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ENVIROFOR NEWS:

Legislative Session

Four new government bills were introduced in May:

- [Bill 9](#) – Finance Statutes Amendment Act (No. 2), 2021 (*Partially in force*)
- [Bill 10](#) – Municipal Affairs Statutes Amendment Act, 2021 (*NYIF*)
- [Bill 11](#) – Miscellaneous Statutes Amendment Act, 2021 (*NYIF*)
- [Bill 13](#) – Employment Standards Amendment Act (No. 2), 2021 (*Partially in force*)

A reminder that if you would like to be notified on the progress of these bills or any other legislation, visit the [My Alerts](#) page to set up some custom alerts for laws that matter most to you. We recommend trying the BC Legislative Digest or the new [Keyword Alert](#) options.

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[ENERGY & MINES](#)

[FORESTRY & ENVIRONMENT](#)

[OCCUPATIONAL HEALTH & SAFETY](#)

ENERGY AND MINES NEWS

Win for American Energy Companies Facing Climate Change Litigation

In a 7-1 ruling in *BP PLC et al v Mayor and City Council of Baltimore* ([19-1189](#)), the Supreme Court of the United States ruled that the Fourth Circuit Court of Appeals did not fully analyze whether a climate change tort lawsuit seeking damages against several energy companies operating in the United States should be heard in federal court, instead of in state court. The decision is a welcome reprieve for energy companies facing potential litigation across a multitude of jurisdictions in the United States, as it could potentially result in climate change claims falling under the jurisdiction of federal courts instead of state courts, and under federal law rather than state law. Read the [full article](#) by Mike Theroux, Laura Gill and Jon McKay with Bennett Jones LLP.

Federal Court of Appeal Lifts Injunction on Alberta's "Turn Off the Taps" Legislation

On April 26, 2021, the Federal Court of Appeal (the FCA) in *Alberta (Attorney General) v. British Columbia (Attorney General)*, [2021 FCA 84](#) overturned the injunction granted by the Federal Court of Canada (the FC), in

favour of British Columbia (BC), against Alberta's *Preserving Canada's Economic Prosperity Act*, SA 2018, c P-21.5 (the Act). The Act empowers Alberta to establish a licencing regime that permits Alberta to restrict exports of natural gas, crude oil, and refined fuels from the province. The FCA determined that BC's application, which also sought a declaration that the Act was unconstitutional, was premature as Alberta had not yet implemented an operational regulatory regime that would actually limit exports of natural gas, crude oil, or refined fuels to BC. Overturning the FC decision and lifting the injunction placed on the Act represent a small victory for Alberta. However, contrary to some media coverage, the FCA did not uphold or otherwise make a declaration on the constitutional validity of the Act. Rather, the FCA merely lifted the injunction placed on the Act by the FC, while holding that it would be premature to render a declaration on the Act's constitutionality in the absence of its operational provisions. Read the [full article](#) by Michael A Marion and Brett Carlson with Borden Ladner Gervais LLP.

Are Electric Vehicle Charging Services Regulated "Suppliers" of Electricity? Provincial Energy Regulators Are Saying No

Canadian electric vehicle (EV) sales have accelerated over the past decade, with no signs of slowing down. Between 2011 and 2020, the total number of EVs sold in Canada skyrocketed from 460 up to over 53,000 per year. With nearly 200,000 EV motors now whirring along Canada's roads, more and more EV charging stations have sprung up to power them. As of March, 2021, Canada has 6,029 EV charging stations, and counting – a year over year increase of 15%. When EV drivers go to the "pump", they don't fill a tank by the litre. They fill a battery by the kilowatt (kW) – a fact which has raised novel legal questions for EV charging suppliers and electricity regulators across Canada. The sale or supply of electricity in all jurisdictions is legislatively confined to authorized electrical utilities, who are typically subject to careful regulatory oversight and price control. The owners and operators of EV charging facilities tend not to be authorized utilities, yet facilitate the delivery of electricity to their customers for compensation, a set of circumstances generally attracting regulatory prohibition or regulatory oversight. Read the [full article](#) by Chris Hummel and Ian A. Mondrow with Gowling WLG.

Recent BCOGC Bulletins

The BCOGC has recently issued the following bulletins:

- [INDB 2021-17](#) – New Landslide Susceptibility Map for Oil and Gas Industry Working in NEBC
- [INDB 2021-18](#) – Amendment Application Submission Requirements
- [INDB 2021-19](#) – Updates to Area-Based Analysis

Visit the [BCOGC website](#) to view this and other bulletins.

ENERGY AND MINES

Act or Regulation Affected	Effective Date	Amendment Information
Administrative Penalties Regulation (35/2011)	May 25/21	by Reg 136/2021
	June 1/21	by Reg 136/2021
Consultation and Notification Regulation (279/2010)	REPEALED June 1/21	by Reg 50/2021
Emergency Management Regulation (217/2017)	June 1/21	by Reg 50/2021
Fee, Levy and Security Regulation (9/2014)	June 1/21	by Reg 50/2021 and Reg 79/2021
Greenhouse Gas Reduction (Clean Energy) Regulation (102/2012)	May 25/21	by Reg 134/2021
Kerr-Sulphurets-Mitchell Mine Exemption		

Regulation (140/2021)	May 28/21	see Reg 140/2021
Oil and Gas Road Regulation (56/2013)	June 1/21	by Reg 50/2021
Requirements for Consultation and Notification Regulation (50/2021)	NEW June 1/21	see Reg 50/2021
Service Regulation (199/2011)	June 1/21	by Reg 52/2021
Transmission Upgrade Exemption Regulation (140/2013)	May 28/21	by Reg 140/2021

FORESTRY AND ENVIRONMENT NEWS

New Forest Policy to Redistribute Forest Tenures to Small Operators and Indigenous Communities

The BC government has [announced](#) significant changes to forest policy, outlined in a new intentions paper. The proposed changes include what it calls a compensatory framework to redistribute forest tenures to Indigenous Nations, forest communities and small operators. The new policy will also provide for more government control over management of the sector. The goal will be to increase forest tenure held by Indigenous Peoples in BC from 10% to 20%. Other proposed changes will provide for increased access to wood fibre for value-added domestic manufacturers and an audit process of the fee-in-lieu it charges companies when unprocessed logs are exported out of BC. New legislation reflecting these new policies is expected to be introduced in the fall. A summary presentation of government's intentions paper is available here: https://news.gov.bc.ca/files/Modernize_Forest_Policy_Presentation.pdf.

U.S. Move to Double Tariffs on Canadian Softwood Lumber Is "Egregious", Says BC Lumber Trade Council

The president of the BC Lumber Trade Council says a move by the United States to double tariffs on Canadian [softwood lumber](#) is "particularly egregious" given current record high lumber prices. Susan Yurkovich says the dramatic increase in the "all others" preliminary countervailing and anti-dumping rate to 18.32 per cent from 8.99 per cent will hurt American consumers who are faced with a market where prices are at record heights because supply can't keep up with demand. Read the Global News [article](#).

Investigation Finds Old Growth, Biodiversity at Risk near Port Alberni – FPB

An investigation of a complaint about BC Timber Sales' (BCTS) logging of large old growth trees in the Nahmint River Watershed has found that BCTS's forest stewardship plan (FSP) is not consistent with the Vancouver Island Higher Level Plan Order and does not adequately protect old forest and biodiversity values in some ecosystems. Read the Forest Practices Board [news release](#).

Environmental Appeal Board Decisions

The following Environmental Appeal Board decisions were made recently:

[Environmental Management Act](#)

- [Christine McLean v. Director, Environmental Management Act](#) [Preliminary Issue of Jurisdiction – Appeal Dismissed]

[Integrated Pest Management Act](#)

- [Robert Todd Lang v. Administrator, Integrated Pest Management Act](#) [Consent Order – Penalty Confirmed]

[Water Sustainability Act](#)

- [Denis Lefebvre v. Assistant Water Manager](#) [Final Decision – Appeal Dismissed]

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

FORESTRY AND ENVIRONMENT

Act or Regulation Affected	Effective Date	Amendment Information
Placer Mining Waste Control Regulation (107/89)	May 17/21	by Reg 131/2021

OCCUPATIONAL HEALTH AND SAFETY NEWS

Health and Safety at the Construction Site – Apportioning Risk [Relevance to BC]

Construction safety is one of the most, if not the most, important issues for any construction project. Owners and contractors generally treat construction safety issues very seriously. As a result, the apportionment of liability for workplace safety on a construction site is a key term for any construction contract. Typically, owners will seek to shift the liability for ensuring workplace safety and compliance with applicable health and safety legislation to the contractor through the contract terms. Owners do so as risk is best placed where it is best managed and with respect to construction safety the contractor controls the project site and work and is best able to manage this risk. A recent decision from the Ontario Court of Appeal, however, suggests that, at least in Ontario, the contract language may not be the only factor in determining who is responsible for compliance with applicable health and safety legislation. The owner's actions may make the owner liable for all health and safety matters, particularly if the owner has a presence at the construction site. Read the [full article](#) by Rosalie Clark and Scott Lamb with Clark Wilson LLP.

New Public Health Orders

The Public Health Office (PHO) recently issued the following orders & Guidelines:

Orders:

- [Gatherings and Events – May 28, 2021 \(PDF, 425KB\)](#)
 - [Variance: Indoor Worship Services – May 26, 2021 \(PDF, 191KB\)](#)
 - [Variance: Outdoor Worship Services – May 26, 2021 \(PDF, 226KB\)](#)
 - [Indoor Exercise Requirements – May 27, 2021 \(PDF, 462KB\)](#)
 - [Extension of the Variance Suspension: Indoor Worship Services on Four Days – April 19, 2021 \(PDF, 208KB\)](#)
 - Read related [Public Health guidance](#)
- [Food and Liquor Serving Premises – May 24, 2021 \(PDF, 339KB\)](#)
 - Read related [Public Health guidance](#)
- [Long-Term Care Facility Staff Assignment – April 15, 2020 \(PDF, 274KB\)](#)
 - [Variance of the Facility Staff Assignment Order – May 16, 2021 \(PDF, 256KB\)](#)
 - [Amendment: Deployment and redeployment of staff - October 26, 2020 \(PDF, 444KB\)](#)
- [Industrial Camps – May 12, 2021 \(PDF, 394KB\)](#)
 - [Delegation: Industrial Camps – June 9, 2020 \(PDF, 216KB\)](#)
- [Workplace and Post-Secondary Institution Safety – May 2, 2021 \(PDF, 339KB\)](#)
- [Advanced Care Paramedic and Critical Care Paramedic SARS-CoV-2 Swabbing – May 2, 2021 \(PDF, 222KB\)](#)

Public Health Guidance:

- [Guidance for Holding Low Risk Worship Services – May 26, 2021 \(PDF, 384KB\)](#)
- [Guidance for Outdoor Assemblies, Rallies, and Protests – May 17, 2021 \(PDF, 370KB\)](#)

Visit the [PHO website](#) to view these and other related orders and notices.

2021 New or Revised ACGIH Threshold Limit Values and BC Exposure Limits

The Occupational Health and Safety Regulation provides that, except as otherwise determined by WorkSafeBC, an employer must ensure no worker is exposed to a substance exceeding the Threshold Limit Values (TLVs) prescribed by the [American Conference of Governmental Industrial Hygienists](#) (ACGIH). Each year, the ACGIH publishes a list of substances for which they have set new or revised TLVs. When the new or revised TLVs for substances are adopted, these TLVs are referred to as BC Exposure Limits (ELs). An EL is the maximum allowed

airborne concentration for a chemical substance for which it is believed that nearly all workers may be exposed over a working lifetime and experience no adverse health effects. ELs may be set out as an 8-hour time-weighted average concentration, a 15-minute short-term exposure limit, or a ceiling limit. Read the full WorkSafe [news release](#).

OHS Policies/Guidelines – Updates

WorkSafeBC recently issued the following OHS Updates:

OHS Guidelines – Occupational Health and Safety Regulation

The following guidelines were retired:

- Part 8 Personal Protective Clothing and Equipment
 - G8.21 [Leg protection](#) (retired)
- Part 29 Aircraft Operations
 - G29.12 [Unstable materials](#) (retired)

Editorial revisions were made to the following guidelines:

- Part 3 Rights and Responsibilities
 - G3.16(1.1) [Basic requirements to meet schedule 3-A](#)
- Part 26 Forestry Operations and Similar Activities
 - G26.21-26.22 [Faller training - Application](#)
 - G26.28 [Summoning qualified assistance](#)
 - G26.65(1) [Certified welding inspector](#)

Check the [WorkSafe BC Updates page](#) to explore these and other important OHS updates.

Workers Compensation Claims for Adverse

Reactions to COVID-19 Vaccine Possible

WorkSafeBC recently published its position on COVID-19 vaccinations, making it clear that workers compensation claims related to adverse vaccine reactions can be successful. Such reactions – either injury or death – would have to arise "out of and in the course of the workers' employment". That means that getting the vaccine would need to be a requirement of employment. Where an employee receives a vaccination voluntarily, there is likely no right to workers compensation benefits. Read the [full article](#) published Clark Wilson's [employment and labour law lawyers](#).

OCCUPATIONAL HEALTH AND SAFETY

Act or Regulation Affected	Effective Date	Amendment Information
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There were no amendments this month.

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