COVID-19: Implications for Environmental Permitting and Compliance

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As a result of the COVID-19 pandemic, reduced or modified operations at government offices and regulatory tribunals, physical distancing requirements and changes to certain business activities have impacted environmental permitting and enforcement activities in many Canadian jurisdictions. While some agencies appear to be following a business-as-usual approach, many have modified their permitting processes and/or compliance approach (or indicated a willingness to consider exceptions to strict compliance). This Update provides a cross-country overview of Canadian government pronouncements or guidance in respect of environmental permitting and compliance obligations during the pandemic.

FEDERAL

PROPOSED AMENDMENTS TO THE OUTPUT-BASED PRICING SYSTEM (OBPS) REGULATIONS

On April 8, 2020, the federal government published a notice announcing that the Minister of Environment and Climate Change intends to develop regulations amending the OBPS Regulations made under the Greenhouse Gas Pollution Pricing Act in response to the pandemic. If approved by the federal cabinet, these amending regulations may take effect retroactively (as early as April 8, 2020) and would extend the deadline for submitting annual reports under the OBPS Regulations from June 1 to October 1, 2020. The amending regulations would also extend the deadlines for providing compensation for greenhouse gas emissions emitted in excess of a covered facility’s emissions limit for the 2019 compliance period, from December 15, 2020 to April 15, 2021 (regular rate compensation) and from February 15 to June 15, 2021 (increased-rate compensation).
FISHERIES AND SPECIES AT RISK

Authorizations under the *Fisheries Act* will continue to be processed but may be delayed depending on the nature of the requests. Similarly, permits under the *Species at Risk Act* will continue to be processed in accordance with the same 90-day service standard, and applicants will be notified of any delays.

BRITISH COLUMBIA

GENERAL ENVIRONMENTAL COMPLIANCE

According to the *Ministry of Environment* and Climate Change Strategy, authorizations under the *Environmental Management Act* remain in effect and all reasonable measures should be taken to comply. Authorization holders who are unable to meet the authorization requirements due to orders, directives, or guidance provided by the Province are told to provide notice to the Ministry by stating their compliance issues, how the compliance issues are related to COVID-19, and what mitigative measures are being taken.

CARBON TAX

On April 1, 2020, the government of British Columbia announced that they will not be going ahead with the scheduled increase to their provincial carbon tax. At this time, the carbon tax rate will remain at $40.00 per tCO2 until further notice. The deadline for making provincial carbon tax payments has also been extended to September 30, 2020.

ENVIRONMENTAL ASSESSMENT OFFICE (EAO)

The British Columbia EAO advises that there may be delays in advancing projects and responding to issues.

OIL AND GAS COMMISSION (OGC)

The British Columbia OGC has closed their offices due to COVID-19 but has released detailed guidance to stakeholders, indicating the following:

- **Field Inspections and Enforcement**: Inspections of oil and gas sites continue, and the OGC will follow their regular processes when communicating inspection results to permit holders (via the online KERMIT system). The OGC has also stated that they will continue to employ enforcement tools as appropriate.

- **Permit Applications**: Applications to the OGC continue to be actively reviewed. The OGC does not anticipate much change to processing timelines, although flexibility “may be a consideration” for applications that require consultation and engagement with other parties. Such adjustments will be determined on a case-by-case basis.

- **Emergency Response Plans**: The OGC has stopped physically attending Emergency Response Plan review meetings and the annual exercises of permit holders. Options to allow permit holders to conduct their exercises via video conference are currently being tested; however, the OGC has advised some companies that it is prepared to reschedule their annual exercises to later in the year. Permit holders are still expected to maintain their capacity to respond to incidents.
ENVIRONMENTAL APPEAL TRIBUNALS

On March 27, 2020, the Environmental Appeal Board, the Forest Appeals Commission and the Oil and Gas Commission (the “Tribunals”) issued a statement [PDF] that given COVID-19 and the disruptions it presents, the Tribunals may need to place their focus on critical matters. Key points include:

1. Communication: The Tribunals advised that email is the most reliable method of contact.
2. Timelines: The Minister of Public Safety has suspended all mandatory timeframes for the filing of appeals. As well, appeal bodies have been granted the ability to waive, suspend, or extend timeframes until the current state of emergency related to COVID-19 is over. Any mandatory timeframes for filing appeals by March 18, 2020 are suspended for all Tribunals without the need to extend statutory timeframes. Further, any appeal that would have been due on March 25, 2020 will now be due 7 days after the suspension is lifted, whenever that may be.
3. Pressing Matters: All parties, participants, intervenors and representatives should identify pressing and time-sensitive issues so they may be prioritized. Tribunal staff will review matters raised on a priority basis.

ALBERTA

ENVIRONMENTAL REPORTING REQUIREMENTS

Alberta Environment and Parks (“AEP”) issued three Ministerial Orders related to environmental reporting requirements on March 30, 2020:

- **Ministerial Order 17/2020** suspends all requirements to report information pursuant to provisions in registrations or approvals issued under the Environmental Protection and Enhancement Act and the Water Act (except those related to drinking water facilities). It also suspends all requirements to submit returns or reports related to dispositions under the Public Lands Act. While these requirements are suspended, holders of dispositions must still record and retain the information they would otherwise have to report or submit, and such records must be provided to the responsible regulator if requested.

  This Order will lapse, and reporting requirements will resume, on August 14, 2020, unless it is continued by an order of the Alberta Cabinet under the Public Health Act or terminated sooner. If the order-in-council declaring a state of public health emergency in Alberta is terminated before June 15, 2020, the Order will lapse 60 days later.

- **Ministerial Order 15/2020** extends the deadline to submit compliance reports and emissions reduction plan reports under the Technology Innovation and Emissions Reduction Regulation (Alberta’s heavy emitter carbon pricing regime) from March 31 to June 30, 2020.

- **Ministerial Order 16/2020** similarly extends the deadline for fuel suppliers, approved contributors and renewable fuel providers to submit reports for the 2019 compliance period under the Renewable Fuels Standard Regulation from March 31 to June 30, 2020.

On April 6, 2020, the Minister of Energy made Ministerial Order 219/2020, which suspends a number of reporting obligations under the Coal Conservation Rules, Coal Conservation Act, the Oil and Gas Conservation Rules, directives and approvals and the Oil Sands Conservation Rules and approvals. These reporting obligations include annual and exploration reporting under the Coal Conservation Rules, pressure surveys and well logs under the Oil and Gas Conservation Rules and directives, annual progress
reports and performance presentations for Directive 065 scheme approvals and annual mine plans and
geotechnical and operations reports under the Oil and Gas Conservation Rules. While these requirements
are suspended, holders of registrations, approvals, licenses and dispositions must still record and retain
the information they would otherwise have to report or submit, and such records must be provided to
the Alberta Energy Regulator, if requested.

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AIR QUALITY

The AEP temporarily amended select air quality monitoring and reporting requirements on March 31,
2020. Temporary amendments to the Air Monitoring Directive ("AMD") allow industrial facilities to
deviate from certain AMD monitoring and reporting requirements, including: (i) providing an extension
to complete and submit 2019 Annual Emissions Inventory Reports from September 30, 2020 to
December 31, 2020; (ii) removing the requirement to immediately report exceedances of Ambient Air
Quality Guidelines until August 31, 2020 (exceedances of Ambient Air Quality Objectives and other
immediate reporting must still be completed); and (iii) providing an extension to submit airshed monthly
air monitoring summary reports and ambient data (March reports are now due June 30, April reports are
due July 31, May reports are due August 31, and June reports due September 30).

SASKATCHEWAN

TEMPORARY ENFORCEMENT RELIEF

Saskatchewan’s Minister of Environment recently issued a Temporary Enforcement Policy [PDF]. (which
applies retroactively to March 27, 2020) to address violations of, among other things, the Environmental
Management and Protection Act, 2010, the Environmental Assessment Act, and the Management and

While noting that industrial and municipal facilities regulated by the Ministry are expected to comply
with their regulatory requirements where reasonably practicable, the policy provides for potential relief
from enforcement where the nature of the non-compliance is related to COVID-19. More specifically, if
compliance is not reasonably practicable because of COVID-19 issues, proponents must:

- report the non-compliance to the Ministry (except for certain low risk activities)
- act responsibly to minimize the effects and duration of any non-compliance caused by COVID-19-
related issues
- identify and document the specific nature and dates of the non-compliance
- identify and document how COVID-19 was the cause of the non-compliance, and actions taken in the
  response, including efforts to comply as soon as possible.

Enforcement relief based on the policy will not apply where proponents are unable to provide
documentation to the Ministry regarding the nature of the non-compliance or how the non-compliance is
related to COVID-19 or where proponents or individuals are not acting in good faith or are knowingly
violating legislation.

"COVID-19: Implications for Environmental Regulation"

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The Ministry has also reduced inspections as a result of the pandemic, and is evaluating the possibility of using technology, surveys or personal protective equipment in the circumstances.

The Ministry will assess the need for the temporary policy on a regular basis, update it if the COVID-19 situation changes and provide at least seven days notice prior to terminating the policy.

**OIL AND GAS SECTOR**

On April 14, 2020, the Government of Saskatchewan announced that it will be implementing relief measures for the provincial oil and gas sector. The measures include an extension of filing and other deadlines applicable to routine reporting activities, which is intended to help stabilize operations. The announcement also includes a one-year extension of mineral rights (leases, exploration licenses or permits) set to expire in 2020.

**MANITOBA**

The Manitoba government has suspended non-critical business operations (with exceptions). Manitoba Conservation and Climate has confirmed all environmental compliance and enforcement functions are operating as normal.

**ONTARIO**

**ENVIRONMENTAL REVIEW TRIBUNAL**

Effective March 13, 2020, Tribunals Ontario (which includes the Environmental Review Tribunal) implemented a new policy to postpone in-person hearings and to consider alternative hearing options where possible (such as written and telephone hearings). On March 20, 2020, the Ontario government issued Ontario Regulation 73/20, which suspends limitation periods and procedural time periods relevant to tribunal hearings, retroactive to March 16, 2020. If parties are unable to meet certain timelines, Tribunals Ontario will postpone the deadlines.

The Environmental Review Tribunal has announced that it continues to receive and process new appeals and applications sent via email to errtribunalsecretary@ontario.ca. Appeals and applicants filed by mail or fax are subject to longer delays. All hearings and mediations will be held via teleconference.

**PROVINCIAL OFFENCES**

Prosecutions under the *Environmental Protection Act*, *Pesticides Act*, and the *Ontario Water Resources Act* that are proceeding under the Provincial Offences Act have had been adjourned through to May 29, 2020. Companies with *Provincial Offences Act* matters scheduled before then will have a new court date mailed to the address on file with the Provincial Offences Court.

**ENVIRONMENTAL BILL OF RIGHTS – TEMPORARY EXEMPTIONS**

On April 1, 2020, the Ontario government filed Ontario Regulation 115/20 under the *Environmental Bill of Rights, 1993* ("EBR"). This Regulation temporarily exempts ministers from complying with the posting requirements in Part II of the EBR for proposals for Acts, policies, regulations and instruments. The Regulation also exempts the ministries listed in section 1 of Ontario Regulation 73/94 from the requirement in section 11 of the EBR to consider the ministry statement of environmental values.
whenever decisions that might significantly affect the environment are made.

This Regulation applies until 30 days after the province’s COVID-19 emergency declaration is terminated. Further information on these temporary exemptions can be found on the Environmental Registry of Ontario site.

To date, no formal announcement of explicit relief from reporting or other requirements has been provided by the Ministry of the Environment, Conservation and Parks (“MECP”) in Ontario. However, in response to questions from the Ontario Bar Association, an MECP representative indicated that the MECP will consider temporary requests for regulatory relief on a case-by-case basis from members of the regulatory community who are facing disruption to their business as a result of the COVID-19 outbreak. The MECP representative also clarified that, in its view, the suspension of limitation periods and procedural time periods in Ontario Regulation 73/20 (referred to above) does not apply to MECP Orders, directives and inspection requests.

QUÉBEC

On April 9, 2020, the Centre de contrôle environnemental du Québec (“CCEQ”) published directives [French only] with three key messages:

- Businesses’ environmental obligations remain for any situation that may have a direct impact on the health and safety of the population as well as on the quality of the environment. However, other field inspections and off-site inspections will be limited in the current context.
- The CCEQ will be understanding and flexible — including with respect to the use of sanctions — for those businesses that have environmental obligations and who, following the Québec government’s recommendations, have temporarily ceased their activities or started providing essential services.
- Upon facing any problem or particular situation, businesses are encouraged to contact the CCEQ regional management to keep them informed and identify the action to be taken under the circumstances.

In addition, the CCEQ announced that it would temporarily loosen restrictions, including the requirement to obtain or modify certain permits and approvals, for companies that are reorganizing their operations to provide essential products related to the pandemic, either by increasing current production of essential equipment (e.g., personal protective equipment, sanitizers, wipes, respirators and other medical equipment and supplies) or by temporarily changing activities to newly produce this essential equipment. Companies must notify the Ministry in order to confirm this temporary exemption.

NEW BRUNSWICK

On March 19, 2020, the Government of New Brunswick closed or restricted government offices to critical functions. The validity of all licenses, registrations, certificates and permits issued by the Province that were valid as of March 16, 2020 has been extended until May 31, 2020 (unless suspended by a court or via another provincial statute).

NOVA SCOTIA

To date, we have not seen any specific announcement from the Nova Scotia Department of Environment relating to environmental permitting or compliance/enforcement.
PRINCE EDWARD ISLAND
As of April 9, 2020, the PEI Department of Environment, Water and Climate Change has advised that it has not suspended reporting requirements under its Environmental Protection Act or other legislation and does not plan on doing so at this time.

NEWFOUNDLAND AND LABRADOR
Newfoundland and Labrador’s Department of Fisheries and Land Resources has issued several Public Advisories in late March and early April 2020 due to the pandemic, extending expiry dates for fish processing, fish buyer licenses and aquaculture licenses. The Department has suspended walk-in counter service at all department offices until further notice.

YUKON
As of April 15, 2020, the Yukon Department of Environment offices remain open.

NORTHWEST TERRITORIES
As of April 3, 2020, Environment and Natural Resources (ENR) continues to monitor and enforce environmental licences and permits as usual, including the NWT Spill Report Line. However, ENR offices are closed and officers are available by appointment only. The territorial government had previously stated that inspectors may ask operators to demonstrate compliance through photographs and providing weekly updates. Operators are expected to notify the relevant inspectors if limitations due to the COVID-19 pandemic affect their ability to remain in compliance.

The Department of Lands has indicated that project assessments are still available but with altered or limited service. The Mackenzie Valley Environmental Impact Review Board and the Mackenzie Valley Land and Water Boards are continuing to operate as best as possible under the Mackenzie Valley Resource Management Act, though some project assessments and applications may be impacted. All internal and external in-person meetings with these agencies are suspended until further notice.

NUNAVUT
The Department of Environment Services has posted limited updates regarding COVID-19. There is no indication that environmental compliance and enforcement has been affected thus far. As of April 3, 2020, the Government of Nunavut critical response capacity is still being maintained with all spills to be reported as normal to the Nunavut Spill Line.

We would like to acknowledge the assistance of John Gormley, Marleigh Dick, Maryna Polataiko and Joyce Pong.
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Companies must serve directives and inspection requests.

Prosecutions under the Ontario Regulation 73/20 (referred to above) does not apply to MECP Orders, provided by the Ministry of the Environment, Conservation and Parks (“MECP”) in Ontario. However, in circumstances.

The Ministry will assess the need for the temporary policy on a regular basis, update it if the COVID-19 pandemic continues.

Violating legislation.

Documenting to the Ministry regarding the nature of the non-compliance or how the non-compliance is related to COVID-19, what mitigation measures

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BRITISH COLUMBIA

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