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ENVIRONOTES!

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Environmental Solutions for Business

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Inside

In Brief:
News
Legislation
Court Decisions

In Depth:
Going for "Sustainability": The 2010 Vancouver Olympic Winter Games

Ontario Sentencing Update

Legislating Sustainable Development

Planning Our Landscape: The Annual Report of the Environmental Commissioner of Ontario

What's Happening Around Miller Thomson

IN BRIEF:

NEWS

Canada

On October 21, 2005, *Canada's Response to the Recommendations in the International Joint Commission's (IJC) Twelfth Biennial Report on Great Lakes Water Quality* was released. In addition, a comprehensive review of the operation and effectiveness of the Great Lakes Water Quality Agreement was commenced. The IJC will hold public meetings in Canadian and U.S. communities this fall to gather input. For more information please see: http://www.ec.gc.ca/press/2005/051021_n_e.htm.

On October 12, 2005, the Canadian Council for Ministers of the Environment announced revisions to its *Guidelines for Compost Quality* to reflect new science and technologies and an improved understanding of composting and compost. For more information please see: <http://www.ccme.ca/publications/newpublications.html?item=161>.

On October 6, 2005, Environment Canada proposed to regulate Large Final Emitter companies under the *Canadian Environmental Protection Act, 1999*. Large Final Emitters are companies that produce goods in emissions-intensive sectors including primary energy production, electricity production, and selected areas of mining and manufacturing production. For more information please see: <http://www.ec.gc.ca/lfe-gef/home-lfe.htm>.

On October 5, 2005, federal, provincial and territorial ministers responsible for Forests, Wildlife, Endangered Species, and Fisheries and Aquaculture approved a plan to develop a *Biodiversity Outcomes Framework for Canada*. The plan sets the stage for a joint federal-provincial-territorial work program to complete the Framework by the fall of 2006. For more information please see: http://www.ec.gc.ca/press/2005/051005_n_e.htm.

On October 5, 2005, Minister Dion announced that the proposed Orca Sand and Gravel Extraction and Associated Marine Terminal project is not likely to cause significant adverse environmental effects. The project involves the construction and operation of a gravel and sand extraction facility and an associated marine terminal. For more information please see: http://www.ceaa-acee.gc.ca/050/DocHTMLContainer_e.cfm?DocumentID=11055.

On September 29, 2005, Minister Dion responded to the *2005 Report of the Commissioner of the Environment and Sustainable Development*. Recommendations made this year deal mainly with Canada's Oceans Action Plan, Canada's National Parks, the safety of drinking water, and federal strategies on sustainable development. For more information please see: http://www.ec.gc.ca/press/2005/050929_n_e.htm.

British Columbia

On October 28, 2005, Energy, Mines and Petroleum Resources Minister Neufeld announced that a new provincial program that pays for the reclamation of orphan oil and gas sites through a tax on industry was introduced the previous day in the legislature. The funding program would place the burden of reclamation payment on industry. For more information please see: http://www2.news.gov.bc.ca/news_releases_2005-2009/2005EMPR0045-000924.htm.

Alberta

On October 19, 2005, a draft water management plan for the South Saskatchewan River Basin became available for public review. The Plan is designed to ensure water is managed wisely and to encourage conservation. Albertans are invited to provide their feedback on the Plan by December 9. For more information please see: <http://www.gov.ab.ca/acn/200510/18931076BF23F-4AE3-48F1-A51B19E8FBA35351.html>.

On October 5, 2005, the Environmental Protection Commission delivered its interim report to Minister Boutillier outlining the areas the Commission will be examining more closely, particularly around building capacity in Alberta to prevent and respond to environmental emergencies. For more information please see: <http://www.gov.ab.ca/acn/200510/18851CD51B738-D8C3-4153-8972FB1471ADA9EE.html>.

On September 30, 2005, a number of Codes of Practice made pursuant to the *Environmental Protection and Enhancement Act* were published in the *Alberta Gazette, Part I*, including:

- Code of Practice for Land Treatment of Soil Containing Hydrocarbons;
- Code of Practice for Energy Recovery;
- Code of Practice for Exploration Operations; and
- Code of Practice for Small Incinerators.

For more information please see: http://www.qp.gov.ab.ca/documents/gazette/2005/pdf/0930_i.pdf.

On September 15, 2005, the Environmental Protection Commission, established following the Lake Wabamun derailment, began to carry out its mandate to review and make recommendations on Alberta's ability to respond to environmental incidents. For more information please see: <http://www.gov.ab.ca/acn/200509/18749E406CEB6-E950-408C-89102D2489D2AE2D.html>.

Ontario

On September 27, 2005, the Ministry of Natural Resources announced a new toll-free phone line to assist members of the public in reporting suspected violations of natural resources laws. The Ministry asks those who spot illegal activities involving fish and wildlife, forests, parks, aggregates or public lands to call 1-877-TIPS-MNR. For more information please see: http://www.mnr.gov.on.ca/MNR/csb/news/2005/sep27bg_05.html.

LEGISLATION

Canada

On October 19, 2005, Environment Minister Dion and Health Minister Dosanjh announced final regulations to significantly reduce sulphur levels in diesel fuel used for rail, marine and other off-road purposes such as construction, agricultural and industrial equipment. For more information please see: http://www.ec.gc.ca/press/2005/051019_n_e.htm.

The *New Substances Notification Regulations* were repealed and on September 21, 2005 the replacement regulations were published in the *Canada Gazette, Part II*:

- *New Substances Notification Regulations (Chemicals and Polymers)* (S.O.R./2005-247) and
- *New Substances Notification Regulations (Organisms)* (S.O.R./2005-247)

For more information please see: <http://canadagazette.gc.ca/partII/2005/20050921/html/sor247-e.html> and <http://canadagazette.gc.ca/partII/2005/20050921/html/sor248-e.html>.

Also published in *Canada Gazette, Part II*, on September 21, 2005, were the following:

- The amendment of certain regulations under the *Canadian Environmental Assessment Act*. For more information please see: <http://canadagazette.gc.ca/partII/2005/20050921/html/sor261-e.html>; and
- The addition of a number of Toxic Substances to Schedule 1 of the *Canadian Environmental Protection Act, 1999*. For more information please see: <http://canadagazette.gc.ca/partII/2005/20050921/html/sor262-e.html>.

British Columbia

On October 28, 2005, the Ministry of the Environment announced that the new *Ground Water Protection Regulation* would come into effect on November 1, 2005. The Regulation is part of the Province's *Action Plan for Safe Drinking Water* and establishes standards to ensure wells are properly drilled, sealed, maintained and closed. For more information please see: http://www2.news.gov.bc.ca/news_releases_2005-2009/2005ENV009-000968.htm.

Alberta

A number of Alberta's environmental regulations were recently amended. On September 30, 2005, the following new regulations were published in the *Alberta Gazette, Part II*:

- *Activities Designation Amendment Regulation*, Alta. Reg. 157/2005;
- *Substance Release Amendment Regulation*, Alta. Reg. 159/2005;
- *Conservation and Reclamation Amendment Regulation*, Alta. Reg. 160/2005;
- *Environmental Protection and Enhancement (Miscellaneous) Amendment Regulation*, Alta. Reg. 161/2005;
- *Waste Control Amendment Regulation*, Alta. Reg. 162/2005;
- *Administrative Penalty Amendment Regulation*, Alta. Reg. 163/2005; and
- *Water (Offences and Penalties) Amendment Regulation*, Alta. Reg. 164/2005.

For more information please see: http://www.qp.gov.ab.ca/documents/gazette/2005/pdf/0930_ii.pdf.

Ontario

On October 19, 2005, the Ministers of the Environment and Agriculture, Food and Rural Affairs announced final amendments to the *Nutrient Management Regulation* (O. Reg. 267/03) which were filed on September 29, 2005. The government also announced that:

- A Nutrient Management Standards Science Committee will be established to advise on a number of risk-based nutrient management standards.
- Long-range scientific research, related to nutrient management practices and their impact on the environment, is being coordinated with the University of Guelph.
- The *Nutrient Management Act* may become a prescribe Act under Ontario's *Environmental Bill of Rights* to ensure greater public participation.

For more information please see: <http://www.omafra.gov.on.ca/english/infores/releases/2005/101905.html>.

On October 7, 2005, the Ministers of the Environment and Agriculture, Food and Rural Affairs announced that the government has finalized O. Reg. 535/05 requiring an average of at least five percent ethanol in all gasoline sold in Ontario beginning January 1, 2007 and is now accepting applications under the Ontario Ethanol Growth Fund. For more information please see: <http://www.ene.gov.on.ca/envision/news/2005/100701.htm> and <http://www.ene.gov.on.ca/envregistry/025600er.htm>.

Québec

On October 14, 2005, the Ministers of Sustainable Development, Environment and Parks, Agriculture, Fisheries and Food and Health and Social Services published amendments to the *Agricultural Practices Regulation*. The government hopes to encourage sustainable development of farming practices and protection of groundwater and public health. For more information please see: <http://www.mddep.gouv.qc.ca/Infuseur/communique.asp?no=901>.

COURT DECISIONS

Alberta

On September 9, 2005, the Alberta Court of Appeal held in a judicial review application that an environmental impact assessment was not required for the proposed expansion of a ski resort into an environmentally sensitive area. The decision by the Director of Regulatory Assurance that a mandatory report was not required was reasonable, as was the decision by the Minister of Environment not to exercise his authority to order a report. *Castle-Crown Wilderness Coalition v. Alberta (Director of Regulatory Assurance Division, Alberta Environment)*, [2005] A.J. No. 1150.

IN DEPTH:

GOING FOR "SUSTAINABILITY": THE 2010 VANCOUVER OLYMPIC WINTER GAMES

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In 2010, Vancouver (and Whistler) will host the Winter Olympic Games. A great deal of anticipation is building for these games, not only from the perspective of Canadians "owning the podium" but of showing to the world that Canada is at the forefront of the sustainability revolution.

Sustainability emerged with the 1987 report of the World Commission for Environment and Development (the Brundtland Report) which defined sustainability for the planet. In 1992, the Rio Declaration created 27 principles of sustainable development and in 2002, in Johannesburg, South Africa, Agenda 21 and the commitments to the Rio principles were re-affirmed.

At its most basic, "sustainability" means meeting the needs of the present without compromising the ability of future generations to meet their own needs.

Sustainability and the Olympics

In 1994, the International Olympic Committee ("IOC") added environment as a third pillar of the Olympic movement (along with sport and culture). In 1999, the IOC adopted its own Agenda 21 which focussed on:

- Improving socio-economic conditions;
- Conserving and managing resources; and
- Strengthening the role of major groups.

The 2010 Vancouver Olympic Bid

The 2010 Vancouver bid underwent two environmental assessments, being:

1. A strategic environmental assessment required by the federal government; and
2. A preliminary impact assessment required by the IOC.

In addition, Vancouver committed to incorporating sustainable and inclusive principles into all 2010 plans and actions.

The 2010 Winter Games aim to broaden and strengthen the focus of sustainability beyond environmental stewardship to include social responsibility, economic opportunity, sport development and health promotion.

For 2010, environmental stewardship is to be affirmed in every activity such that the games will conserve resources, prevent pollution, and protect and enhance natural systems. Vancouver will investigate the use of the latest environmental practices for the 2010 Games, including:

- Green building standards;
- Sustainable transportation innovation;
- Energy efficiency and use of renewable energy;
- Wastewater treatment and water conservation;
- Air quality and greenhouse gas management; and
- Protection/enhancement of natural landscapes.

The sustainability framework provides policy guidance and a set of best practices based on principles of ecological limits, interdependence, long-term view, stakeholder engagement, equity, accessibility, and healthy communities. It applies to planners, organizers and suppliers during the bid and organizing phases.

The sustainable framework guidelines are meant to ensure the needs of today and tomorrow are met; integrate and optimize sport, environmental, social and economic considerations; help build community, domestic and international sport; ensure the creation of a sustainable legacy; enable the Games to become a showcase of sustainability to the citizens of Canada and the world; and increase the understanding of sustainability through the Olympic medium.

Specific environmental initiatives will include:

- Green buildings;
- Green power program;
- Fuel cell program;
- Zero waste program; and
- Green hotel program.

In addition, Vancouver 2010 is supporting the Whistler sustainability initiative, which is based on The Natural Step Framework.

Sustainability Opportunities

Sustainability for the 2010 Games will create opportunities for those developing the infrastructure required for the games. The venues to be built in Vancouver are committed under various legal agreements that were developed during the bid stage. These agreements outline, among other things, the venue budget, design process and sustainability features (including "green" buildings).

For example, the Hillcrest Curling Facility is planned to have a sustainability standard of LEED "silver". However, the City of Vancouver *Legacy Report* recommended that new and renovated facilities on Park Board land should be built to a LEED "gold" standard. The Athletes' Village, which will be built on the brownfield South East False Creek will also provide opportunities for sustainable planning, development and building.

LEED is a voluntary, consensus-based international standard for developing high-performance, sustainable buildings. In Canada, the Canada Green Building Council has 140 projects being developed with 16 completed to date. For the federal government, all future buildings over a certain minimum size are to meet the LEED gold standard.

Many infrastructure projects are now underway including the Sea to Sky Highway upgrade, the RAV line, and many more. However, we shall have to wait for the judges' decision in 2010 to determine if in fact the Vancouver Winter Games are the most *sustainable* games ever.

ONTARIO SENTENCING UPDATE

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On November 1, Maple Leaf Foods Inc. carrying on business as Rothsay was fined a total of \$682,500 after pleading guilty to charges under the *Environmental Protection Act* ("EPA"), Ontario Regulation 347 and the *Ontario Water Resources Act* ("OWRA").

Rothsay recycles animal and poultry by-products, including bones, trim, fat and offal into a broad range of commercial tallow and protein products, at its Hamilton plant. On numerous dates during 2001, 2003 and 2004, odours emanating from various sources at the company led to complainants reporting nausea, loss of appetite, loss of sleep, terminated social events and inability to enjoy outdoor property.

On three occasions the company failed to provide to the Ministry of the Environment shipping manifests for the transportation of wastes generated at its plant, as required by Ontario Regulation 347. In addition, it further failed to comply with its Certificate of Approval, Provincial Officer's Orders and Orders of the Environmental Review Tribunal in a number of respects relating to storm water studies, lagoon decommissioning, liquid levels in lagoons, sampling and analysis of effluent, and maintenance of effluent quality. Inspections by the Ministry and public complaints resulted in investigations by the Ministry's Investigations and Enforcement Branch, which lead to charges being laid against the company.

Rothsay pleaded guilty to a total of 18 counts:

- Odour causing adverse effects, in 2001, 2003 and 2004;
- Failing to return Copy 1 of the Ontario Regulation 347 Manifest to the Ministry (3 counts);
- Failing to submit a storm water study;
- Failing to comply with a Provincial Officer's Order to decommission wastewater lagoons;

- Failing to maintain minimum freeboard in the lagoons (3 counts);
- Failing to analyze for required parameters;
- Failing to take a grab sample at the clearwell;
- Discharging effluent containing Excessive Total Suspended Solids;
- Discharging effluent containing Excessive Unionized Ammonia (3 counts);
- Discharging effluent containing Excessive Total Residual Chlorine in Effluent; and
- Discharging effluent containing Excessive Biochemical Oxygen Demand (2 counts).

The company was fined \$450,000 for the odour emissions charge and \$232,500 for the remaining 17 charges totaling \$682,500, plus the 25 *per cent* victim fine surcharge.

As we reported in the June edition of EnviroNotes!, Bill 133 amended the EPA's and OWRA's sentencing provisions applicable to offences like these by expanding the level of fines available on the more minor offences, incorporating minimum fines for the more serious offences and increasing jail time for individuals, all of which are applicable to offences committed after June 9, 2005.

LEGISLATING SUSTAINABLE DEVELOPMENT

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On June 13, 2005, Québec's Minister for Sustainable Development, Environment and Parks, Mr. Thomas J. Mulcair, tabled a bill for the adoption of the *Sustainable Development Act* (Bill 118). In an interview given to a Québec newspaper in mid-October, the Minister stated that the Bill should be adopted by the National Assembly by Christmas.

Bill 118's main objective is to create a concerted and coherent effort across Québec's ministries and organisations to align the administration with sustainable development practices.

Section 2 of the Bill defines sustainable development as:

Development that meets the needs of the present without compromising the ability of future generations to meet their own needs. Sustainable development is based on a long-term approach which takes into account the inextricable nature of the environmental, social and economic dimensions of development activities.

The legislation sets out 16 guiding principles for government action, notably: health and quality of life; social equity and solidarity; biodiversity preservation; and polluter pays.

Bill 118 also seeks to ensure that the government will adopt a series of strategic objectives as indicia of sustainable development. The administration's first strategic plan is to be announced one year after the coming into effect of the legislation.

Moreover, Bill 118 sets up a framework whereby all government ministries and organisations are to prepare a sustainable development action plan and measure its implementation annually.

The Bill would add a provision to Québec's human rights legislation, in its economic and social rights section, which would read as follows:

Every person has a right to live in a healthy environment in which biodiversity is preserved, to the extent and according to the standards provided by law.

The legislation also creates a green fund to assist sustainable development initiatives, notably by municipalities and not-for-profit organizations.

Finally, the Bill provides for the nomination of a commissioner who will act as an assistant to the province's auditor general with respect to sustainable development matters.

It is difficult, at this time, to assess what practical effects Bill 118 will have. It has yet to go through several readings at the National Assembly and its regulatory framework will eventually determine how it is put into place. However, by tabling this Bill, the Québec government has decided to put sustainable development at the forefront of its environmental policy.

PLANNING OUR LANDSCAPE: THE ANNUAL REPORT OF THE ENVIRONMENTAL COMMISSIONER OF ONTARIO

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The 2004/2005 Annual Report of the Environmental Commissioner of Ontario was released in October of 2005. The Annual Report deals primarily with changes to the land use planning system in Ontario, but recommendations dealt with a variety of issues:

- New government laws and initiatives that are environmentally significant should be prescribed under the *Environmental Bill of Rights Act, 1993* within one year of implementation;
- All ministries and prescribed agencies should actively consult with the public, using the Environmental Registry, when setting environmentally significant goals and targets for the province's energy sector;
- The Ministry of Municipal Affairs and Housing (MAH) should undertake consultation on the government's population growth modeling and projections in order to provide a transparent context for land use planning decisions;
- The government should identify a lead ministry so that a provincial strategy can be prepared to help meet Canada's climate change obligations, and that the ministry be provided with adequate resources;
- The Ministry of Natural Resources (MNR) and the Ministry of the Environment (MOE) should consult with the public on changes to the Fish Habitat Compliance Protocol drafted in 2004;
- MNR should require forestry companies to utilize prescribed burns where appropriate, while outlining a direct and supporting role for the ministry in the process;
- MNR should develop transparent and accountable processes related to approvals for aquaculture operations;
- The Ministry of Energy should establish more substantial targets for the generation of electricity from renewable energy sources, consulting the public on the longer term;
- The Ministry of Transportation should establish programs for highway construction staff on how to prevent and minimize environmental damage during road construction, and also establish training standards for environmental inspectors;
- The Ministry of Agriculture, Food and Rural Affairs, MNR and MOE should review current public policies related to drainage and stormwater management to ensure that ecosystem functions are safeguarded;
- The government should remove barriers that discourage commercial landlords with Ontario government tenants from undertaking major energy efficiency upgrades and recouping these costs through increases in rent;
- MNR, in consultation with MOE and MAH, should develop a law to ensure that peat harvesting is carried out with minimal ecosystem disturbance, and that appropriate rehabilitation is undertaken; and
- MNR and MAH should develop a coordinated urban forest strategy to protect urban and heritage trees, working together with municipalities, non-governmental organizations and local agencies.

For a copy of the Annual Report and the Supplement, please visit the Environmental Commissioner's web site at: <http://www.eco.on.ca>.

AROUND MILLER THOMSON

Miller Thomson LLP is holding seminars across the country on the topic of "Investigating Contamination: Key Issues in Environmental Site Assessment". The Seminar will be held in Montréal on November 16 and Toronto on November 17. Please contact **Tony Crossman**, **Brian Evans**, **John Tidball** or **Luc Gratton** for further information.

Bruce McMeekin and **Bryan Buttigieg** were recently certified by the Law Society of Upper Canada as Specialists in Environmental Law, bringing Miller Thomson's total to three Ontario certified lawyers in this practice area.

Bruce McMeekin and **Michelle Fernando** will be leading a workshop on November 29 on Environmental Due Diligence for Directors and Officers just prior to The Canadian Institute's 8th Annual Environmental Law and Regulation in Ontario Conference, which is being held on November 30 and December 1 at the Sutton Place Hotel in Toronto.

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