

ISSUE NOTE

Issue:

- Federal *Species at Risk Act* and caribou recovery in British Columbia

Background:

Federal *Species at Risk Act* (SARA)

- Under SARA, recovery strategies must be prepared for all threatened or endangered species, and these recovery strategies must identify critical habitat without consideration of the social and economic implications of protection.
- SARA contains regulatory options designed to compel Provinces and Territories (P/Ts) to effectively protect the critical habitat of species at risk.
- If the federal Minister of Environment and Climate Change Canada (ECCC) forms an opinion that critical habitat is not “effectively protected” for provincially-managed species and habitat on provincial lands, she must recommend to Governor in Council (GIC) that an order be made against destruction of critical habitat on provincial lands.
- SARA does not allow consideration of social and economic values when making ministerial recommendations to GIC to protect critical habitat, yet BC must consider those factors when making significant land-use decisions.
- SARA also does not adequately recognize significant recovery investments outside of the protection of critical habitat that may be required for effective recovery of some species at risk (e.g., predator management; disease management).
- Effective management of BC’s biodiversity is complicated by: the number of species at risk found in BC (44% of all SARA listed species occur in BC); overlapping agency and jurisdictional responsibilities; a complex suite of legislation, regulatory and policy tools; and availability of adequate resources. New approaches are required for managing SAR/Biodiversity in BC.
- BC’s position is that federal decisions need to better reflect P/T jurisdictional accountabilities and reforms to SARA, or SARA-related policies, are required to increase flexibility and ensure socio-economic factors are considered prior to making legal decisions to protect critical habitat.

Caribou Recovery:

- Woodland Caribou are listed as threatened under the federal *Species at Risk Act* (SARA). Southern Mountain Caribou (SMC) and Boreal Caribou are two sub-populations of Woodland Caribou that range in BC.
- In 2016, ECCC announced a formal Critical Habitat Protection Assessment (CHPA) process to identify whether critical habitat for SMC is “effectively protected” as per SARA requirements under the federal recovery strategy.
- In part, this decision was triggered by a finding of significant adverse cumulative effects on caribou of the Murray River Coal Mine Project for the use of lands and resources for traditional purposes by Aboriginal Peoples.
- To support ECCC’s assessment, BC agreed to collaborate on a joint Protection Study (the

Study) on SMC.

- The Study identified critical habitat protection gaps against targets outlined in the federal Recovery Strategy for SMC.
- Results of the Study will be used to inform the federal CHPA and additional protection and recovery measures in BC.
- Timelines and policy process for the draft CHPA decisions are still being developed by ECCC; this is creating uncertainty for natural resource development in BC.
- s.13

- s.13,s.17

- It is anticipated that ECCC will consider conducting a CHPA on Boreal Caribou.
- To address gaps in protection, BC announced \$27 million over three years to support caribou recovery efforts across BC. This will support development and implementation of updates to the Boreal Caribou Implementation Plan (BCIP) and Peace Northern Caribou Plan (PNCP).
- BC is consulting with First Nations, public and stakeholders on BC's new protection measures and proposed updates to existing plans.

Decision required:

60 day issue:

s.12,s.13,s.16

- **Public review and comment on the revised BCIP**
- **90 day issue:**
 - **Updates to the BCIP and PNCP**

ISSUE NOTE

Issue:

- South Island Aggregates / Cobble Hill Holdings Contaminated Soil Landfill in Shawnigan Lake – Spill Prevention Order status and next steps

Background:

- *Environmental Management Act* (EMA) Permit 105809 was issued to CHH in August 2013, allowing the company to operate a contaminated soil treatment facility and landfill at an active rock quarry in Shawnigan Lake. The permit decision was appealed by the Shawnigan Residents Association and in March 2015, the Environmental Appeal Board (EAB) upheld the permit. The permit was amended to include five new requirements as directed by the EAB.
- In May 2015, the Shawnigan Residents Association applied for a Judicial Review of the EAB process and later that summer they further requested that the court overturn the permit due to fraud and the existence of a secret profit sharing agreement with the qualified professional who designed the facility. Also in May 2015, the Cowichan Valley Regional District (CVRD) filed a petition with the Supreme Court of B.C. alleging that the facilities contravene the local zoning bylaw. While the initial court ruled in favour of the CVRD, CHH was successful in having the decision overturned by the B.C. Court of Appeal in November 2016.
- The permit was administered by Ministry staff in the Regional Operations Branch, and between April 2015 and December 31, 2016, the Ministry conducted 14 inspections (site visits and office reviews) on various aspects of the permit. The inspections resulted in six Notices of acceptable compliance and eight penalties for varying degrees of non-compliance (four Advisory Letters, three Warning Letters and one Order).
- Among the non-compliances, there were significant incidents at the site with respect to water management in the fall of 2015 and the fall of 2016. When the second incident occurred in 2016 and appropriate corrective actions had not been taken by CHH in response to the 2015 incident, the Minister of Environment issued a letter to CHH identifying she was considering suspending or cancelling the permit for failure to comply with the requirements of the permit.
- CHH was not able to fully rectify the non-compliances in a timely manner and in February 2017 the permit was cancelled by the Minister for failure to comply with permit terms. At

the same time, a Ministerial Spill Prevention Order (SPO) was issued, requiring that CHH and other parties prevent the discharge of leachate and waste to the environment.

- There are approximately 100,000 tonnes of contaminated soil in the landfill (which is covered with a geomembrane) but the landfill is not permanently closed yet. There are also approximately 3,000 tonnes of soil in a temporary storage area on the site. The SPO requires CHH to either permanently close the landfill or remove the soil. Ministry staff met twice with the CHH principals to discuss the SPO and are aware that CHH intends to pursue final closure rather than soil removal. Staff are reviewing information to determine if the engineering is sound and if the soil can safely remain on the site, or if the soil presents a risk to the environment.
- Should any entity seek to establish a landfill or reopen this site as a landfill, a permit application with associated technical & environmental impact assessments and, public and First Nations consultation would be required. The Ministry is obliged to assess and consider an application once received.

Decision required:

- s.13
- Should the soil remain on site an authorization may be needed to landfill the additional 3,000 tonnes of soil currently stored on site.

Corporate Transition Briefing Note

**Prepared in Response to 2017 Confidence and Supply Agreement between the BC Green Caucus
and the BC New Democrat Caucus**

Issue: Revitalize the Environmental Assessment process in BC

Ministry: Environment (Environmental Assessment Office)

Background Information:

The Environmental Assessment Office (EAO) has recently taken direct action to enhance confidence in the provincial environmental assessment (EA) process by the public First Nations and proponents alike by:

- Working with the First Nations Energy and Mining Council (FNEMC) over the last 18 months – including several regional workshops with First Nation communities - to jointly develop a paper entitled “*A Shared Vision for Enhancing BC’s Environmental Assessment Process*” aimed at providing recommendations to address deficiencies in the current environmental assessment (EA) process and enhanced opportunities for First Nations’ participation in the process; this includes recommendations relating to the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).
- Formally collaborating with First Nations on individual projects (Kemess Underground Mine; proposed Blackwater Mine; proposed Aurora LNG Facility) to administer EAs as partners and strive for consensus in the spirit of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP); and,
- Making access to EA related information easier and more intuitive by launching a test version of the EAO’s web-based Project Information & Collaboration system (EPIC) - <https://projects.eao.gov.bc.ca/> - which includes an enhanced public commenting experience that provides transparent, near-real-time access to, and categorization of, comments received during public comment periods.

s.13,s.16

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Date note prepared: 17-06-16

Corporate Transition Briefing Note

Prepared in Response to 2017 Confidence and Supply Agreement between the BC Green Caucus and the BC New Democrat Caucus

Issue: *South Island Aggregates/Cobble Hill Holdings (SIA/CHH) Shawnigan Lake contaminated soil facility (pg. 6, S3, 2I).*

Ministry: *Environment*

Background Information:

Environmental Management Act (EMA) Permit 105809 was issued to SIA/CHH in August 2013, allowing the company to operate a contaminated soil treatment facility and landfill at an active rock quarry in Shawnigan Lake. The permit decision was appealed by the Shawnigan Residents Association and in March 2015, the Environmental Appeal Board (EAB) upheld the permit. The permit was amended to include five new requirements as directed by the EAB.

In May 2015, the Shawnigan Residents Association applied for a Judicial Review of the EAB process. They further requested that the court overturn the permit due to fraud and the existence of an undisclosed profit sharing agreement with the qualified professional who designed the facility. Also in May 2015, the Cowichan Valley Regional District (CVRD) filed a petition with the Supreme Court of B.C. alleging that the facility contravenes a local zoning bylaw prohibiting landfills. While the lower court ruled in favour of the CVRD, SIA/CHH was successful in having the decision overturned by the B.C. Court of Appeal in November 2016.

Between April 2015 and December 31, 2016, the Ministry conducted 14 inspections (site visits and office reviews) on various aspects of the permit. The inspections resulted in six Notices of acceptable compliance and eight penalties for varying degrees of non-compliance (four Advisory Letters, three Warning Letters and one Order).

Among the non-compliances, there were significant incidents at the site with respect to water management in the fall of 2015 and 2016. When the second incident occurred in 2016 and appropriate corrective actions had not been taken by SIA/CHH in response to the 2015 incident, the Minister of Environment issued a letter to SIA/CHH identifying she was considering suspending or cancelling the permit for failure to comply with the requirements of the permit.

SIA/CHH was not able to fully rectify the non-compliances in a timely manner and in February 2017 the permit was cancelled by the Minister for failure to comply with permit terms. At the same time, a Ministerial Spill Prevention Order (SPO) was issued, requiring that SIA/CHH and other parties prevent the discharge of leachate and waste to the environment. The SPO also directed SIA/CHH (as well as the two owners) to choose to either remove the soil or submit a closure plan for the facility

by May 31, 2017 with closure implementation to begin July 1, 2017 and be completed by October 31, 2017. Should the operators elect to remove the soil it must be removed by March 31, 2018.

A closure plan was received from SIA/CHH on May 31, 2017 and the Ministry commissioned an independent engineering company (Hemmera) to review the closure plan (as well as other engineering documents) and provide advice to the Ministry. The Ministry has prepared a decision package for the Minister of Environment's consideration as to whether the closure plan is protective of the environment.

There are approximately 100,000 tonnes of contaminated soil in the landfill (which is covered with a geomembrane). There are also approximately 3,000 tonnes of soil in a temporary storage area on the site.

Proposed Implementation Response and Critical Dates

s.13

Prepared by:

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Date note prepared: 17 06 16

Corporate Transition Briefing Note

Prepared in Response to 2017 Confidence and Supply Agreement between the BC Green Caucus and the BC New Democrat Caucus

Issue: *Address failures in the professional reliance model in BC so that British Columbians' faith in resource development can be restored (pg. 6, S3, 2I).*

Ministry: *Environment and Forests, Lands and Natural Resource Operations*

Background Information:

Professional reliance (PR) is the specific requirement to use a qualified professional (QP), meaning the use of a person registered with a legally established self-governing body that holds members accountable to known work standards and independently responsible for their actions. Use of QPs is a long standing practice within a number of statutes including Forest and Range Practices Act, Environmental Management Act, Land Act and Water Sustainability Act. The primary benefits of the PR model are: the shifting of costs from the taxpayer onto project proponents, the ability to require specific expertise that government staff may not have, and faster and more durable decisions.

Currently, 27 natural resource sector (NRS) regulatory regimes rely on QPs to provide information to government decision-makers and in certain situations QPs are delegated the authority and associated responsibilities to make statutory decisions on government's behalf.

Since 2013, the Environmental Appeal Board, Forest Practices Board, Office of the Auditor General and Office of the Ombudsperson have investigated how well the PR model provides independent, objective advice to government regulators. While acknowledging the overall value of the PR model these investigations highlight the need for adequate oversight of QPs both by government and licensing and regulatory bodies. Specific concerns include inadequate work (competency), need for improved guidance, and better follow-up and monitoring (accountability).

Since 2013, government has actioned many of the recommendations from these investigations. For example, the government recently completed an audit looking specifically at the use of QPs in BC's mining and municipal wastewater sectors in order to determine if they are in compliance with current regulatory requirements. There are other examples of changes government has implemented to the use of professional reliance in the forestry sector related to monitoring, guidance, and how to further leverage the model in response to issues identified. Recently, government has requested licensing and regulatory bodies to look into actions of their members (e.g. the Province contacted APEGBC regarding Active Earth's undisclosed financial interests in the South Island Aggregates contaminated soil facility which has resulted in the current investigation).

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s.12;s.13

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Corporate Transition Briefing Note

Prepared in Response to 2017 Confidence and Supply Agreement between the BC Green Caucus and the BC New Democrat Caucus

Issue: *Climate Action*

- i. Implement an increase of the carbon tax by \$5 per tonne per year, beginning April 1, 2018 and expand the tax to fugitive emissions and to slash-pile burning.*
- ii. Deliver rebate cheques to ensure a majority of British Columbians are better off financially than under the current carbon tax formula.*
- iii. Implement a climate action strategy to meet our targets (pg. 4, S3, 2ai, ii, iii).*

Ministry: *Climate Leadership (Ministry of Finance/Ministry of Environment)*

Background Information:

British Columbia's greenhouse gas emissions in 2016 were 62 million carbon dioxide equivalent tonnes (tCO₂e). The legislated greenhouse gas emissions target for 2050 is 13 million tonnes CO₂e. Achieving the 2050 target requires decarbonisation of the majority of the energy system and elimination of most non-fuel related greenhouse gas emissions.

- Decarbonisation analysis has identified the emissions milestones between 2020 and 2050.

s.13

As British Columbia's carbon price (direct and indirect, regulations, fees) levels materially exceed surrounding jurisdictions, significant competitiveness impacts affect the provincial economy and carbon costs to households become unmanageable. Some pricing approaches are affected by the opportunity to pass through carbon costs that may affect emission reductions.

Many non-fuel related greenhouse gas emission sources such as forest waste and methane leaks are difficult to monitor, measure or quantify in a manner that makes them unsuitable to be included in the carbon tax base. As such, other carbon pricing approaches need to be considered. Furthermore, there are also regulatory and other measures that could be implemented to achieve similar desired outcomes. In case of the fugitives, a regulatory approach may align better with the Federal government's current regulatory approach to reduce methane emissions in the oil and gas sector.

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Corporate Transition Briefing Note

Prepared in Response to 2017 Confidence and Supply Agreement between the BC Green Caucus and the BC New Democrat Caucus

Issue: *Climate Action - Applying the carbon tax to fugitive emissions*

- i. Implement an increase of the carbon tax by \$5 per tonne per year, beginning April 1, 2018 and expand the tax to fugitive emissions and to slash-pile burning.*

Ministry: *Climate Leadership (Ministry of Environment)*

Background Information:

The 2017 Confidence and Supply Agreement between the BC Green Caucus and the BC New Democrat Caucus commits to expanding the carbon tax to fugitive emissions (s.2 (a) (i)).

Currently, the carbon tax applies to emissions from fuels purchased or used in BC by individuals, business, industries or government. All fuels combusted in BC that are reported in Environment and Climate Change Canada's National Inventory Report are captured by the carbon tax.

Fugitive emissions are defined in the Greenhouse Gas Emission Reporting Regulation to be "the unintended or incidental emissions of greenhouse gases from the transmission, processing, storage, use or transportation of fossil fuels, greenhouse gases or other".

Approximately 8.5% (5.5 MT) of BC's total greenhouse gas (GHG) emissions are fugitive emissions. The majority of these emissions are methane (approximately 97%), however small amounts of other GHGs, including sulphur hexafluoride (2%) and carbon dioxide (0.2%) are also reported by industrial facilities.

In 2015, the majority of fugitive emissions were reported by three industrial sectors: the oil and gas extraction sector (approximately 53% of the reported total), coal mining (36%), and natural gas pipelines and distribution (9%). Other industries that also reported small amounts of fugitive emissions included electric power transmission, cement manufacturing, lime manufacturing, and metals mining and smelting operations.

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s.12;s.13

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Corporate Transition Briefing Note

Prepared in Response to 2017 Confidence and Supply Agreement between the BC Green Caucus and the BC New Democrat Caucus

Issue: *Climate Action - Applying the carbon tax to slash-pile burning*

- i. Implement an increase of the carbon tax by \$5 per tonne per year, beginning April 1, 2018 and expand the tax to fugitive emissions and to slash-pile burning.*

Ministry: *Climate Leadership (Ministry of Environment)*

Background Information:

The 2017 Confidence and Supply Agreement between the BC Green Caucus and the BC New Democrat Caucus commits to expanding the greenhouse gas emission sources covered by the carbon tax to include slash-pile burning (s.2 (a) (i)). This commitment appears to be drawn from the Green Party Platform commitment to apply the carbon tax at rate of \$36 per tonne to forest slash-pile burning.

The carbon tax currently applies to the purchase and use of fuels in British Columbia by individuals, business, industries and governments. All fuels combusted in BC reported in the Environment and Climate Change Canada's National Inventory Report are captured by the carbon tax. The tax does not currently apply to wood, biomass and certain biofuels in certain circumstances.

Slash is not defined in provincial legislation but is commonly understood to be the branches, tops and other wood material left on site as waste or non-merchantable timber after forest harvesting has taken place. Slash is often piled and burned to abate potential fire hazard and prepare a site for replanting. Slash-pile burning, with the exception of some agriculture activities, is primarily done by legal obligation on the forest sector to abate forest fire risk after harvest. The national greenhouse gas inventory attributes approximately 10 million carbon dioxide equivalent tonnes (tCO₂e) of greenhouse gas (GHG) emissions to forest slash-pile burning in BC.

Prudent policy where a price signal is being used to motivate a specific action requires an ability to clearly identify or quantify the activity and the actor being addressed, an approach that can be applied equally and fairly to all potential actors and a reasonable alternative to the activity being addressed.

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