

# Environmental Law Update



OBA - Operation Update

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Dianne Saxe, Ph.D.





# Overview

- **Caselaw**
- **Legislation**
- **What's coming?**



# Caselaw 2009

- *Enforcement:*
  - *Demolition & Recycling Inc. et al v. R.*
  - *R. v. RPR*
- *Nuisance:*
  - *Heyes v. Vancouver*
  - *St. Lawrence Cement v. Barrette*
  - *Connecticut v. American Electric Power*
- *Regulatory Failures:*
  - *Great Lakes United v. Canada (MOE)*
  - *Environmental Defence Canada v. Canada (DFO)*



## Enforcement: *Demolition & Recycling*

- Defendants bought major PCB contaminated site
- Breached OWRA orders to stop escape
- Dec. 08: \$659,000 fine & president 4 months jail
- Appeal - Aug. 2009
  - Reduced fines to \$519,000, upheld jail



## Enforcement: *RPR*

- EIHWHRM and cross border paperwork
- 2 search warrants, >60 charges
- 1 plea, \$5,000 donation, training course, absolute discharge



## Nuisance: *Heyes v. Vancouver*

- Small business endured 3 years of disruption as Canada Line subway built
- Cut and cover to save \$
- Awarded \$600,000 in nuisance against transit authorities (+ interest and costs)
- Blow to infrastructure projects?



## *St. Lawrence Cement v. Barrette (SCC)*

- \$15 million to cement plant neighbours in Quebec class action:
  - \$935-\$11,000 each
  - 6 years of odour, noise, dust
- Despite:
  - Company diligent, and
  - Specific statutory authorization
- Quebec no-fault liability = nuisance?



## *Connecticut v. American Electric Power*

- Climate change victims can sue major emitters in nuisance
  - States, city, NGOs
- Complex, but justiciable
- Standing, causation ok
- US 2nd Circuit (Sotomayor)





## Regulatory Failure: *Great Lakes United v. Canada*

- CEPA
- No more NPRI exemptions for mine tailings
- Federal Court: Minister has a duty to provide pollutant release information to the public through NPRI



## *SARA: Environmental Defence v. Canada*

- Test case
- Endangered Nooksack dace
- Minister of DFO ordered to get serious about habitat protection, now



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# Legislation

- *Green Energy Act, 2009*
- *Toxics Reduction Act, 2009*
- *Pesticides Act- cosmetic ban*
- *Waste Diversion Act*
- Federal enforcement amendments
- Right to Know by-law - Toronto
- Corporate environmental disclosure



## *Green Energy Act, 2009*

- 10 steps to renewable energy
- Renewable Energy Approvals in force  
September 24 2009 (O.Reg. 359/09)
  - Exempts renewable energy projects from  
range of provincial and municipal approvals
- Feed-in Tariff program also in effect



# *Toxics Reduction Act, 2009*

- Passed June 4 2009, not yet in effect
  - Draft regulation posted to Environmental Registry September 18
- CEPA toxics plus acetone
- Substantial new requirements for industry
  - e.g. certified Toxic Substance Reduction Plans
- New provincial powers to control toxics in consumer products



# Right to know by-law - Toronto

- Environmental Reporting & Disclosure by-law
  - Must publicly report use and release of 25 substances
  - Four year phase-in starting January 1 2010
  - Phase 1 - food & beverage, printing & publishing, power generation, chemical manufacturing, wood industries, water treatment
  - Offences - fines of up to \$5000 (1st offence), \$25,000 (2nd offence), \$100,000 (3rd & subsequent offences)



# Environmental Disclosure

- Private member's bill - Passed April 09
- Ontario Securities Commission to compel additional disclosure of environmental information from corporations
- OSC to report back to Minister of Finance by Jan 1 2010 with recommendations





# Tire recycling program

- Launched September 1 - a first in Canada
- Under *Waste Diversion Act*, program will be delivered by Ontario Tire Stewardship
  - Recycle 12 million used tires every year
  - Includes recycling 91% of used care/truck tires into higher end uses



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# What's coming?

- *Mining Act*
- Greenhouse Gas Emissions Trading
- New standards for brownfields



# *Mining Act* amendments

- Final version not yet released
- Amendments will likely
  - Improve notice to and consultation with First Nations and surface rights owners
  - Prevent claims from being staked on land with private surface rights (e.g., cottage country)
  - Allow map staking (physical entry on land not required)
  - Dispute resolution process for Aboriginal-related mining issues
  - Improve enforcement

# Questions? Comments?

## Saxe Law Office

248 Russell Hill Road  
Toronto, Ontario M4V 2T2

Tel: 416-962-5882

Fax: 416-962-8817

Email: [admin@envirolaw.com](mailto:admin@envirolaw.com)

[www.envirolaw.com](http://www.envirolaw.com)

