the following principles:

- The importance of protecting the environment for the well-being of society
- Carrying out Alberta’s economic growth in an environmentally responsible manner
- Sustainable development
- Preventing and mitigating the environmental impact of development and of government policies
- The need for government leadership
- The shared responsibility of all Alberta citizens for environmental protection
- Opportunities for citizens to provide advice on decisions affecting the environment
- Co-operation with governments of other jurisdictions to minimize trans-boundary environmental impacts
- “Polluter pays” principle
- The important role of comprehensive and responsive action.

The EPEA regulates the process for environmental assessments, approvals and registrations. Certain activities are designated by the regulations as requiring an environmental assessment. For example, an environmental assessment is necessary for the “construction, operation or reclamation of” oil sands mines, oil refineries, certain manufacturing plants, dams over 15 metres high, coal processing plants, and landfills that accept hazardous waste.

The EPEA also grants the government discretion to require other assessments. In deciding whether to require an assessment, the government will consider the size, nature and location of the proposed activity, the complexity of the activity, public concern, similar activities in the same area, and the criteria in regulations.

In addition to assessments, the EPEA regulates the release of specific substances and imposes a reporting obligation on any person who “releases or causes or permits the release of [one of these substances] into the environment”. The EPEA regulates the issuance of reclamation certificates and environmental protection orders (EPOs). The Director may issue an EPO directing a person to take whatever measures the Director deems necessary to deal with the release or potential release of a substance that may cause, is causing, or has caused an adverse effect.

In addition, the EPEA regulates the use and storage of hazardous substances and pesticides, as well as waste management.

2.1.3 Climate Change and Emissions Management Act (CCEMA)

Alberta has developed a greenhouse gas (GHG) emissions reduction program. Under the CCEMA, Alberta’s GHG emissions reduction system includes emissions trading systems, mandatory reporting and the creation of a fund for implementing new technologies, as well as programs and measures for reducing emissions. Regulated facilities have four compliance options available to them. They may reduce their emissions through operational efficiency, purchase emissions offsets, contribute to the Climate Change and Emissions Management Fund (Fund Credit) or purchase emissions performance credits. The CCEMA includes several regulations which provide further guidance for regulating emissions in the province.

The Specified Gas Reporting Regulation sets out the GHG reporting requirements for regulated facilities. The Specified Gas Emitters Regulation (SGER) requires all regulated facilities in Alberta emitting over 100,000 tonnes of carbon dioxide equivalent (CO2e) per year to reduce their emissions intensity by 12% per year from their government-approved baseline. Facilities and sectors not subject to the SGER that are able to reduce their GHG emissions according to government-approved protocols are eligible to generate emissions offset credits which can be bought and sold in the Alberta emissions offset market. The Climate Change and Emissions Management Fund Administration Regulation regulates the Climate Change and Emissions Management Fund which is where the Fund Credits under the CCEMA are deposited. The price of a Fund Credit was originally set at C$15/tonne but is now going to be established on an ongoing basis by Ministerial Order.
2.1.4  

**Water Act (WA)**

The WA supports and promotes the conservation and management of water, while recognizing the need for Alberta’s economic growth and prosperity. Property in and the rights to the diversion and use of all water in Alberta are vested in the provincial Crown. The definition of “water” is broad, including all water on or under the surface of the ground, whether in liquid or solid state.

The WA enables the Director to establish water management areas and water management area plans for specified areas within Alberta. However, the central function of the WA is to establish an approvals, priority and licensing regime. With the exception of deemed licence holders, exempt agricultural uses, households and riparian owners or occupants, a party must have approval before it commences an activity (as defined under the Act) or a licence before it diverts waters. The WA operates on a FITFIR (first in time, first in right) principle. Older licence holders, therefore, have priority to the water supply over newer licence holders. There is presently a moratorium on the issuance of new licences for the South Saskatchewan River basin, which basin encompasses an area in and around the City of Calgary.

The WA definition of “activity” is expansive. For example, an approval is needed for any activity that alters flow or water level, that could cause siltation or erosion, that affects aquatic life or that alters the location of water. The WA defines a “diversion” as the impoundment, storage, consumption, taking or removal of water for any purpose. With some exceptions, anyone wishing to commence or continue a diversion of water or operate a works to divert water must apply to the Director for a licence.

2.1.5  

**Drainage Districts Act**

The Drainage Districts Act establishes a Board of Trustees that may construct, replace, extend, modify, alter, dismantle, or operate and maintain drainage works in a specific drainage district. The Board of Trustees is also empowered to issue orders directing persons to remove anything that is causing or is related to an interference with a drainage work, or to cease and desist from activities that may damage any drainage work. The Board of Trustees is empowered to take whatever action is necessary to carry out its orders. One of the central functions of the Board of Trustees is to establish a general assessment of drainage rates, and to create assessment rolls and allocate these rates out to parties in the relevant drainage district. The Act allows parties to dispute these charges, and establishes hearing and appeal processes.

2.1.6  

**Fish and Wildlife Legislation**

The Fisheries (Alberta) Act and the Wildlife Act pertain mostly to licensing schemes for fishing and hunting, as well as the regulation of the sale of fish or wildlife. However, under the Wildlife Act, certain species have been designated as endangered. Thus, where work is to be carried on in areas where there are endangered animals, operators must comply with certain procedures. For example, there are operating guidelines in caribou protection areas in northern Alberta.
2.1.7 Natural Resources Legislation

The oil, gas and energy industry is heavily regulated in Alberta. Legislation such as the Oil and Gas Conservation Act, the Mines and Minerals Act, the Oil Sands Conservation Act, the Energy Resources Conservation Act, the Coal Conservation Act and their related regulations are not all strictly environmental. However, under these pieces of legislation, various ministers, boards or other delegated authorities have broad powers to make orders or take other action to protect Alberta’s natural resources. There are also a number of licensing and approvals regimes, many of which take environmental concerns into account. For example, both the Energy Resources Conservation Board (ERCB) and the Alberta Utilities Commission (AUC) regulate the energy industry in Alberta. The mandate of the ERCB is to regulate the safe, responsible and efficient development of Alberta’s energy resources. Similarly, the AUC’s mandate is to ensure the delivery of Alberta’s utility services occurs in a manner that is fair, responsible and in the public interest. Authorities such as the ERCB and AUC must balance economic development with resource conservation.

The Forests Act establishes an annual allowable cut in coniferous and deciduous forests. It prohibits persons from damaging the forest in any way and allows the Minister to construct and maintain forest recreation areas. As well, under the Forest and Prairie Protection Act and Forest Reserves Act, certain areas of forest can be designated as reserves or forest protection areas.

The Natural Resources Conservation Board Act (NRCBA) provides for an impartial process to review projects that will or may affect the natural resources of Alberta to determine whether, in the Board’s opinion, the projects are in the public interest. In doing so, the Board must balance the economic effects of a project with its environmental impact.

The NRCBA only applies to projects that are defined as “reviewable projects”, including forest industry projects, recreational or tourism projects, mining projects, and water management projects. A “water management” project is defined as a project to construct a dam, reservoir or barrier to store water, or a project to divert water. The NRCBA requires the proponent of any reviewable project to apply to the Board for approval to carry on with the project, regardless of whether the applicant has already received a licence or approval under any other Act.

2.1.8 Restricted Development and Water Conservation Areas Legislation

The Government Organization Act establishes ministerial powers regarding the acquisition of land for environmental protection, the declaration of states of emergency to prevent or stop environmental damage, and the establishment of parts of Alberta as a “Restricted Development Area” or “Water Conservation Area”.

The establishment of a Restricted Development Area or a Water Conservation Area can occur for various reasons, for example, retaining an environment’s natural state to propagate plant or animal life, confining activities to a specific area where they could adversely affect a natural resource, protecting a watershed, and controlling or stopping pollution of natural resources. The Minister can require urgent co-ordinated action. The consequences of refusing to assist range from fines to imprisonment.
2.2 British Columbia

2.2.1 Environmental Management Act (EMA)

The EMA is the principal environmental statute in British Columbia. It prohibits the introduction of waste into the environment in such a manner or quantity as to cause pollution, except in accordance with a permit, a regulation or a code of practice established by the government for particular activities. The Waste Discharge Regulation prescribes the activities that may operate under a code of practice and those that must have a permit. The EMA also contains provisions that:

- Establish a specific regime for the handling of hazardous wastes
- Establish rules regarding spills and spill reporting
- Provide for pollution abatement and pollution prevention orders
- Provide for orders requiring remediation of contaminated sites
- Provide for municipal waste management programs
- Provide for enforcement procedures and penalties
- Provide for environmental protection orders
- Provide for orders in the event of an environmental emergency.

The Hazardous Waste Regulation establishes detailed siting and operational requirements and performance standards for facilities, which include onsite management facilities, that deal with special wastes.

Part 4 of the EMA and the Contaminated Sites Regulation establish a detailed regime for the identification, determination and remediation of contaminated sites, and the assessment and allocation of liability for remediation. Liability under the regime is absolute, retroactive, joint and separate. Once a site is found to be contaminated, “responsible persons” will be responsible for remediation of the site and may be liable to anyone who has incurred costs to remediate the site unless an exemption from liability can be established. British Columbia’s new Limitation Act, which will come into force by regulation, will eliminate the limitation period for remediation cost recovery actions. Remediation orders may require a responsible person to provide information, carry out tests, undertake site investigations, construct or carry out works, and/or carry out remediation. The term “responsible person” is broadly defined and includes current and past owners and operators of a site, plus transporters and producers of contaminants.

The EMA creates a number of offences, including the failure to handle hazardous waste in accordance with the regulations, the failure to comply with a permit, and the failure to report the spill of waste into the environment. Maximum penalties under the EMA are C$3-million and/or three years’ imprisonment. The EMA allows for administrative penalties and tickets.
The EMA also establishes the Environmental Appeal Board to hear appeals under the EMA and certain other statutes.

### 2.2.2 Environmental Assessment Act (EAA)

The EAA, which is administered by the B.C. Environmental Assessment Office, establishes a comprehensive process for the assessment of the environmental effects of major projects in British Columbia. Projects designated in the Reviewable Projects Regulation or designated as reviewable by ministerial order must undergo an environmental assessment and cannot proceed without an environmental assessment certificate.

### 2.2.3 Action on Climate Change

The Carbon Tax Act imposes a tax on the purchase of fuel with rates for different types of fuel set out in a schedule to the legislation (the rates are based on a price of C$30 per tonne of carbon-dioxide equivalent emissions). According to the B.C. government, the carbon tax is revenue-neutral because it is tied to reductions in personal and business taxes.

The Greenhouse Gas Reduction (Cap and Trade) Act allows B.C. to participate in the Western Climate Initiative (WCI) cap-and-trade system which is currently under development. Six states (Oregon, Washington, New Mexico, Arizona, Utah and Montana) left the WCI in 2011 which leaves B.C., Manitoba, Ontario, Quebec and California as the remaining WCI partners. Thus far only California and Quebec have adopted cap-and-trade regulations, while B.C. has not decided whether to formally adopt a cap-and-trade system.

The Reporting Regulation came into effect on January 1, 2010 pursuant to the Greenhouse Gas Reduction (Cap and Trade) Act and requires B.C.-based operations emitting 10,000 tonnes or more of carbon dioxide equivalent per year to report GHG emissions to the B.C. Ministry of Environment. Reporting operations with emissions of 25,000 tonnes or greater are required to have emissions reports verified by a third party. Certain sectors are exempt from the initial phase of the Reporting Regulation, including air and marine transportation.

The Clean Energy Act sets out B.C.’s energy objectives (one of which is the generation of at least 93% of the electricity in B.C. from clean or renewable resources), requires the British Columbia Hydro and Power Authority (B.C. Hydro) to submit integrated resource plans on how it will meet those objectives and requires the province to achieve electricity self-sufficiency by the year 2016. The Act also prohibits certain projects from proceeding (e.g., the development of energy projects in parks, protected areas or conservancies), ensures that the benefits of the heritage assets are preserved, provides for the establishment of energy efficiency measures and establishes the First Nations Clean Energy Business Fund. On July 24, 2012, the Clean Energy Act was amended to exclude electricity generated for purposes of serving liquefied natural gas (LNG) facilities from the 93% clean energy objective, thereby enabling the use of natural gas to power these LNG plants.

The Greenhouse Gas Reduction Targets Act, which was introduced in 2008, sets a province-wide target of a 33% reduction in the 2007 level of GHG emissions by 2020 and an 80% reduction by 2050. While the Act sets targets, it does not yet impose requirements on the private sector to achieve the stated goals. Recent amendments to the Act repealed past requirements on public-sector organizations, including Crown corporations, to be carbon neutral by 2010, and
they are now only required to produce annual carbon reduction plans and reports. In this respect, the Act is primarily a form of policy statement to be implemented through further legislative and regulatory initiatives.

The Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act allows the government to set standards for the amount of renewable fuel that must be contained in B.C.’s transportation fuel blends, reduce the carbon intensity of transportation fuels and meet its commitment to adopt a new low carbon fuel standard similar to California’s. The Renewable and Low Carbon Fuel Requirements Regulation requires fuel suppliers to ensure they supply the required minimum renewable fuel content, on a provincial annual average basis, in the fuel they supply in B.C. The renewable fuel requirement for gasoline is a 5% annual average and for diesel is a 4% annual average.

Part 6.1 of the EMA requires owners or operators of waste management facilities of certain classes to manage GHGs produced from waste handled in their facilities.

2.2.4 Utilities Commission Act (UCA)

The British Columbia Utilities Commission (BCUC) is an independent regulatory agency that operates under and administers the UCA. The BCUC’s responsibilities include the regulation of B.C.’s natural gas and electricity utilities as well as intra-provincial pipelines. A person must obtain a certificate of public convenience and necessity from the BCUC before beginning the construction or operation of a public utility plant or system, or an extension of either. The BCUC can issue administrative penalties and impose fines which were increased in 2012 from C$10,000 to C$1-million per day.

The UCA imposes a mandatory reliability standard for B.C.’s bulk electricity system and the Mandatory Reliability Standards Regulation applies reliability standards to a variety of transmission facilities, including bulk power systems, generating units connected to bulk power systems or designated as part of a transmission facility operator’s plan for the restoration of a bulk power system. The regulation requires reports on the reliability standard to be prepared and submitted to the BCUC.

2.2.5 Natural Resources Legislation

The Forest and Range Practices Act sets the framework for what the B.C. government calls “results-based” forestry on public land. This concept is to set environmental objectives established by government for soils, timber, fish, biodiversity, cultural heritage, forage and associated plant communities, visual quality, water, wildlife, and resource and recreation features. Operators prepare five-year Forest Stewardship Plans designed to achieve the targets or strategies.

The Private Managed Forest Land Act creates a mechanism for the regulation of forest practices on private land assessed as managed forest. The legislation creates a governing council that establishes and enforces environmentally sustainable forest practices on private managed forest land in accordance with objectives set by the government in the Act.

The Oil and Gas Activities Act impacts conventional oil and gas producers, shale gas producers, and other operators of oil and gas facilities in B.C. Under the Act, the B.C. Oil and
Gas Commission has broad powers, particularly with respect to compliance and enforcement and the setting of technical safety and operational standards for oil and gas activities. The Environmental Protection and Management Regulation establishes the government’s environmental objectives for water, riparian habitats, wildlife and wildlife habitat, old-growth forests and cultural heritage resources. The Act requires the Commission to consider these objectives in deciding whether or not to authorize an oil and gas activity.

Although not an exclusively environmental statute, the Petroleum and Natural Gas Act requires proponents to obtain various approvals before undertaking exploration or production work, such as geophysical licences, geophysical exploration project approvals, and permits for the exclusive right to do geological work and geophysical exploration work, and well, test hole, and water-source well authorizations. Such approvals are given subject to environmental considerations and licences and project approvals can be suspended or cancelled for failure to comply with the Act or its regulations.

The Mines Act applies to all mines during exploration, development, construction, production, closure, reclamation and abandonment activities. Before starting any work in or about a mine, the owner, agent, manager or any other person must hold a permit and have filed a plan outlining the details of the proposed work, a program for the conservation of cultural heritage resources, and for the protection and reclamation of land, watercourses and cultural heritage resources affected by the mine.

### 2.2.6 Water, Fish and Wildlife Legislation

The Water Act establishes licensing or approvals for diversion and use of water, construction of works and alteration or improvements to streams and channels. The provincial government is in the process of modernizing the Water Act to respond to challenges related to the management of surface and groundwater in B.C. The Water Protection Act prohibits the removal of water from British Columbia or the construction or operation of large-scale projects capable of transferring water from one watershed to another without a licence. The Drinking Water Protection Act regulates drinking water supply systems, establishing mechanisms for source protection and providing for greater public accountability of water suppliers.

The Fish Protection Act is designed to protect and restore fish habitat. It prohibits the construction of dams on specified significant rivers, allows for the designation of sensitive streams and establishes rules for new residential, commercial or industrial development. Under the Riparian Areas Regulation, an assessment of potential impact to fish habitat must be carried out before development can be approved by a local government.

The Wildlife Act regulates the management of wildlife in British Columbia, other than on federal lands. Although much of it relates to hunting, it contains limited protections for threatened and endangered species. B.C. also maintains a species at risk lists (referred to as red, blue and yellow lists) which, while not statutory, are relied on by the Province to inform regulatory decisions involving wildlife.
2.2.7  Transport of Dangerous Goods Act (TDGA)

The TDGA regulates the transportation of dangerous goods within British Columbia and gives additional powers to municipalities to regulate the transportation of dangerous goods within their boundaries. Its regulation substantially adopts the rules under the federal TDGA.

2.3  Quebec

2.3.1  Environment Quality Act (EQA)

The main environmental statute in Quebec is the EQA. The EQA makes it an offence to deposit or allow the deposit of a contaminant into the environment over and above limits set by decree or by regulation or in a manner that negatively impacts on the environment or human health. Accidental releases must be reported to the Ministry of Sustainable Development, Environment and Parks (MSDEP) immediately. The EQA confers upon all persons the right to the protection of the environment to the extent set forth in the Act. A person residing in the immediate vicinity of a place where a violation may occur, the Attorney General, and the local municipality may apply to the Superior Court for an injunction to prevent or stop a violation from occurring or continuing.

2.3.1.1  Authorizations

Anyone wishing to undertake an activity that may result in the release of a contaminant into the environment must first obtain a certificate of authorization from the MSDEP. These certificates are transferable, with MSDEP consent. Air emissions control and wastewater treatment are normally covered by a separate authorization issued by the MSDEP under the EQA. However, if a facility is located on the island of Montréal, then as regards air emissions, the facility is subject to standards set forth in regulations of the Montréal Metropolitan Community (MMC). Moreover, if a facility is located within the territory of the MMC, then with respect to wastewater discharge standards, the facility is subject to standards set forth in the regulations of the MMC. Under the EQA, facilities in certain industrial sectors are subject to the requirement to obtain a “depollution attestation”, a type of comprehensive environmental operating permit that must be renewed every five years. The first three sectors to have been made subject to this requirement are pulp and paper mills, and the mining and primary metals industry. Emissions standards in depollution attestations are tailored to the facility and its receptor environment. Holders of attestations pay fees that are based on their emissions and must monitor effects of their emissions on the local environment.

Certain types of projects listed in a regulation to the EQA must undergo an environmental impact assessment process before the Quebec government may issue a certificate of authorization. The environmental assessment process always includes the preparation of an environmental impact assessment, a public notification step and may include public hearings before the Bureau des audiences publiques en environnement (BAPE – the office of public hearings on the environment). The recommendations of the BAPE must be taken into account by the Quebec government in making its decision to authorize the project and in setting permit conditions. The EQA contains a separate environmental and social impact assessment process for the James Bay and Northern Quebec region which requires the involvement of Cree and Inuit in the approval process.
2.3.1.2 Air Emissions

In 2011, the Quebec government issued the Clean Air Regulation under the EQA, replacing the 1979 Quality of the Atmosphere Regulation. This Regulation applies to all activities that result in emissions to outdoor air, subject to exceptions listed in the Regulation. Exceptions include activities subject to sector-specific regulations, such as pulp and paper mills, motor vehicles, and pits and quarries. Air emissions standards do not apply during facility start-up or shutdown. For facilities that were already in operation on June 29, 2011, Clean Air Regulation provisions take effect gradually over a five-year period. The Regulation now requires that authorization of new facilities be subject to an assessment of impacts on air quality, standards for which are set out in the Regulation.

2.3.1.3 Contaminated Sites

The EQA contains a framework for managing contaminated sites. The EQA requires a person who permanently ceases an activity that is listed in a regulation or a person who changes the use of property on which a designated activity once occurred to carry out a site assessment in accordance with MSDEP guidelines. In the case of a permanent cessation of activities, the site assessment must be carried out within six months of cessation. If the site assessment indicates that the MSDEP standards are exceeded, there is a requirement to provide the MSDEP with a remediation plan and execution timetable for approval. The EQA recognizes the possibility of carrying out remediation by way of a risk-management approach. Once the remediation plan is approved by the MSDEP, it must be carried out and completed and a remediation report prepared. All reports prepared as part of this process must be certified by a MSDEP-recognized expert.

In addition, if the site assessment establishes that standards are exceeded, a Notice of Contamination must be registered at the land registry. A Notice of Decontamination can be registered against title once a government-certified expert establishes that concentrations of contaminants onsite no longer exceed regulatory criteria. Where an approved risk-management approach is carried out, a Notice of Land Use restriction must be registered on title.

The EQA also requires a person to notify their neighbours if they become aware that contaminants resulting from designated activities are present in soil at the property limits or if there is a serious risk that contaminants in groundwater are migrating offsite that might affect the use of water.

The Act gives MSDEP the power to order polluters or custodians of property to carry out spill clean-up, site assessment and site remediation when MSDEP is notified of a spill or otherwise becomes aware that a site poses a hazard to human health or the environment. Defences available to innocent custodians of contaminated land facing an order from the MSDEP to assess or remediate the land are: 1) they honestly did not know about the contamination; 2) they knew about the contamination but they complied with the law and acted reasonably and diligently under the circumstances; and 3) the site was contaminated by a neighbouring property.
2.3.1.4 Waste Management

Quebec has a decentralized framework for siting landfills for disposal of non-hazardous material, with public involvement through regional county municipalities.

Regulations have been adopted requiring manufacturers to take back used paint and paint containers, as well as used oil. Regulations are under development extending these obligations to used batteries, consumer electronics, and fluorescent light bulbs. Landfill operators and companies that market printed materials, containers and packaging pay dues that are remitted to municipalities to help finance the cost of curbside recycling programs.

Standards are in place for the use and storage of hazardous waste (known as residual hazardous materials in Quebec). A permit is required to treat or use for energy generation third-party hazardous waste, and to store third-party hazardous waste onsite (a transfer station).

Permits are also required to transport hazardous waste and to operate hazardous waste disposal sites. The Transportation of Dangerous Substances Regulation adopted under the EQA governs the handling and transportation of dangerous substances, including hazardous waste, on Quebec’s roads. It tracks the provisions of the federal Transportation of Dangerous Goods Regulations.

2.3.1.5 Enforcement and Remedies

Violation of the EQA can result in the imposition of administrative penalties of up to C$10,000 per day for a corporation. Violations can also result in prosecutions which may result in fines of up to C$6-million for a corporation and imprisonment. Convictions can include an order to repair damage done and an additional fine equal to the amount of any financial gain resulting from the commission of the offence. The MSDEP lists recent administrative penalties and convictions on an online registry on its website.

The MDDEP also has the power to issue orders to prevent, investigate, or remediate contamination. Persons subject to an order from the MSDEP or whose certificate of authorization was cancelled or denied may appeal to the Quebec Administrative Tribunal.

Individuals can also bring civil claims based on the Civil Code of Québec claiming damages or seeking injunctions relating to impact to property or a person. These claims can also involve damages based on nuisances resulting from noise, odours or smoke. There have been several class action suits, on subjects such as nuisances from municipal landfills, an aquaculture operation that raised phosphorus levels in a lake, dust from a cement company and noise from a snowmobile path.

In 2008, the Supreme Court of Canada held that a nuisance claim under the Civil Code of Québec can form the basis of an environmental class action suit and result in no-fault liability for an industrial facility that causes excessive inconvenience to its neighbours.
2.3.2  *Pesticides Act (PA)*

The PA has two main objectives: 1) preventing and mitigating harmful effects to the environment and human health caused by pesticides; and 2) rationalizing and reducing the use of pesticides. These objectives are fulfilled by analyzing, assessing and controlling the effects of pesticide use, and by developing and promoting alternatives to pesticide use.

The PA requires pesticide users and vendors to obtain permits and certificates and provides for the establishment of a pesticide classification process. It also grants the Quebec government the power to adopt regulations imposing requirements for pesticide storage, sale and use. The two regulations currently in force under the Act are: 1) the *Regulation respecting permits and certificates for the sale and use of pesticides*; and 2) the *Pesticides Management Code*.

The *Pesticides Management Code*, in force since April 3, 2003, initially prohibited the use of certain pesticides on lawns of public, semi-public and municipal properties. In April 2006, the prohibition was extended to private and commercial properties, except golf courses.

2.3.3  *Water Resources Preservation Act* and Quebec’s Water Policy

The *Act to Affirm the Collective Nature of Water Resources and Provide for Increased Water Resource Protection* came into force in 2009. This Act creates a new division in the EQA titled Water Resource Protection and Management. Henceforward, water withdrawal authorizations are required for any withdrawal of water – defined as the taking of surface water or groundwater by any means – in amounts exceeding 75,000 litres per day. Authorizations are valid for 10 years and government decisions regarding their issuance and renewal must give priority to public health needs and the environment. No water withdrawn in Quebec may be transferred out of Quebec. Exceptions are provided for water used in hydroelectric power generation, agriculture and bottled water operations. Regulations issued in 2011 require payment of fees for water takings: C$0.0025 per cubic meter, except oil and gas extraction and industries where water is incorporated into the final product (such as the bottled water industry), in which case the fee is C$0.07 per cubic meter.

2.3.4  *Natural Resources Legislation*

Quebec has several laws regulating natural resources development and conservation.

Quebec amended the EQA to include provisions requiring reporting of GHG emissions and providing for the establishment of a cap-and-trade system. Regulations identifying entities subject to the reporting requirements have been adopted and Quebec will adopt regulations setting out its rules with respect to the cap-and-trade system.

The Quebec National Assembly has studied legislation that would amend the *Mining Act* in a number of areas, including: to clarify that surface minerals are owned by the landowner; to raise the amount of the reclamation guarantee to 100% of anticipated reclamation costs and accelerate payment thereof; and to make more mining projects subject to environmental assessment and public consultation obligations.

In 2009, MNR began the process of delegating to municipalities its powers to regulate and issue leases and permits for sand and gravel extraction.
The **Natural Heritage Conservation Act** allows the MSDEP to designate various types of protected areas in Quebec, sometimes on an emergency basis. The **Act respecting the conservation and development of wildlife** sets out rules for hunting, fishing and trapping on public land, allows the government to adopt wildlife conservation measures, and contains provisions for accommodating the rights of Aboriginal Peoples. The government has recently proposed legislation that would significantly amend this legislation.

The **Forest Act** is intended to promote sustainable forest management. It contains different sets of requirements for public and private forests. Persons carrying on a forest management activity in public forests, other than road maintenance, must hold a forest management permit. The Act also provides for the negotiation of timber supply and forest management agreements, and forest management contracts. An authorization must be obtained from the MSDEP pursuant to the **Tree Protection Act** to destroy or damage a tree, sapling or shrub, or any underwood, anywhere other than in a forest under the management of the MNR. In case of failure to obtain such authorization, punitive damages may be payable.

Quebec’s **Act respecting the sustainable management of the forest territory** became law on April 1, 2010, though most provisions take effect in March 2013. It includes a three-level approach to land use planning, where the forested land base is divided into three types of areas, each with its own level of land use intensity: 1) off limits to resource development (biodiversity conservation); 2) sustainable resource management (multiple use, with a focus on ecosystem-based forest management); and 3) intensive forestry operations (plantation agriculture). Another element is decentralized decision-making by local forest management corporations using results-based management, with MNR taking a step back and concentrating on protecting the public interest, addressing aboriginal issues, road planning, and certain other matters. A further innovation will be selling fibre at market prices, giving existing rights holders a right-of-first-refusal on market-priced lumber.

The **Petroleum Products Act** is intended to ensure the continuity and security of the petroleum products supply. Regulations under the **Petroleum Products Act** and related statutes set out standards governing the types of permitted petroleum products (oil and gasoline), the use, monitoring and maintenance of petroleum storage tanks and other petroleum equipment, leaks and leak prevention, safety procedures, and government inspections and reporting, among other matters. The **Building Act** creates a regulatory framework for high-risk petroleum products storage equipment, including permit requirements.

The Quebec government has an energy strategy for the period 2006-2015. The document is available online at: [http://www.mrnf.gouv.qc.ca/english/publications/energy/strategy/guidelines-strategy.pdf](http://www.mrnf.gouv.qc.ca/english/publications/energy/strategy/guidelines-strategy.pdf). The strategy calls for development of all energy resources, including oil and gas, as part of a long-term plan to ensure energy security. MNR is currently carrying out strategic environmental assessments for offshore oil and gas exploration and development in the Gulf of Saint Lawrence. In 2011, the Quebec government issued regulations making well completion activities subject to the requirement to hold a certificate of authorization under section 22 of the EQA, issuance thereof to be preceded by a public consultation.
2.3.5 **Sustainable Development Act (SDA)**

In addition to providing a definition of sustainable development, the SDA creates the position of Sustainable Development Commissioner to conduct environmental audits within the office of the Auditor General. The SDA establishes a Green Fund to finance MSDEP initiatives. The fund is financed in part through a levy on fossil fuels. In the summer of 2009, the government tabled legislation aimed at expanding the categories of persons subject to the payment of this levy (Bill 54). The SDA elevates the right to environmental quality set out in the EQA to the level of an economic and social right under the Quebec *Charter of Human Rights and Freedoms*.

2.4 **Ontario**

2.4.1 **Environmental Protection Act (EPA)**

The main source of environmental regulation in Ontario is the EPA. It provides for the control of air, water and land pollution and its basic structure is to prohibit the emission or discharge of a broad range of contaminants that cause or are likely to cause an “adverse effect” to the natural environment. Prohibited adverse effects include: harm or material discomfort to persons; the impairment of the safety of persons; injury or damage to property or to plant or animal life; loss of enjoyment of normal use of property; and interference with the normal conduct of business. Numerous regulations have been made under the Act regulating specific activities or substances. Some of the EPA’s more important provisions and regulations are discussed below.

2.4.1.1 **Environmental Approvals**

Whenever a contaminant is discharged from a factory stack or wastewater outfall, or when waste is deposited on land, approval must first be obtained from the Ontario Ministry of the Environment, which administers the EPA and a companion statute, the *Ontario Water Resources Act*, which regulates both the taking of water for human or industrial use, and the discharge of wastes and storm water directly into a river or lake.

While this approval, prior to October 31, 2011, took the form of a Certificate of Approval, it now takes the form of an Environmental Compliance Approval (ECA).

The change to the ECA regime from the previous Certificate of Approval regime is mostly procedural, and does not impose new, substantive environmental obligations on applicants. The ECA process is used to regulate high-risk activities. Unlike previous Certificates of Approval, an ECA is able to authorize multiple activities at a single site and a single activity at multiple sites. The Ministry of Environment has also indicated that the ECA system would allow for more operational flexibility to businesses once they have obtained an approval.

Prior to issuing an ECA, the Ministry generally requires detailed plans and modelling describing the discharge source, the expected off-site impact and the manner in which the level or concentration of contaminants discharged will be minimized. The Ministry has increasingly required evidence that the owner or operator of the subject facility has identified the best available pollution control technology that is economically feasible. The Ministry will also have regard to concentration limits that have been developed for specified contaminants.
and is aggressively pushing Ontario industry to continually reduce the levels of contaminants being discharged into the province’s air and water. Major facilities are subject to detailed wastewater discharge requirements, contained in both their approvals and industrial sector regulations.

Certificates of Approval issued prior to October 31, 2011 remain in force. Existing Certificates of Approval can be amended, suspended, or revoked, as though they were an ECA.

In addition to the new ECA regime, the Ontario government has also created the Environmental Activity and Sector Registry (EASR). EASRs are intended for certain prescribed low-risk activities, namely heating systems, standby power systems and automotive refinishing. No specific approval is required for activities that fall within the EASR. All that is required is that the activity be registered with the Ministry of the Environment.

Renewable energy projects such as solar and wind powered generation facilities are subject to a special approval or permit under the EPA as a result of amendments associated with the Green Energy Act passed in 2009.

2.4.1.2 Air Emissions

Air emissions are regulated under the EPA through a combination of the environmental approval process and specific air contaminant limits determined at “points of impingement”. The principal air emission regulation is Regulation 419/05. Among other things, this regulation requires the use of new air emission models, detailed monitoring and reporting, and the phasing-in of stricter air emission standards for over 100 different chemical parameters.

The Ontario government has issued a number of regulations that have strengthened its air emission controls. In 2005, the province commenced implementation of a five-point action plan to reduce industrial emissions, particularly smog causing emissions of nitrogen oxide (NOx) and sulphur dioxide (SO2). NOx and SO2 limits and monitoring requirements now govern the electricity generation, base metal, iron and steel and petroleum sectors, among others.

Ontario is working with other provinces and U.S. states through the Western Climate Initiative to design a cap-and-trade system that will support the transition to a low-carbon economy.

In December 2009, the EPA was amended to provide the government with regulatory authority to establish such a system. The details of the regulations will be developed with additional consultation with the federal government, industry and stakeholders. The government aims to harmonize the system with other programs in North America and international approaches to GHG credit systems.

2.4.1.3 Waste Management

Any business which collects, transports, treats or disposes of waste, must obtain environmental approval from the Ministry of the Environment and, in certain circumstances
involving energy generation, may require a renewable energy approval. In the case of “liquid industrial and hazardous wastes”, special rules apply. The generators of such waste must register each waste with the Ministry and use prescribed waste manifests in respect of each shipment from the waste generation facility. Hazardous waste must be packaged and labelled in accordance with the federal Transportation of Dangerous Goods Act and the generator must confirm the delivery of a waste shipment at the intended receiving facility. If the liquid industrial or hazardous wastes are stored onsite for more than three months, the Ministry must be notified and, in most cases, it will require assurances that the waste will ultimately be removed from the site.

Over the past few years, the Ministry of the Environment has taken steps to encourage the reduction and recycling of waste. Waste materials destined for recycling are exempt from some of the strictures of the legislation, including the requirement for environmental approval under the Environmental Protection Act. There are also regulations that require industrial and other waste generators to conduct waste audits and meet prescribed waste reduction targets.

The provincial government, under the authority of the Waste Diversion Act, now has several stewardship recycling programs aimed at the end use of consumer products. The “Blue Box” recycling program applies to packaging and printed materials with respect to a variety of consumer products and affects all “brand owners and first importers” of products that generate plastic, paper, glass, metal or textile packaging waste. The program requires such organizations to register with Waste Diversion Ontario or its delegate, Stewardship Ontario, and implement a waste diversion or recycling program, or pay annual fees based upon sales volumes. Similar recycling programs have been extended to household hazardous wastes and electronic products. New and expanded “extended producer responsibility” recycling and reduced packaging programs are expected over the coming years as Ontario moves towards a target of “zero” waste.

### 2.4.1.4 Spills and Contaminated Sites Clean-up

Where accidental spills or discharges of contaminants occur, the persons in control are obligated under the Environmental Protection Act to notify government agencies “forthwith” and to do everything practicable to clean up major “spills” and restore the natural environment. Persons suffering loss or damage from a spill are entitled to compensation. If the government incurs clean-up costs, it is able to recover these costs from the past or current owners and persons in control of the substances spilled. The EPA gives the power to the government to issue orders against and recover costs of the remediation from owners of property, even in circumstances where the owner of the property is not responsible for the contamination. Directors and officers are specifically obligated to exercise “reasonable care” to prevent their corporations from causing or permitting the discharge of contaminants into the environment.

Where land has been contaminated by current or past activities, the Ministry of the Environment is authorized to issue orders requiring remediation. Some orders will require a comprehensive remediation plan, involving expensive studies of the situation prior to the implementation of remediation measures. These orders may be appealed to an environmental tribunal if the terms and conditions are considered unreasonable. Land
remediation may also be required as a condition to obtaining land use approvals from municipal authorities who are responsible for land use planning and development activities. The municipal authorities will typically have regard to provincial and national soil and groundwater guidelines.

The “Record of Site Condition” (RSC) part of the EPA, Regulation 153/04 and certain related “Brownfield” legislation, encourage the revitalization of contaminated land by establishing acceptable soil and groundwater standards, a voluntary remediation certification system involving the filing of an RSC and allowing lenders, bankruptcy trustees and other fiduciaries to deal with contaminated land, without assuming liability for historical environmental conditions. Landowners who complete an environmental assessment or remediation of a property in accordance with the requirements of the EPA and file an RSC with the Ministry of the Environment, obtain protection from EPA environmental orders with respect to historic contamination. The RSC soil and groundwater standards vary depending upon the nature of the land use and the potability of the groundwater, among other things.

The central part of the RSC process is the preparation and filing in an electronic public registry of the RSC certificate. An RSC is completed by both a property owner and a so-called qualified person experienced in environmental site assessment and remediation. Regulation 153/04 specifically defines such persons to ensure that they have minimum qualifications and sets out standards for the conduct of Phase I and II environmental assessments and site-specific risk assessments.

2.4.1.5 Enforcement

Ontario aggressively enforces its environmental legislation and the penalties available against those convicted of an offence can be very large. Under the Environmental Protection Act and the Ontario Water Resources Act, maximum fines for corporations are C$10-million and an individual may be imprisoned for up to five years. Some offences attract minimum penalties. Administrative penalties are also available in some cases for less serious offences and the defences available are very limited. In addition to criminal-like sanctions, the Ministry of the Environment has extensive order-making powers that have been used liberally against corporations and their officers and directors. These orders can require expensive environmental investigations and remedial work extending over a number of years and costing millions of dollars.

2.4.2 Green Energy Act

As part of a move to “green” Ontario’s economy, Ontario enacted the Green Energy Act in May 2009 to encourage new investment in renewable energy sources, such as wind, solar, biomass, biogas and hydro power. The programs included in the legislation involve significant financial incentives to private energy developers and will assist the government in ensuring a sufficient power supply in the future as it moves towards phasing out coal-fired power generation by the end of 2014. Related amendments to the EPA and other legislation provide for a “one-window” approvals process, fixed electricity prices or tariffs and standardized building requirements, such as setbacks, for renewable energy projects.
2.4.3  **Ontario Water Resources Act (OWRA)**

Where a waste generator wishes to discharge its waste to a local water body, the discharge must be subject to environmental approval granted by the Ontario Ministry of Environment pursuant to the OWRA. Without such a licence, if the discharge “may impair the quality of the water,” the person causing or permitting the discharge is guilty of an offence under the Act. Upon conviction for such an offence, the generator/discharger may be fined or imprisoned in accordance with the same penalty structure provided for under the EPA.

Under the Act, no person is permitted to establish or operate a facility or works for the collection, transmission, treatment and disposal of commercial and industrial sewage wastes, among other wastes (sewage works), without first obtaining an environmental compliance approval.

Where one discharges liquid wastes into a municipal sanitary sewer, it is necessary to become familiar with any applicable sewer use bylaw. In most areas of the province, municipal sewer bylaws restrict what may be discharged into local sanitary and storm sewers and, in some cases, require pollution prevention plans.

The construction of water wells and the use or taking of any surface or groundwater above 50,000 litres a day is also regulated by the Act, which requires such takings to be permitted by the Ministry of the Environment.

Renewable energy projects regulated under the EPA are exempt from some of the requirements of the OWRA.

2.4.4  **Safe Drinking Water Act**

The *Safe Drinking Water Act* governs municipal drinking-water systems, expands on existing policy and practice and introduces features to protect drinking water in Ontario. The Act’s purpose is to protect human health through the control and regulation of drinking-water systems and drinking-water testing. Under the Act, owners and operators must ensure that “end of pipe” water quality meets prescribed standards; that only trained personnel are used to operate a compliant system; that sampling, testing, and monitoring are proficient; and that all reporting obligations regarding any adverse drinking-water quality tests results are complied with. The Ministry of Environment must also approve all operational plans from operators of municipal drinking-water systems. Part IV of the Act imposes a Quality Management Standard on operators of drinking-water systems and an accreditation body is designated for the purpose of administering programs to accredit operating authorities.

2.4.5  **Clean Water Act**

The *Clean Water Act* was enacted in October 2006 and represents the Ontario government’s most recent comprehensive legislation aimed at ensuring clean and safe water for its citizens. The Act establishes conservation authority areas that will be subject to development plans that will protect drinking-water sources such as groundwater aquifers and surface watersheds. Preparation of the source protection plans will be done in consultation with various local agencies and, once completed and approved by the Minister of the
Environment, the plans will guide and restrict development activities within the plan areas much like current provincial and municipal development plans.

2.4.6 Toxics Reduction Act

Also part of the green economy movement by the provincial government, the goal of the Toxics Reduction Act is to protect health and the environment by reducing the use of toxic substances. Regulated industrial facilities will be required to track and quantify toxics and substances of concern that are used and created. Facilities must meet reporting requirements and the information provided to the government will be made public. The provincial government has stated it will provide C$24-million over three years to help facilities comply with the requirements and to support innovation in green chemistry and engineering.

Corporations found to have contravened a provision of the Act or associated regulations can be found liable, upon first conviction, for a maximum fine of C$50,000 per day or part of a day on which the offence continues, and upon any subsequent conviction, for a maximum fine of C$100,000 per day or part of a day on which the offence continues.

2.4.7 Environmental Assessment Act

Pursuant to the Environment Assessment Act, significant public projects proposed by the provincial and municipal governments and, in a few cases, environmentally sensitive private projects, are subject to an assessment of their environmental impacts or effects. The application of the process is subject to the discretion of the Minister of the Environment, who must provide an approval before a project or undertaking may proceed. In some cases, a public project that is caught by the legislation may be exempted by order of the Minister. In other cases, private projects that would normally not be subject to the Act may be designated by the Minister after having been asked to do so by members of the public. In anticipation of the further privatization of Ontario’s electricity generation system, a regulation exists under the Act requiring environmental assessments of prescribed electricity projects, which captures virtually all electricity projects of significance.

If a project is required to undergo an environmental assessment, at the very least, extensive environmental studies will be required to determine the project’s environmental impacts and consider the need for, and alternatives to, the undertaking. Some public consultation will be required and, in many cases, full public hearings are carried out before an independent tribunal known as the Environmental Review Tribunal. Where other government approvals are required, a consolidated public hearing may be held and the hearing can easily go on for a number of months. In the past, the types of private projects required to undergo an environmental assessment have included major waste management undertakings and new mines.

2.4.8 Liquid Fuels Handling Regulations and Code

The storage and handling of petroleum products and other liquid fuels, in both above and below ground containers, is regulated under the Technical Standards and Safety Act. The Liquid Fuels Handling Regulations and Code under the Act stipulate detailed requirements regarding the safe use and distribution of gasoline and most other petroleum products. Underground storage tanks (UST) and other storage systems are subject to detailed safety and
environmental protection requirements. When a leak is discovered, the owner of the UST must notify the Fuels Safety Division and Ministry of the Environment, and arrange for the immediate repair or replacement of the leaking systems, the recovery of escaped product and the removal of contaminated soil. The general provisions and the soil and groundwater standards of the EPA will also apply to such fuel spills.

2.4.9 Natural Resources Legislation

The Crown Forest Sustainability Act is the principal statute governing forestry activities in the province. The Act provides for the administration and regulation of forest management planning, forest resource agreements and licences, information management, reforestation and revenue collection. The Ministry of Natural Resources administers the Act and relies on several manuals to guide various aspects of forest management activities and ensure that provincial forests are managed in a sustainable manner consistent with the long-term objectives set out in forest management plans. After the sustainable supply of wood is determined for a management unit, forest resource disposition occurs based on demand, and access is afforded to forest industry companies primarily through socio-economic-based policy instruments, including supply agreements and licences for harvesting and processing forest resources.

Mining activities are governed by the Mining Act, which provides for the exploration, development and rehabilitation of mines. Before a mine may be opened, the Ministry of Northern Development and Mines must first approve or accept a closure and rehabilitation plan for the mine. Such a plan will require a description of the proposed conditions and uses of the mine site and those that will exist after mine closure. The plan must provide for the rehabilitation of tailings areas and detail all other necessary rehabilitation work. The plan will be subject to negotiation with various government officials, including representatives of the Ministry of the Environment, which will likely be required to issue permits or certificates of approval under their legislation. The Ministry of Northern Development and Mines may also require some form of financial assurance that the closure plan will be carried out at the end of the mine’s life.

Similar rehabilitation requirements are provided for under the Aggregate Resources Act, which governs the extraction of sand, gravel and other aggregates.

2.4.10 Fish and Wildlife Legislation

Hunting and fishing in Ontario are managed by the Ministry of Natural Resources, principally under the Fish and Wildlife Conservation Act. The Act prohibits the hunting of animals without a licence issued under the Act and regulates, among other things, the means, time and location of permitted hunting. The Ministry regulates fishing under the authority of this Act and regulations issued under the federal Fisheries Act – Ontario Fishery Regulations, 2007 (SOR/2007-237).

The Endangered Species Act, 2007 came into force on June 30, 2008, significantly enhancing protection for endangered species in Ontario. Its purpose is to identify species at risk, create measures for their protection, and promote recovery and stewardship of endangered species. Endangered species are identified and designated by the Committee on the Status of Species at Risk in Ontario. Once a species is designated under the Act, it may not be harmed,
captured, killed, sold or possessed. In addition, damaging the habitat of an endangered species is prohibited. Enforcement provisions under the legislation include issuing a stop order, fines and imprisonment for offences.
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