

## ***Do I have to comply with Environmental Regulations during the COVID-19 Pandemic?***

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The global COVID-19 pandemic has created an unprecedented crisis, causing significant disruptions to businesses across all sectors. The ever-evolving nature of the pandemic and the numerous statements and orders issued by all levels of government in Canada makes navigating the legal landscape of this new reality challenging. Whether business operations are ramping up, slowing down, or halting altogether, businesses need to be aware of their environmental regulatory obligations.

Environmental regulators across Canada have taken different approaches to dealing with the COVID-19 pandemic. While some regulators have pressed pause on certain regulatory obligations, others have confirmed that regulatory obligations remain in effect.

This article outlines guidance provided by the Ontario, Alberta, and federal governments on environmental regulatory compliance and permitting.

### **ONTARIO**

On March 20, 2020, the Government of Ontario filed an Order pursuant to the *Emergency Management and Civil Protection Act*,<sup>1</sup> s. 7.1(2). The Order suspends limitation periods<sup>2</sup> and periods of times for taking steps based on the Courts, Tribunals or decision-makers discretion,<sup>3</sup> retroactively to March 16, 2020 (see our separate article [here](#)). Whether the emergency Order suspends applicable timing within which regulators must initiate environmental prosecutions remains to be determined.

Despite the emergency Order, the current understanding is that most environmental reporting, monitoring, approval and permitting requirements remain in force. The Ministry of Environment, Conservation and Parks (“MECP”) has not issued directives, orders or guidelines providing relief from environmental regulatory requirements. The

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<sup>1</sup> RSO 1990, c E9.

<sup>2</sup> *Order Under Subsection 7.1(2) of the Act – Limitation Periods*, O Reg 73/20, s 1.

<sup>3</sup> *Ibid*, s 2.

MECP has stated that it recognizes the impact that COVID-19 has had on the regulated community and is working to find practical solutions that support critical operations while ensuring the ongoing protection of the environment and human health.

The MECP has received some requests for temporary regulatory relief and is working to assess and respond to these requests on a case-by-case basis.<sup>4</sup>

As such, many of Ontario’s environmental laws, regulations, standards and policies continue to apply. This means, for example, that:

- ◆ businesses that operate under Environmental Compliance Approvals are required to continue complying with the terms of the Approval
- ◆ the Spills Action Centre is operating and there is no suspension on requirements to report and take action to address spills and other environmental emergencies, and
- ◆ the MECP can continue to exercise its authority to inspect, investigate, issue orders, and prosecute parties for failure to comply with statutory requirements.

Notably, however, the Ministry of Natural Resources and Forestry (“MNR”), in relation to its aggregate portfolio, has interpreted the emergency Order to suspend regulated timelines under the *Aggregate Resources Act*<sup>5</sup> (“ARA”). The MNR has indicated that aggregate authorizations that require public and stakeholder consultation are temporarily on hold, retroactive to March 16, 2020, while the MNR considers options for transparent consultation.

On April 1, 2020, O. Reg. 115/20 Temporary Exemptions Relating to Declared Emergency, made under the *Environmental Bill of Rights, 1993*,<sup>6</sup> came into force. The Regulation, as written, exempts all proposals for Acts, policies, regulations, and instruments from Part II of the *Environmental Bill of Rights, 1993* (“EBR”). Part II of the EBR requires a Minister to consider the Statement of Environmental Values and post the proposal on the Environmental Registry for Ontario for public comment. Angelina King of CBC News reported that “[t]he provincial environment minister has told CBC News the exemption is intended only for projects related to the pandemic that need to built quickly — which might include medical facilities to battle COVID-19, for example.”<sup>7</sup>

<sup>4</sup> Based on responses to questions posed by the Ontario Bar Association - Environmental Law Section to the MECP.

<sup>5</sup> RSO 1990, c A8.

<sup>6</sup> SO 1993, c 28.

<sup>7</sup> Angelina King, “Environmentalists slam Ontario for suspending oversight regulation amid pandemic”, CBC News (23 April 2020), <https://www.cbc.ca/news/canada/toronto/ontario-temporarily-suspends-environmental-oversight-law-citing-covid-19-1.5541875>.

Additionally, the MECP has temporarily suspended emissions testing for heavy diesel commercial motor vehicles required under O. Reg. 457/19: Vehicle Emissions.<sup>8</sup>

Given the evolving nature of the pandemic and varied regulator responses, those subject to regulatory requirements should exercise caution and frequently check for updated guidance.

## ALBERTA

In Alberta, the provincial government issued several Ministerial Orders that provide relief from certain reporting obligations under Alberta's environmental laws:

- ◆ Ministerial Order 15/2020 extends the deadline from March 31, 2020 to June 30, 2020 under the *Technology Innovation and Emission Reduction Regulation*<sup>9</sup> for submitting compliance reports and emissions reduction plan reports for 2019<sup>10</sup>
- ◆ Ministerial Order 16/2020 extends the deadline from March 31, 2020 to June 30, 2020 for submission of fuel supplier, approved contributor and renewable fuel provider compliance reports required by the *Renewable Fuels Standard Regulation*<sup>11</sup>
- ◆ Ministerial Order 17/2020 suspends reporting requirements contained in approvals, registrations, licences and land dispositions (except in the case of drinking water facilities) under the *Environmental Protection and Enhancement Act*,<sup>12</sup> the *Water Act*,<sup>13</sup> and the *Public Lands Act*.<sup>14</sup> Approval, registration, licence and disposition holders are required to collect information and make it available on request. Other reporting requirements under these acts remain in force<sup>15</sup>

<sup>8</sup> Ministry of Environment, Conservation and Parks, "Motor Vehicle Emissions Standards and Testing", <https://www.ontario.ca/page/motor-vehicle-emissions-standards-and-testing>.

<sup>9</sup> Alberta Regulation 133/2019.

<sup>10</sup> Ministerial Order 15/2020, <https://open.alberta.ca/dataset/2deef631-4dad-4b47-a20f-d31dd2cbe343/resource/366a722d-630c-4ce8-9ea5-3a22f3696bfb/download/aep-ministerial-order-15-2020.pdf>.

<sup>11</sup> Alberta Regulation 29/2010; Ministerial Order 16/2020, <https://open.alberta.ca/dataset/904ee5c9-015e-4ea1-95e8-ba26f460b378/resource/9a7f721b-c065-405a-8ce0-fc36f46d5386/download/aep-ministerial-order-16-2020.pdf>.

<sup>12</sup> RSA 2000, c E-12.

<sup>13</sup> RSA 2000, c W-3.

<sup>14</sup> RSA 2000, c P-40.

<sup>15</sup> Ministerial Order 17/2020, <https://open.alberta.ca/dataset/0cc78dea-655e-4a28-8128-5f0310399b74/resource/d26172b7-7109-418c-bfbe-e9b049076581/download/aep-ministerial-order-17-2020.pdf>.

- ♦ Ministerial Order 219/2020 suspends some reporting requirements under the *Coal Conservation Act*,<sup>16</sup> the *Oil and Gas Conservation Act*,<sup>17</sup> and the *Oil Sands Conservation Act*<sup>18</sup> related to annual reports, exploration reports, reservoir pressure surveys, well logs and summary reports, and annual geotechnical reports, among others.<sup>19</sup>

These Ministerial Orders remain in effect until August 14, 2020 unless Alberta's state of public health emergency is terminated earlier. If the order-in-council declaring a state of public health emergency in Alberta is terminated before June 15, 2020, the Orders will lapse 60 days later.

Additionally, Alberta Environment and Parks released a Temporary Amendment of Select Air Monitoring Directive Requirements, allowing industrial operations and Alberta airsheds to deviate from select Air Monitoring Directive monitoring, siting, and reporting requirements, with various submission deadlines.<sup>20</sup>

Alberta's Ministerial Order 27/2020 suspends limitation periods and periods of time within which any step must be taken in any proceeding or intended proceeding from March 17, 2020 to June 1, 2020.<sup>21</sup> Notably, however, proceedings under the *Provincial Offences Procedure Act* are excluded from the application of the suspension. Accordingly, it appears that Alberta regulators will not have additional time to initiate environmental prosecutions beyond the applicable timing granted through legislation.

## FEDERAL

On April 2, 2020, the Minister of Environment and Climate Change wrote to the Business Council of Canada confirming that Environment and Climate Change Canada's ("ECCC") laws remain in effect and cannot be waived.<sup>22</sup> However, the Minister indicated that ECCC will "exercise enforcement discretion to take into account any

<sup>16</sup> RSA 2000, c C-17.

<sup>17</sup> RSA 2000, c O-6.

<sup>18</sup> RSA 2000, c O-7.

<sup>19</sup> Ministerial Order 219/2020, <https://open.alberta.ca/dataset/d0190561-7988-479f-a25b-d01c0c178b6c/resource/9477b36f-031a-444a-aef4-178453a7a03a/download/covid-energy-mo219-2020-reporting-deferrals.pdf>.

<sup>20</sup> Alberta Environment and Parks, "Temporary Amendment of Select Air Monitoring Directive Requirements" (31 March 2020), <https://open.alberta.ca/dataset/70c04728-f685-42db-8a48-a82652db19fc/resource/6fef0513-e14d-4f90-bb1c-218ba0194278/download/aep-amd-temporary-relief-policy-2020-03.pdf>.

<sup>21</sup> Ministerial Order 27/2020, <https://open.alberta.ca/dataset/92362163-460c-445f-b0b2-150ab061cfb6/resource/0e5abce0-858b-4e00-a031-dd7892e01ded/download/jsg-ministerial-order-27-2020.pdf>.

<sup>22</sup> Letter from Minister Wilkinson to Business Council of Canada (2 April 2020), <https://www.acr-alberta.com/app/uploads/SIGNED-LETTER-Dillon-Min-265111.pdf>.

challenges that regulated parties may face as a result of the current pandemic.”<sup>23</sup> Despite this discretion, ECCC expects parties to act responsibly and minimize the effects and duration of any non-compliance caused by COVID-19.

Businesses subject to federal environmental regulations should act with due diligence during the pandemic. To the extent possible, the ECCC encourages regulated parties to document the nature, dates and circumstances of how COVID-19 caused/contributed to the non-compliance, the efforts to prevent or minimize risk to human health and the environment, and actions taken to come into compliance as soon as possible.<sup>24</sup>

All obligations to notify public authorities about unauthorized releases of pollutants, particularly where those incidents may cause a risk to human health or the environment, remain in force.<sup>25</sup>

ECCC has issued a Notice of Intent to amend the Output-Based Pricing System Regulations, made under the *Greenhouse Gas Pollution Pricing Act*.<sup>26</sup> If approved by the federal cabinet, the amending regulations may take effect retroactively and would extend the deadlines for reporting and for providing compensation for greenhouse gas emissions emitted in excess of a covered facility’s emissions limit. On May 2, 2020, a Notice was published in the Canada Gazette postponing the deadline for submitting greenhouse gas reports under the Greenhouse Gas Reporting Program for the 2019 calendar year from June 1, 2020 to July 31, 2020.<sup>27</sup>

ECCC has also extended the deadline from June 1, 2020 to July 31, 2020 for submitting reports to the National Pollutant Release Inventory for the 2019 reporting year.<sup>28</sup>

The Department of Fisheries and Oceans (“DFO”) has confirmed that all critical functions remain operational, including licensing, catch certification, monitoring, and enforcement.<sup>29</sup> DFO can adjust timelines and monitoring requirements of existing authorization under the *Fisheries Act*<sup>30</sup> s. 35 (permits to carry on any work, undertaking

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> Notice of intent to amend the Output-Based Pricing System Regulations, <https://www.canada.ca/en/environment-climate-change/services/climate-change/pricing-pollution-how-it-will-work/output-based-pricing-system/notice-intent-amend.html>

<sup>27</sup> Canada Gazette, Part I, Volume 154, Number 18: Government Notices (2 May 2020), <http://gazette.gc.ca/rp-pr/p1/2020/2020-05-02/html/notice-avis-eng.html#ne2>.

<sup>28</sup> Government of Canada, “Legal requirements: Canada Gazette notices”, <https://www.canada.ca/en/environment-climate-change/services/national-pollutant-release-inventory/report/legal-requirements-gazette-notices.html>.

<sup>29</sup> Department of Fisheries and Oceans, “COVID-19 – Information for industry and partners”, <http://www.dfo-mpo.gc.ca/covid19/industry-industrie/index-eng.html>.

<sup>30</sup> RSC 1985, c F-14.

or activity that results in the harmful alteration, disruption or destruction of fish habitat). Such adjustments can be made by regional DFO staff on a case-specific basis upon request.

Permitting under the *Species at Risk Act* continue to be processed and applicants will be notified of any delays.<sup>31</sup>

It is worth noting that a number of industry associations have been communicating with the federal government to request suspending and/or reducing timelines and requirements. In doing so, these industry associations have outlined key measures that facilities are taking to ensure physical distancing and reduce the spread of COVID-19.

### **STAYING COMMITTED TO ENVIRONMENTAL COMPLIANCE DURING THE PANDEMIC**

It is important for companies and individuals to stay committed to complying with their environmental obligations. Regulators will expect companies and individuals to take all reasonable steps to comply with permitting obligations and regulatory requirements.

Only some deadlines have been suspended or postponed. Regulated companies and individuals should review their operating permits and keep on top of regulatory updates in determining how to proceed.

Even during the writing of this article, additional orders and guidance were issued. It is imperative that you and your legal counsel continuously check for and review the evolving directions, orders and decisions from all levels of government, the Courts, and Tribunals.

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<sup>31</sup> Department of Fisheries and Oceans, “COVID-19 – Information for industry and partners”, <http://www.dfo-mpo.gc.ca/covid19/industry-industrie/index-eng.html>.