

Torys on Environmental, Health and Safety

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Canada

Modernizing federal environmental sentencing

On March 25, 2009, Bill C-16, the *Environmental Enforcement Act*, underwent second reading in Parliament. If enacted, the bill would amend nine existing statutes (collectively, the Acts) that are administered by Environment Canada and the Parks Canada Agency. The Acts include the *Canadian Environmental Protection Act, 1999*; the *Canada Wildlife Act*; and the *Migratory Birds Convention Act, 1994*. Among its most significant features, Bill C-16 would amend the Acts to establish minimum fines for certain serious offences; increase certain maximum fines; and specify aggravating factors to be considered in sentencing decisions, including whether the convicted party gained or benefited from committing an offence. Bill C-16 would further amend the Acts by requiring courts to order corporate offenders to disclose details of convictions to their shareholders and by establishing administrative penalties for certain less serious environmental offences that, according to the government, are often not pursued because of the complexity and high cost of prosecution.

Bill C-16 would also add to each of the Acts a requirement that all fines collected be credited to the Environmental Damages Fund and be available for environmental projects or the administration of that fund.

For further information about these and other aspects of Bill C-16, please see www.ec.gc.ca/default.asp?lang=En&n=714D9AAE-1&news=FF3737AB-7757-4C49-A477-C8FD21750872.

Changes to federal environmental assessment regime

On March 12, 2009, the federal government amended the existing *Exclusion List Regulations, 2007* and issued the new *Infrastructure Projects Environmental Assessment Adaptation Regulations* (the Infrastructure Regulations), both under the *Canadian Environmental Assessment Act* (CEAA). Designed to streamline the environmental approvals process for infrastructure projects, these regulatory changes will be in effect until March 2011. Specific classes of projects, which the federal government expects to fund under its Building Canada plan, have been added to the Exclusion List, thereby exempting projects in these classes from the requirements to undergo a CEAA environmental assessment, should one otherwise be required. And under the Infrastructure Regulations, the Minister of the Environment may allow a project proponent to forgo the CEAA process if a provincial process is also applicable, even while the federal minister retains decision-making authority regarding the assessment. However, such authority can be exercised only if the provincial process meets certain prescribed requirements related to the content of the assessment and public participation.

For further information, please see www.carruthers.com/orders98/SOR2009_88.pdf.

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Amendments to Navigable Waters Protection Act

On March 12, 2009, the *Navigable Waters Protection Act* (NWPA) was amended (by the *Budget Implementation Act, 2009*) to eliminate the need for an environmental assessment under the CEAA in certain circumstances. More specifically, the amendments to the NWPA created a “tiered” system for Canada’s navigable waterways, granting the federal government authority to “declassify” certain waterways. As a result, works or undertakings affecting declassified waterways, for example, would not be required to obtain an approval under the NWPA, which in turn triggers the need for an environmental assessment approval under the CEAA. Including these kinds of amendments in a budget bill is unusual; consequently, the substance of the amendments was not actively debated and there was virtually no opportunity for public comment or debate.

For further information, please see www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Parl=40&Ses=2&Mode=1&Pub=Bill&Doc=C-10_4.

Proposed nuclear liability legislation

On March 24, 2009, the federal government introduced Bill C-20, the *Nuclear Liability and Compensation Act*, into Parliament for first reading. Bill C-20, if enacted, would repeal the existing *Nuclear Liability Act*, establishing in its place a liability regime applicable in the event of a nuclear incident that makes operators of nuclear installations absolutely and exclusively liable for damages up to a maximum of \$650 million. This maximum is currently \$75 million. Operators would be required to hold financial security for this potential liability.

For further information, please see www2.parl.gc.ca/content/hoc/Bills/402/Government/C-20/C-20_1/C-20_1.PDF.

Ontario

Ontario 2009 budget

On March 26, 2009, the Ontario government released its 2009 budget. It outlines the various environmental initiatives, including committing \$250 million over five years for the creation of a new Emerging Technologies Fund. Beginning this July, the fund is intended to invest in technology companies, including green technology companies, by matching small to medium private sector investments; in return the fund will receive an interest in these companies. The budget also reiterates the government’s commitment to passing into law and implementing the proposed *Green Energy and Green Economy Act, 2009*, described in greater detail in Torys’ recent [Infrastructure and Energy Bulletin](#).

For further information about the budget, please see www.fin.gov.on.ca/english/budget/ontariobudgets/2009/.

United States

Mandatory climate change disclosure requirements

On March 17, 2009, the U.S. National Association of Insurance Commissioners (NAIC), comprising the chief insurance regulatory officials of the 50 states, approved a requirement that insurance companies disclose to regulators and investors the financial risks the companies face from climate change and the actions they are taking (in light of these risks) to change their investment strategies, to engage and educate policymakers and policyholders and to alter their risk-management and catastrophe-risk modelling. Insurance companies with annual premiums of \$500 million or more will be required to complete an Insurer Climate Risk Disclosure Survey every year, with the first survey due on May 1, 2010.

For further information, please see www.naic.org/Releases/2009_docs/climate_change_risk_disclosure_adopted.htm. 