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ENVIROFOR NEWS:

House Resumes

On September 8th the House will return to prorogue the 1st session and convene the 2nd session of the 41st Parliament. It is expected that the newly formed government will introduce a number of bills that will ban corporate and union donations, make elections mandatory every four years on a fixed date in the fall and hold a referendum on proportional representation. For your convenience, we have updated the new [Parliamentary calendar](#) which is accessible via the left navigation when you login to Quickscribe.

Tip: Log in to EnviroFor Online prior to clicking Reporter links.

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FEDERAL LEGISLATION — For notification of federal amendments, we recommend you use our [Section Tracking](#)  tool.

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ENERGY AND MINES NEWS

Federal or Provincial Regulation? One of the Many Challenges Facing Energy Projects

Background

From the small town of Smithers, British Columbia, Michael Sawyer applied to the National Energy Board (the "NEB") requesting it to determine and issue a declaratory order that the Prince Rupert Gas Transmission Project (the "Project") was properly within federal jurisdiction, and therefore subject to regulation by the NEB. The NEB found that Sawyer failed to demonstrate on a prima facie basis that the Project was a federal work or undertaking and therefore not subject to NEB jurisdiction. Sawyer applied for judicial review of the NEB's decision and the Federal Court of Appeal unanimously granted Sawyer's appeal, remitting Sawyer's original application back to the NEB for redetermination.

The judgment of *Sawyer v Transcanada Pipeline Limited*, 2017 FCA 159, 2017 CarswellNat 3405 [*Sawyer v Transcanada*] is interesting for a number of reasons:

1. the facts demonstrate how significantly an individual may affect regulatory processes;
2. the facts demonstrate the difficulties facing energy projects that are potentially subject to both provincial and federal regulation; and
3. it provides a useful overview of how a court will likely consider, and how a regulatory tribunal should consider, whether or not a project is a federal work or undertaking.

The NEB's Decision

Standing

Sawyer's application was preliminary. [Subsection 12\(1\)](#) of the [National Energy Board Act](#), RSC 1985, c N-7 (the "Act") grants the NEB full and exclusive jurisdiction to determine whether an inquiry is

required to determine if the NEB has jurisdiction over a given project.

Read the [full article](#) by [Miles Pittman](#) and [Michael Gaber](#) with Borden Ladner Gervais LLP.

Kinder Morgan Reaches Milestone on Westridge Terminal Approval, but Hurdles Remain

As Kinder Morgan begins to meet federal regulatory conditions on its \$7.4-billion Trans Mountain Pipeline expansion, the company is slowly putting itself in a position to begin construction on some elements of the controversial mega-project.

In a letter posted on its website Wednesday [August 30], the National Energy Board said 49 conditions needed to begin construction on the Westridge Marine Terminal expansion in Burnaby have been satisfied.

However, the company will also need other permits to start construction, even where it has met NEB conditions, including from the Vancouver Fraser Port Authority for the Westridge expansion.

A project application submitted by Kinder Morgan to the port authority in June of this year is under review. When a decision will be made and a permit issued is unclear.

And there are other hurdles that could create delays for the project, meant to provide a major Canadian access point to new markets for Alberta oil in energy-hungry Asia. In BC, the new NDP government has said it will not issue permits until the company's plans meet a test of First Nations consultation. Read *The Vancouver Sun* [article](#).

Foundational Policies Can Lead to Bright Future for Canada's Mineral and Mining Industry

As Canada's Energy and Mines Ministers convene for their 74th annual conference, a national coalition of mining associations is recommending several government actions to help unlock billions of economic activity across the country, address climate change, bolster reconciliation efforts with Indigenous peoples, and secure Canada as the world's top supplier of sustainably-sourced minerals and metals in an increasingly lower carbon global economy.

A brief submitted by the Canadian Mineral Industry Federation (CMIF) details six policy areas where provincial collaboration and action by governments can enhance Canada's ability to attract new mineral investment and expand the mineral and mining industry's vast socio-economic contributions to Canadians:

1. **Improve the regulatory process:** Given the importance of the regulatory regime to the mining industry's competitiveness and Canada's ability to compete against other countries for new mineral investment, it is critical that current reviews of the [Canadian Environmental Assessment Act](#), the [Fisheries Act](#), and the [Navigation Protection Act](#) result in an effective, timely and coordinated regulatory process, from pre-environmental assessment (EA) to post-EA permitting, with meaningful consultation.

Read the [full press release](#) on the Mining Association of Canada website.

Making a Constitutional Case Out of Constructing Pipelines

The latest obstacle to the establishment of a Canadian LNG industry

In recent years, one of the most significant challenges faced by major pipeline projects has been the constitutional question of whether governments have satisfied their duty to consult Aboriginal groups as required by [section 35](#) of the [Constitution Act, 1982](#). A judicial determination of inadequate consultation can result in courts overturning government approvals permitting pipeline construction. However, a finding of inadequate consultation need not be fatal to projects, assuming the responsible government involved is prepared to remedy its consultation errors in a timely manner. Remedying these types of constitutional errors does not necessarily undermine or negate the years of work that go into the regulatory permitting process.

The opposite is true of constitutional cases based on arguments that pipeline proponents have applied to or received approvals from the wrong regulator. If a major pipeline is found by a court to have been approved by the wrong regulator before it is constructed, the years of work associated with obtaining approval can potentially be negated and the pipeline proponent may need to start over with the regulator determined to have jurisdiction. Read the [full article](#) by [Bernie \(Bernard\) J. Roth](#) and [Laura K. Estep](#) of Dentons.

ENERGY AND MINES

Act or Regulation Affected	Effective Date	Amendment Information
Petroleum and Natural Gas Act	Aug. 1/17	by 2014 Bill 12, c. 10, section 30 (a) only (in force by Reg 198/2016), Natural Gas Development Statutes Amendment Act, 2014
Petroleum and Natural Gas General Regulation (357/98)	Aug. 1/17	by Reg 198/2016

FORESTRY AND ENVIRONMENT NEWS

Navigating the Political and Regulatory Constraints Associated with Urban Riparian Forests

Trees are vital to our cities' character and for the well-being of its residents. In order to manage them, we are required to understand and comply with a wide range of policies that regulate trees and the environment. Understanding how trees are managed under municipal bylaws as well as their role within provincial environmental legislation can be complicated. One of the more challenging tasks is to navigate the political and regulatory constraints associated with forests growing next to streams that run through our urban areas. The provincial [Riparian Areas Protection Act](#) and associated [Riparian Areas Regulation](#) (RAR) protect riparian areas from development by establishing a streamside protection and enhancement area (SPEA). A local government can allow development activities to proceed near streams if a qualified environmental professional provides their opinion that the SPEA is protected from the development, and that measures have been taken to protect the integrity of the SPEA. Where a forested edge is created along a watercourse, the developer is responsible for ensuring that the trees within the SPEA are protected. Read the [full article](#) by Mike Coulthard, RPF, RPBio, Diamond Head Consulting published in the September-October edition of *BC Forest Professional*.

The U.S. Argument in Lumber Talks Is, yet again, Based on Faulty Calculations

In the runup to NAFTA negotiations starting on Aug. 16, Foreign Affairs Minister Chrystia Freeland has been pushing to close a softwood lumber deal in order to clear the decks. But with heavy U.S. penalties on Canadian lumber imports already in place, the BC and Canadian lumber industries are clearly sitting in a very weak bargaining position. For now, the U.S. side holds all the aces. But they are blackmail cards, based on extremely flawed subsidy calculations by the U.S. Department of Commerce. This now marks the third time in a row since 1996 that the United States has attempted to use erroneously calculated duties to pressure Canada into accepting a punitive long-term trade agreement. However, caving in early to another blackmail lumber agreement in 2017 would be like snatching defeat from the jaws of victory. Here is why. On April 25, Commerce opened its fifth countervailing duty case against Canadian softwood lumber imports in 35 years. The department assessed three representative BC Interior companies with an average 9.4-per-cent penalty for allegedly "subsidized stumpage." When alleged BC log export restrictions and government grants were factored in, the total subsidy penalty for the rest of the Canadian industry rose to an average of 20 per cent. Stumpage is the value of a tree while it is still standing on the stump, excluding harvesting and hauling costs to the sawmill. For more than three decades, the U.S. Coalition for Fair Lumber Imports has alleged that the Canadian lumber industry enjoys an unfair cost advantage, mainly because provincial governments are said to provide subsidized timber from public lands. Read *The Globe and Mail* [article](#) by Doug Smyth.

NDP Orders Review of Government Reliance on Industry-hired Experts

The NDP government has ordered a review of BC's controversial "professional reliance" system, which uses experts hired by industry to assess the environmental risks associated with logging, mining and other projects. Environment Minister George Heyman said in an interview that the province previously relied on its own professionals to protect the public interest. But the Liberal government shifted much of that responsibility to professionals hired by project proponents — a change that critics say creates conflicts of interest and undermines public trust. Heyman said that reviewing the system is a top priority for the NDP government, but he gave no indication of how long it will take or when it will be completed. Read *The Vancouver Sun* [article](#).

BC MP Says Feds Need to Move Faster on Fisheries Legislation

While the federal government is taking public input on potential changes to the [Fisheries Act](#), the NDP fisheries

critic says those changes aren't coming soon enough. The government is reviewing [amendments made in 2012 by the then-ruling Conservatives](#) that rolled back fish habitat protections and environmental assessment laws. During the 2015 federal election, [the Liberal Party campaigned on a promise](#) to "review these changes, restore lost protections and incorporate more modern safeguards." "Those promises have not been kept. We're two years into a federal Liberal mandate and still, we're under the Harper Fisheries Act," Port Moody-Coquitlam MP Fin Donnelly told [On The Coast](#) guest host Michelle Eliot. "All processes need time but certainly when there's a promise made by a party that knew full well what changes needed to be made ... it should not take you two years." Read the CBC [article](#).

BC Ministry of the Environment: Errata Version 3 Posted for CSR Omnibus Amendment

An [updated Errata](#) (version 3) to the Stage 10 (Omnibus) Amendment to the [Contaminated Sites Regulation](#) has been released. The purpose of the Errata is to compile all currently known errors in the Stage 10 Amendment with the intention to correct all errors in a final 'house-keeping' amendment to be made to the Regulation immediately prior to the new standards coming into force on November 1, 2017. Read the [full post](#) on the British Columbia Environment Industry Association website.

Environmental Appeal Board Decisions

There was one Environmental Appeal Board decisions released in the month of August:

[Environmental Management Act](#)

- [Ermes Culos v. Director, Environmental Management Act \(Belcorp Environmental Services Inc.; Village of Cache Creek, Third Parties\)](#) [Final Decision – Appeal Dismissed]

Visit the Environmental Appeal Board [website](#) for more information.

FORESTRY AND ENVIRONMENT

Act or Regulation Affected	Effective Date	Amendment Information
Grain Industry Development Fund Regulation (236/90)	Aug. 1/17	by Regs 154/2017 and 155/2017
Hunting Licensing Regulation (8/99)	Sept. 1/17	by Reg 127/2017
Wildlife Act Commercial Activities Regulation (338/82)	Sept. 1/17	by Reg 127/2017
Wildlife Act General Regulation (340/82)	Sept. 1/17	by Reg 127/2017

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