CUTTING UP THE SAFETY NET

Environmental Deregulation in British Columbia

West Coast Environmental Law Association

WEST COAST environmental law

This report was written by the West Coast Environmental Law Association, with major contributions from Chris Rolfe, Mark Haddock and Andrew Gage, and assistance from Jessica Clogg, Nancy Klenavic, Susan Rutherford and Barb Everdene.

Cover photos, clockwise from top left: **Spill kit drum**, labelled "Area around this container must be kept clean," nearly buried under trash at a contaminated site, by Andrew Gage. **Sour gas flare** in Fort St. John, 400 metres from residences, West Coast Environmental Law. **Contaminated site**, with almost 2,000 barrels of oil waste, solvents and other hazardous waste, apparently all of it illegally stored. Although charges were eventually laid, the action was too late, by Andrew Gage. Aerial view of **impacts caused by oil and gas development** in Northeastern BC, near the Sikanni River, by Wayne Sawchuk. **Clearcutting**, West Coast Environmental Law. **Oil spill**, West Moberly First Nation, by Roland Willson.

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Executive Summary

As society grapples with environmental problems ranging from toxic contamination to climate change, it is essential that government maintain a safety net of robust laws, policies and programs aimed at protecting our environment and building a solid foundation from which to grow a thriving, sustainable economy.

Over the last several decades, BC has slowly sewn together an environmental safety net. It has never been as strong as it should be, but at times, components of the net have been exemplary. Regulation of contaminated sites and pulp mill effluent were far ahead of other jurisdictions. On the other hand, BC's environmental safety net has fallen short in other areas such as public environmental rights, endangered species protection and laws requiring integration of environmental concerns into government policies that chart the course for our future economic development.

The holes that existed in the environmental safety net at the end of the last century are a concern, but a larger concern is what has happened in the last few years. In hundreds of changes to laws, policies and programs, the Provincial government has weakened the environmental safety net. Some fibres have been snipped altogether, others have been made threadbare and existing holes have been left to grow larger.

Significant cuts to the staff and budgets of environmental protection ministries have taken their toll on environmental protection efforts, and seriously jeopardized the ability of the government to monitor compliance with and enforce environmental laws. BC falls far behind neighbouring provinces like Saskatchewan and Alberta in terms of numbers of staff devoted to enforcing environmental laws. Legislation creating a Commissioner for Environment and Sustainability was repealed, eliminating an independent watchdog of government's environmental protection record. Public reporting of illegal activity by polluters was also eliminated.

Under the guise of 'streamlining' approvals for new industrial projects the government has eliminated many of the legal safeguards for environmental protection. The *Significant Projects* Strea*mlining Act* allows governments to waive virtually all legal requirements, including environmental protection measures, standing in the way of development projects deemed to be "provincially significant." It is a piece of legislation unprecedented in modern democracies. Other far-reaching changes include eliminating environmental assessment for many projects and elimination of minimum standards for environmental assessments.

A "full-speed ahead" approach to resource development in the province has severely weakened environmental protection measures in the many major resource sectors. The most extensive changes have occurred in relation to the forestry industry and have included the introduction of forest practices legislation that reduces government's ability to protect environmental values, and reduces industry's accountability for damage to the environment. Energy policy and changes to legislation are aimed at accelerating mining, oil and gas development. A new BC energy policy opens the door to coal-fired power generation – a primary source of greenhouse gases, toxic mercury pollution and acid rain in eastern North America. Building new coal-fired power generation will make it more difficult for British Columbians to reduce greenhouse gas emissions and implement the Kyoto Protocol. Changes to laws give development of underground resources greater priority over private property enjoyment, agricultural land protection, and overall environmental protection. Finally, already threatened wild Pacific salmon stocks are put at further risk by the lifting of the moratorium on open net-cage fish farming.

The components of the environmental safety net in place to protect the environment from toxins and other contamination have also been weakened. Changes in pesticide and pollution regulations have reduced government oversight and eliminated opportunities for members of the public to appeal authorizations to use pesticides or pollute. For instance, government no longer monitors and parents can no longer challenge plans to spray pesticides in school grounds. Once stringent pulp-mill effluent regulations that would further reduce chlorine compounds from effluent have been rolled back.

Recent legislative initiatives have also made it more difficult to protect wildlife, ecosystems and human health. The new *Riparian Areas Regulations* reduces protection for urban streams. The size of several significant parks, including South Chilcotin Park, has been reduced. And finally, human health protection has been weakened by amendments to the *Drinking Water Protection Act* that make it more difficult for government to order the preparation of drinking water protection plans.

Many changes involve privatization of Crown land. Land and Water BC has been tasked with optimizing economic return on Crown land through land sales, with little to no direction on how to accommodate other social values. Changes to the *Forest Act* shift control of forest resources from government to forest companies, eliminating requirements aimed at ensuring that local communities receive benefits from logging in their area. Since the mid 1990s there has been a steady increase in approvals for raw log exports.

Considering the changes made by the provincial government over the last few years as a whole, one can identify several common trends:

- **Reduced ability to enforce environmental standards.** Staff cuts, creation of new loopholes, virtual deregulation of small polluters and allowing industry to write standards combine to reduce government's ability to enforce standards.
- **Limits on government's ability to protect the environment.** Changes to forest practices, drinking water protection and pollution laws make it harder for government to take environmental protection measures.
- **Increased "flexibility" to lower standards without regard for results.** Although the government describes its approach to regulation as "results based" most laws have been designed to allow government to waive standards at the request of industry, without requiring that substitute requirements be equally environmentally effective.
- **Increasing the power of politicians.** Politicians have been given far-reaching powers to waive provincial and municipal laws that industry objects to.
- **Science, professional opinion discounted when they recommend higher standards.** Although regulations rely increasingly on professional judgement, professionals are limited in their ability to require better environmental protection.
- **Less public involvement.** Legal changes have reduced the ability of the public to challenge industry's authority to pollute or spray pesticides on public lands. Public involvement in environmental assessments has been reduced, and public access to information on illegal polluters has been eliminated.
- **No integration of environmental, economic and social concerns.** Although 82 percent of BC's greenhouse gases come from energy, the provincial Energy Policy task force was directed to not deal with climate change. Requirements to integrate environmental protection into government planning have been eliminated.
- **Putting the public good in the hands of the private sector.** Government has given the private sector increased authority over protection of the environment and greater control over resources.
- **Less power for local government.** In many instances, the Province has limited local government environmental protection efforts in order to protect favoured interests.

Together these trends have torn holes in the environmental safety net. The average British Columbian has a reduced ability to challenge or have a say in the decisions that affect their environment. They have less assurance that their health and their environment will be protected for them and for future generations.

Why? The current government, like any government, knows that British Columbians value a clean, healthy environment, and the government knows that British Columbians want to pass that environment onto future generations. Motives of any large institution are seldom clear, especially when dealing with far ranging changes.

But the changes of the last few years appear to have been largely motivated by a few assumptions and dictates. They started with an assumption – an oft repeated mantra – that BC was over-regulated and that BC businesses were constrained by "unnecessary red tape and regulation." This assumption was never challenged, and there was no attempt to compare BC regulation with other jurisdictions or to openly explore new ways of regulating that met the needs of both industry and environment.

Changes were also dictated by budget cuts. Drastic cuts to an already stressed civil service created a government that was desperate to reduce demands on government. At the same time, high level political directions to show that BC was "open for business," necessitated that regulations be as "flexible" as possible for business. When the public interest in strong, effective environmental laws clashed with government's desire to cut staff or show that BC was open for business, environmental protection came second or third.

In some cases, the changes to environmental laws go beyond a failure to balance corporate and environmental interests. In sectors such as forestry, regulations developed in a closed industry government process, have been designed to restrict current or future governments' ability to protect the environment. Regulatory changes have created barriers to effective enforcement.

There is a better way. Studies have shown that well designed environmental laws can be good for both the economy and the environment. Effective environmental protection in BC will require new approaches to law. Here are some of the elements for more effective laws and regulations to protect the environment and achieve sustainability:

- Require government to integrate environmental and social objectives into energy, transportation and other plans that have profound impacts on sustainability, and require government to report on its progress against measurable objectives.

- Real results-based regulations that give industry flexibility but ensure that companies are accountable for achieving real, effective environmental protection.
- Adequate resources for enforcement and monitoring, and development of new tools for effective enforcement.
- Legal recognition that government holds public lands in trust for present and further generations, and require public involvement in decisions to privatize public land;
- Ecosystem based management – where development is done in a way that maintains or mimics natural processes – needs to be used.
- Economic incentives for sustainable behaviour. Shift taxes from jobs and employment to environmentally damaging activities, and removal of subsidies to resource industries.
- Legislation establishing rights for a clean environment and for public participation in environmental decision-making.
- Limit the discretion of politicians and government officials to waive and change environmental standards.
- Adopt a precautionary approach to environmental protection, where BC's resources are stewarded for future generations. Government must be willing to reject an industrial development if a substantial body of scientific evidence suggests that the development may cause long-term irreparable damage.

By incorporating these elements into environmental law and policy of British Columbia, we can build a strong environmental safety net that will provide a foundation for sustainable economic growth, and protect the health and well-being of present and future generations.

It is clear that over the past two decades, citizens have become acutely aware of the importance of environmental protection, and of the fact that penal consequences may flow from conduct which harms the environment. Recent environmental disasters, such as the Love Canal, the Mississauga train derailment, the chemical spill at Bhopal, the Chernobyl nuclear accident, and the Exxon Valdez oil spill, have served as lightning rods for public attention and concern. Acid rain, ozone depletion, global warming and air quality have been highly publicized as more general environmental issues. Aside from high-profile environmental issues with a national or international scope, local environmental issues have been raised and debated widely in Canada. Everyone is aware that individually and collectively, we are responsible for preserving the natural environment.

– Supreme Court of Canada[1]

The Environmental Safety Net

Environmental laws are a safety net protecting our quality of life. Air pollution laws protect us from heart and respiratory diseases associated with air pollution. Laws that regulate agribusiness, logging and septic systems protect our drinking water from water borne diseases of the sort that killed six in Walkerton, Ontario. Laws regulating industry have been effective in reversing the toxic contamination of fish and wildlife. In short, environmental laws express our commitment to a healthy environment for present and future generations.

The *environmental safety net* is made up of the laws, policies and programs that protect our environment. It includes regulations that guard against environmental pollution. It includes the dedicated civil servants who uphold and administer laws. It includes the opportunities the public has to challenge industrial activities that threaten their environment.

Through the decades of the 1970s, 1980s and 1990s, BC governments gradually sewed together a safety net of environmental laws in reaction to environmental mishaps in BC and elsewhere. Knowledge of the strong link between air pollution and heart disease, concerns over declining salmon stocks, closure of fisheries in Howe Sound, reports of Georgia Straight heron rookeries ravaged by dioxin related birth defects, rampant birth defects

caused by the Love Canal, the death of 6,400 and serious injury of 40,000 as a result of a chemical leak in Bhopal India: all these events have slowly led to an accumulation of laws, regulations and government programs making sure it doesn't happen here, doesn't happen again or doesn't get worse.

British Columbia has at times been a leader. Our contaminated sites legislation was amongst the most comprehensive and effective in Canada. At one point our regulations of pulp mills were the strongest in the world, effective in achieving a 99 percent reduction in toxic effluent. Our *Forest Practices Code*, while falling short of the environmental protections applicable to US national forests, compared positively to laws in place in other provinces and US regulation of state owned forests.

Repeated studies have shown that properly designed, strong environmental laws can be good for the economy. For example,

- Strong environmental laws can reduce health care costs. Clean air regulations in Greater Vancouver are expected to avoid 33,000 emergency room visits and 2,800 premature deaths between 1985 and 2020.
- Strong regulations are essential to BC's tourism industry and our "SuperNatural" reputation, which was tarnished by stories such as a 1980s National Geographic feature that showed BC mountains scarred by poor logging practices.
- Environmental laws can help keep BC products competitive by avoiding boycotts such as those that have plagued the BC forest industry. A clean environment can help attract new industries, and stringent environmental regulations can make economies more competitive by spurring innovation.[2]

Unfinished business

Despite the obvious benefits of environmental laws, BC's environmental protection falls short of what is needed or what other provinces, states and countries have in place. As of the beginning of this century, BC's environmental safety net was far from complete. For instance:

- In BC, over 83 species of fauna and flora are endangered or threatened, but only four species are protected, and there is no prohibition against damage to their habitat. In comparison, Ontario has a similar number of species at risk,[3] but 40 species are protected and legislation protects habitat – a key to meaningful protection.
- Over 80 percent of BC's airsheds experience poor air quality – levels where health risks are known to occur – at least some of the time,[4] yet many communities have no airshed plans for improving air quality and BC's laws have no requirements to take action when objectives are not being met. In comparison, US law requires local authorities to take action when objectives are not met.
- Unlike Ontario, the Northwest Territories, the Yukon and New Brunswick, British Columbia has virtually no whistleblower protection laws that protect employees if they disclose threats to the environment.
- Unlike Ontario and at the national level, we have no laws guaranteeing the ability of citizens to have effective input into environmental decision-making.

While British Columbia lags behind other provinces with regard to many aspects of its environmental safety net, Canada as a whole has a mediocre record in terms of effective environmental protection. A September 2004 report from the Organization for Economic Cooperation and Development (OECD) pointed to the need for Canada to integrate environmental concerns in sectors such as chemicals, energy, transport, agriculture and forestry. The OECD stressed the need for Canada to strengthen nature protection through measures related to sustainable forestry, to compliance and enforcement of environmental laws at both federal and provincial levels, to use more economic incentives for environmental performance. It found that Canada's verbal commitments to sustainable development have not yet resulted in practical policies and actions.

Other commentators are less charitable of Canada's record. A 2003 treatise by Professor David Boyd of the University of Victoria examined the Canadian record on environmental protection and compared it to all OECD countries. Canada was rated as having less effective environmental laws than all OECD countries except the US.[5]

Poor environmental laws can be a threat to Canadians' health. Dozens of toxic chemicals banned in other nations for health and environmental reasons continue to be used in Canada.[6] PBDEs – a chemical similar to PCBs that have been shown to cause permanent learning and memory deficits and behavioural changes in laboratory animals – have been found in breast milk of Vancouver women. Indeed, median levels of PBDEs in breast milk samples jumped fifteen-fold in the decade preceding 2002. While Europe is phasing out the most toxic PBDEs by 2004, and California initiated a ban in 2003, neither the BC nor the federal government have moved to ban PBDEs.

A new agenda

So how has British Columbia responded to these shortcomings in environmental protection?

As this report details, the Province's agenda has shifted, but not towards fixing the holes in our environmental safety net.

On the day he was sworn into office in 2001, Premier Gordon Campbell announced a Core Services Review that would examine all government programs and decide whether they should be retained, eliminated, offloaded or privatized.

Shortly after taking office, the new Minister of State for Deregulation announced the goal of cutting one-third of the laws on the books. The goals were to "eliminate red tape," allow BC "to compete without being constrained by unnecessary red tape and regulation," and show that BC was "open for business again."[7]

But the government also promised that environmental protection would be maintained at the highest standards (a questionable promise given the mixed record of previous BC governments).[8] Premier Campbell also spoke of the need for openness and accountability, telling British Columbians "we are going to include every British Columbian in the opportunities to shape the future of this province."

These announcements introduced an unprecedented era of change in BC.

Since 2001, the provincial government has systematically rewritten most of the environmental laws on the books in British Columbia. Laws governing environmental assessment, pollution, contaminated sites, logging, mining, oil and gas development, and drinking water have all been drastically changed. Some legislation has been repealed. Some has been replaced with new legislation. Some has been amended – ranging from relatively minor

tinkering to significant amendments that fundamentally alter the roles and responsibilities between government and the private sector in protecting the public interest in a clean and sustainable environment.

The government was also downsized. From the July 2001 budget to the February 2004 budget, 2,299 positions were lost from the Ministry of Water, Land and Air Protection, the Ministry Sustainable Resource Management, and the Ministry of Forests – the main government ministries with environmental protection duties. The Ministry of Water, Land and Air Protection staffing dropped by almost 30 percent. (These figures are based on budgeted cuts to staffing. Actual staffing level cuts may be slightly different).

These cuts followed on significant cuts made between 1996 and 2000. During that period, Ministry of Forests staffing dropped by 17 percent, and staffing at the environment ministry dropped by 22 percent.

What is the effect of all these changes? Has the government lived up to its promises of openness and accountability, its promises of maintaining the highest standards of environmental protection?

These are the questions this report addresses.

The report begins with a review of changes made to date, focussing on changes to laws but also reviewing changes to policies and programs that are an essential aspect of environmental protection. It then reviews the trends that can be discerned from the mass of legal and policy changes. Finally, it identifies a path forward that will establish laws for a sustainable BC.

Four Years of Change

Here is a synopsis of the changes to laws, programs and regulations that form part of the environmental safety net:

Budget and staff cuts reduce government role in environmental protection

Government ministries charged with environmental protection have faced significant staff reductions, and budget cuts, making it difficult for them to monitor and enforce environmental laws.

Cuts to staff

As noted above, the February 2004 budget called for 2,299 fewer full-time employees at the Ministry of Water, Land and Air Protection, the Ministry of Sustainable Resource Management, and the Ministry of Forests – the main government ministries with environmental protection duties. Staffing levels fell by almost 30 percent at the Ministry of Water Land and Air Protection, by over 50 percent at the Ministry of Sustainable Resource Management, and by almost 28 percent at the Ministry of Forests. These cuts followed on major cuts made between 1996 and 2000.

One of the most worrisome impacts of the cuts is on the ability of government to monitor and enforce environmental laws. Enforcing environmental laws goes far beyond littering and hunting violations. Indeed, a 1998 study for the Solicitor General of Canada concluded that organized environmental crime had a greater impact on Canadians than all types of organized crime other than illicit drug trafficking. The primary impact of organized environmental crime was on the health of Canadians and the environment in general.

Since that 1998 report, budgets for enforcement and monitoring of environmental laws in BC have been steadily cut. An upcoming report by West Coast Environmental Law shows a steady drop in the number of tickets issued for the environmental offences, the number of charges laid, and the number of written warnings issued. Anecdotal evidence also shows decreased enforcement levels (see pages 16-17).

Hazardous waste shipping and treatment is one of the areas that the Solicitor General's report identified as being of particular concern because of organized criminal activity, but in 2002, a planned audit of hazardous waste shippers was derailed because of cuts to Ministry staffing. Although the Minister of Water, Land and Air Protection has conducted at least two audits dealing with hazardous waste shipping and treatment, short staffing appears to be taking a toll in terms of the ministry's ability to effectively enforce environmental laws and regulations.

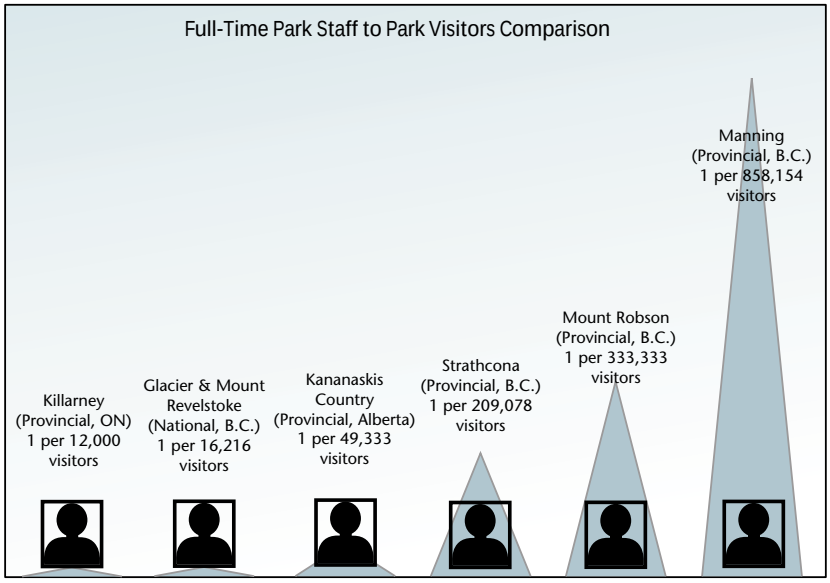
Cuts by Ministry

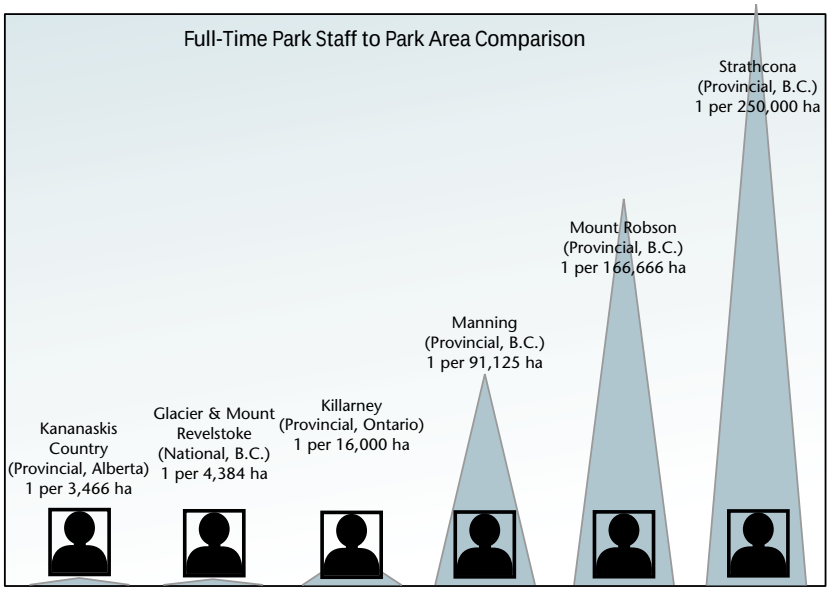
DATE	MWLAP	MSRM	MOF
July 2001 (1st Liberal budget)	1,317 FTEs	1,519 FTEs	4,083 FTEs
Feb. 2004 (latest budget)	924 FTEs	754 FTEs	2,942 FTEs
Total Lost	393 FTEs	765 FTEs	1,141 FTEs
Percentage Decline	29.8 %	50.4 %	27.9 %

Cuts to staff have affected a whole range of environmental protection functions. Government staff no longer provide advice to municipalities on how to avoid environmental impacts from development. There is no longer a group of scientists tasked with providing accurate information on the state of BC's environment. And BC is one of only a few jurisdictions in North America without park interpreters.

Park	Full-Time Park Staff/Area	Full-Time Park Staff/Visitors
Kananaskis Country (Provincial, Alberta)	1 per 3,466 ha	1 per 49,333 visitors
Mount Robson (Provincial, B.C.)	1 per 166,666 ha	1 per 333,333 visitors
Strathcona (Provincial, B.C.)	1 per 250,000 ha	1 per 209,078 visitors
Manning (Provincial, B.C.)	1 per 91,125 ha	1 per 858,145 visitors
Glacier and Mount Revelstoke (National, B.C.)	1 per 4,384 ha	1 per 16,216 visitors
Killarney (Provincial, Ontario)	1 per 16,000 ha	1 per 12,000 visitors

While the Kananaskis Country park system in Alberta has 75 full-time staff and 19.1 seasonal staff, similar sized Strathcona Park on Vancouver Island has 1 full-time and three seasonal staff. Glacier and Mount Revelstoke National Parks have over 50 times as many staff per 10,000 visitors as Manning Park. While some of these differences are due to BC's practice of contracting out park maintenance work, key functions such as planning and monitoring wilderness areas are not occurring, and activities such as illegally harvesting within park boundaries go unchecked.





The Solicitor General of Canada concluded that organized environmental crime had a greater impact on Canadians than all types of organized crime other than illicit drug trafficking.

One of the most worrisome impacts of the cuts is on the ability of government to monitor and enforce environmental laws. Enforcing environmental laws goes far beyond littering and hunting violations. In 1998, a study for the Solicitor General of Canada concluded that organized environmental crime had a greater impact on Canadians than all types of organized crime other than illicit drug trafficking. The primary impact of organized environmental crime was on the health of Canadians and the environment in general.

A West Coast report published in early 2004 found that BC lagged far behind other provinces in terms of resources for enforcement and monitoring of environmental laws. BC has one conservation officer per 826,000 hectares. Alberta has one per 300,355 hectares. BC has one conservation

Cuts to Conservation Officer Service leading to increase in illegal activity

When Walter Cibulka started work in Golden in 1985 as a Conservation Officer (CO), hunting and fishing violations were endemic. With his fellow Conservation Officers, Cibulka was responsible for enforcing over 20 provincial and federal laws that protect wildlife, the environment and human health and safety.

To solve rampant illegal hunting and fishing in Golden, Cibulka and his partner Barry Klassen worked with local rod and gun clubs and the general population. These efforts had the desired effect, poaching activities dropped off around Golden.

Later in 1998, Klassen began working with undercover agents to unravel an illegal poaching activities of a local guide outfitter. The investigation was ultimately successful, and a $56,000 fine assessed.

While these efforts were successful, they took a toll. Klassen had no office support during the investigation. "For the last three years, all I did was spend time in the office. I didn't do any fieldwork at all, none, zero."

And then, in the latest round of government cuts to the CO service, the Golden Office was closed along with offices in Salmon Arm, Nakusp, Alexis Creek, Clinton, Valemont, Houston and New Hazelton. There are now no COs between Bella Coola, and Williams Lake, 465 kilometers to the east.

Within months of their office closing, Klassen and Cibulka say there was a sharp increase in illegal hunting and fishing. "I still get calls from people telling about over limits on fishing, people fishing in closed streams, people shooting undersize dear and leaving them, and night-hunting violations," Cibulka says. "We hadn't had complaints like that for years. And now they're back. And I don't think it is a coincidence."

officer per 36,000 people. Saskatchewan has one per 5,527 people. The author of the report heard the following from present and former staff:

- decreased ability to get out into the field because of cuts in clerical staff and closing of offices.
- increased illegal hunting and angling.
- far fewer inspections of major industrial facilities and a virtual elimination of surprise inspections.

Reduced environmental protection requirements for development projects

The introduction of the Significant Projects Streamlining Act gives individual ministers the power to waive almost any provincial or municipal laws perceived to be a constraint to development of projects that are deemed to be provincially significant. The new Environmental Assessment Act raises the thresholds for when projects need to be environmentally assessed, allows government to waive assessments, and reduces standards for environmental assessment.

New Act allows minister to exempt projects from any provincial or local law, regulation or standard

In late 2003, the government passed a deregulation bill that challenges conventional notions of democracy. The *Significant Projects Streamlining Act* gives the BC Cabinet and individual ministers extraordinary powers to overrule provincial or local government laws, regulations or bylaws if they are *perceived* as being 'constraints' to development projects that the government *deems* as 'provincially significant.'

Once designated, if a project proponent feels that provincial or local laws are getting in the way of project approval, the minister responsible for the project can make orders replacing any law, regulation, bylaw, policy or government program that is perceived to be a constraint to the project. Proponents could even argue that paying their share of taxes is a constraint on a project. There are no criteria governing substitute requirements and there no chance for the public to raise concerns.

The legislation is extraordinary in that it allows Cabinet and ministers to overrule virtually all provincial legislation passed by the Legislature, includ-

ing environmental laws. Although these powers are subject to the *Environmental Assessment Act*, this provides little comfort given changes to that Act (see below).

Although the *Significant Projects Streamlining Act* has not been used so far, its threat hangs like a dark cloud over local governments or bureaucrats who have concerns about a politician's pet project. Politicians have suggested using it to force approval of housing developments. Although the Minister of Deregulation has stated that the Act would not be used for this purpose, nothing in the Act would stop its being used in this way.

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A tale of two Environmental Assessment Acts[9]

In less than three weeks in May of 2002, without any opportunity for public input, the government introduced and passed far-reaching legislation which repealed the former *Environmental Assessment Act* and replaced it with an act that was similar in name only. In December of 2002, the government followed up the new Act with a new set of regulations governing environmental assessment.

The purpose of environmental assessment is to determine whether or not a project has a significant impact on the environment. And more importantly, environmental assessments identify steps needed to avoid environmental harm, and can potentially reject projects that have unacceptable consequences. Unlike some environmental assessment laws, which require quick and easy screenings of minor projects, the old BC Act only applied to relatively large projects. Thresholds were set for different types of projects and projects that exceeded these thresholds had to be assessed.

All that has changed. First, the thresholds determining which projects are subject to environmental assessment were increased. Proposals to increase these thresholds had first surfaced under the Glen Clark government but had never been acted on. The threshold for mineral mines increased threefold, coal-fired power generation by 2.5 times, leaving smaller, yet still significant projects, unassessed. Some of the changes to thresholds are shown in Table 1.

Table 1 – What's assessed under the old and new Acts?

Type of Project	Must be assessed under the old Act if	May be assessed under the new Act if
New Coal Mine	Production capacity of over 100,000 tonnes/year	Production capacity of over 250,000 tonnes/ year
New Mineral Mine	Production capacity of over 25,000 tonnes/year	Production capacity of over 75,000 tonnes/year
Modification of Pulp/ paper mill*	Waste Increases by 10%	Waste Increases by 30%
Expansion of Coal or Mineral Mine*	Expansion of surface area that can be disturbed by 250 hectares or over 35% of original mine site	Expansion of surface area that can be disturbed by 750 hectares or over 50% of original mine site
Coal, Natural Gas or Oil Fired Power Plant or Hydro-Electric Dam	Capacity of over 20 megawatts	Capacity of over 50 megawatts
Hazardous Waste Treatment Facility[10]	Treatment Capacity of over 50,000 kg per day	Treatment Capacity of over 100,000 kg per day
Short term hazardous waste storage	Over 5,000 tonnes of hazardous waste stored in piles or 10,000 tonnes stored in containers	Not Required

* Only applies if unmodified facility/mine/mill would qualify for environmental assessment.

While the new thresholds only exclude relatively small operations, small operations can have a large impact on the environment. Roads penetrating the wilderness to access a small mine can have as much impact on endangered species as roads to larger mines. A small mine that generates acid near critical fish habitat may have a much larger impact than a larger mine. For instance, the McGillvray Coal Pit, an operation with a production capacity of 200,000 tonnes per year, was approved prior to changes to environmental assessment laws, but would be excluded from EA today. Yet the environmental assessment of the McGillvray Coal Pit was important, identifying public concerns regarding wildlife habitat, water quality and fisheries, and identified steps needed to protect the environment.

A 49 megawatt coal and wood fired thermal generation plant slated for Princeton BC will escape environmental assessment under new thresholds.

Second, government officials were given the power to waive environmental assessments if they were of the opinion that projects would have no signifi-

cant environmental impacts. No assessment needed – simply an opinion that a 250,000 plus tonne per year coal mine would not have any significant impact.

In those cases where environmental assessment is still required, there is little guarantee that the assessment will be adequate. The new Act and its regulations provide no detail on the information that a proponent must supply in an application, or how the review process is to be conducted. Instead, the Executive Director of the Environmental Assessment Office or the Minister is to determine the scope, procedures, and methods of the assessment.

While openness and accountability were key elements of the old Act, the new Act has eliminated mandatory consultation with public, First Nations or neighbouring jurisdictions. Under the old Act, the public was given access to a broad range of information, and able to have input at a variety of stages along the way. Municipalities and local First Nations had a right to participate in project committees that oversaw the process. Now, project proponents are "generally required" to propose a public consultation plan, and government officials can require more consultation "if warranted."

Table 2 Public involvement under new and old *Environmental Assessment Act* and Regulations

Involvement	Old *Act*	New *Act*
Public consultation	Required	Generally required*
Public notice of open houses or public meetings	Required	Generally required* if open house or meeting required
Public, local governments, first nations, federal government able to comment on environmental assessment application	Required	Not required
Public, local governments, first nations, federal government able to comment on what information or analysis proponents to provide	Required	Not required
Public, local governments, first nations, federal government able to comment on proponent's project report	Required	Not required

* Regulations state that "It is a general policy requirement that a proponent who applies for an environmental assessment certificate ... be required to ... conduct a public consultation program that is acceptable to the executive director." The Act states that assessments should reflect government policy. The legal result is unclear, but the language suggests that public consultation can be waived.

"Full speed ahead" resource development

Environmental protection measures that govern BC's resource industries have been dramatically altered, with perhaps the most far-reaching changes occurring in the forestry industry. Changes to regulation of the oil and gas industry accelerate development while reducing environmental protections, and changes to laws governing oil, gas and mining development give increased powers for industry to access resources on private property and public land. Parks have been 'downsized' and opened up for tourist developments, and a moratorium on open net-cage fish farms has been removed despite evidence of threats to wild salmon from fish farms.

"Results-based" code ignores results, shifts control to forest companies, creates red tape for environmental protection, inhibits effective enforcement[11]

The biggest impact on the ground in the forest industry is through the complete replacement of the *Forest Practices Code* with the new *Forest and Range Practices Act* and its regulations. The old *Forest Practices Code* used a mix of mandatory forestry planning by logging companies, government approval of company plans, and a few hard and fast rules on issues like size of cut block and riparian setbacks. Environmentalists and industry criticized the process as too bureaucratic, although environmentalists generally wanted more substantive rules, a sentiment not shared by industry.

Although the government promised a "results-based" approach, the main thrust of changes have been:

- reduced government oversight of logging plans,
- an ability to waive substantive rules and replace them with industry written rules,
- regulatory limits on what government can do to protect the environment, and
- creation of barriers to effective enforcement.

Despite the communications spin put on it, the new *Forest and Range Practices Act* has little to do with results.

Under the new forestry rules, logging companies have a choice: they can follow 'default standards' similar to the old *Code*, or they can propose an alternative result or a strategy that meets the generally worded government objective, e.g., retaining wildlife trees "without unduly restricting the supply of timber." The option to propose alternatives applies to most environmental values that British Columbians care about. Alternatives can

be proposed for protection of fish, streams, water quality, wildlife, soil disturbance, wetlands and lakes, cut block sizes etc.

There are several problems with this approach:

- The objectives are unclear. General objectives are muddied by the qualification "without unduly restricting the supply of timber."
- There are no measurable results that companies must meet.
- Government can approve alternatives that are far less effective than default standards.
- Industry gets to propose results or strategies that may prove difficult to enforce.

At the same time as government is allowing companies to suggest alternatives to rules, Victoria will no longer be approving cut-block level plans. Cut-block level logging plans, required since the 1980s, are an important safeguard for protecting environmental values. In addition, logging companies are no longer required to complete assessments of slope stability, watershed hydrology or visual impacts before they log.

The Forest Service will now approve a single logging plan that is much too general to provide effective guidance on matters of environmental protection – for example, the need to protect a particular area of habitat. Now, the Minister of Forests will approve key operational plans so long as they meet very minimal content requirements and are consistent with government's vaguely worded objectives. Plans can no longer be rejected because they fail to adequately manage and conserve public forest resources.

Furthermore, under legislation passed in May 2004, government can pass regulations that could require the Minister of Forests to approve logging plans if a private sector professional forester says the plan will achieve vague objectives. Government would be forced to approve certified plans even if government officials believe the plans do not comply with the law. As noted below, compliance with a plan that the government is forced to approve is a defence to prosecution for damage to the environment.

One of the most unusual elements of the new *Forest and Range Practices Act* and its regulations is the extent to which government has tied its own hands by imposing extraordinary restrictions on government decision-makers. Regulations put red tape and bureaucracy in the way of government efforts to protect the environment. For example, under the new law, a minister can not take certain actions to protect the environment – for instance, designating wildlife habitat areas, scenic areas, community and fisheries sensitive watersheds – without first proving that various conditions are met. He or she must be satisfied that the environmental protection

actions would "not unduly reduce the supply of timber." Also the benefits of taking any *single* environmental protection action must outweigh the *cumulative* impact of past and proposed environmental protection on the ability of logging companies to remain "vigorous, efficient and world competitive." The last requirement is particularly astounding.

Government's capacity to hold forest companies accountable for environmental damage is reduced by a series of loopholes. For instance, the Act prohibits damage to the environment. But, the definition of 'damage to the environment' is limited to various events (landslides, debris torrents, dumping of oil, soil disturbance etc.) that "fundamentally and adversely alter an ecosystem" – a high hurdle to overcome. Even such extreme damage to the environment is not prohibited if it is in accordance with a plan. Indeed, companies can argue that they are not responsible for fundamentally adversely altering an ecosystem because it is pursuant to a vague and general stewardship plan, a site level plan that the company prepared and was never approved by government.[12] The Act also creates new defences, which companies can use to escape liability for government-imposed fines.[13]

The changes to forest practices laws essentially leave environmental performance up to companies. Past performance since the old *Forest Practices Code* came into force nearly one decade ago is not cause for hope. As the Forest Practices Board noted in a 2004 report "key on the-ground conservation measures…were not implemented in a majority of areas."[14]

Changes to the *Forest Act*: making timber tenure more like private property

Through changes to the *Forest Act*, government has rewritten the social contract between the logging industry and the BC public. Tenure holders are no longer required to maintain mills in communities near the timber supply. Minimum cut requirements have been eliminated. The government no longer has the ability to reclaim five percent of a company's cutting rights when tenure changes hands, and government approval is no longer required for transfers of Crown-granted tenure rights.

On the other hand, companies holding major licences are required to give up 11 percent of their allowable annual cut.[15] Half of this will be redistributed to a Forest Service private timber sales program, and the remainder to First Nations, community forests, and woodlots operated by small landowners. Companies will be compensated an estimated $200 million for the take back of tenure, even though other changes to tenure will increase profitability.

While the end of minimum cut requirements and provision of tenure to community forests and First Nations are steps in the right direction, other changes have set the stage for large corporate mergers, the closure of mills, and widespread job losses in many BC communities.

Throughout the last several years, starting under the Glen Clark government, there have been significant increases in exemptions from local manufacturing requirements to enable greater exports of raw logs and chips. Raw log exports increased almost six-fold from 1997 to 2002, and has increased even more dramatically since then. One researcher estimates the job losses from raw log exports at 800, with a potential to grow to 1,500 with exports approved in 2002.[16]

Deregulating forest practices on private land

The government has also decided that it is no longer interested in regulating logging on private land and has replaced the *Forest Land Reserve Act* with new legislation.

Logging on private land will be regulated by a Private Managed Forest Land Council, whose members are appointed equally by government and the landowners (mostly big timber companies).

The government also repealed incentives to keep private forest land in production. For instance, if large timber companies choose to clearcut their property and sell it for residential development, they will no longer be required to pay back taxes that were avoided by keeping the land as managed forest.

The government also removed 87,700 hectares of privately owned land from Tree Farm Licences (TFLs). This land was originally put in TFLs in exchange for large timber companies receiving access to huge areas of Crown land. The effect of removing the land from TFLs is to essentially deregulate logging practices.

Oil and gas: neutral commission becomes political[17]

Since the Province announced its desire to double oil and gas production by 2011, exploration and development have taken off in BC, with oil and gas revenue outpacing revenue from forestry for the first time in provincial history. While this added revenue has helped government coffers, oil and gas exploration and production has had massive impacts on the landscape as seismic lines, roads and pipelines cut up areas of wilderness. Oil and gas production is also controversial due to health concerns associated with flaring of sour gas. And finally, extraction of natural gas from coal seams can have major impacts on ground and surface water due to massive re-

moval of water from coal seams and disposal of contaminated water into streams where the local geology doesn't allow re-injection into the ground.

Under the NDP, environmental regulation was shifted from environmental protection agencies to the Oil and Gas Commission (OGC). The OGC was established to serve as a neutral 'one-stop shop' for regulating the industry.

This system has been significantly changed under the current government. Once considered a neutral regulatory body, the government has appointed the Deputy Minister of Energy and Mines as Chair of the Commission, who has the power to cast tie-breaking votes. Given that this ministry now has a political mandate to double oil and gas production, this could mean that environmental issues once decided by the environment ministry, and later by a 'neutral' OGC, will now be decided in some cases by the industry's proponent ministry.

Residents face risk of poisonous gas cloud

The alarm bells started ringing when Samson Oil first proposed drilling a gas well mid-way down Old Hope Road. The well would produce "sour gas," meaning that the gas would contain large amounts of hydrogen sulphide, a highly toxic gas. The rural residential street, near Fort St. John, is a dead-end, and residents were horrified to realize that if there were an accident at the well, the resulting poisonous gas cloud would drift across the road and cut off their escape.

The new Oil and Gas Commission quickly approved Samson's application for drilling. The residents requested a reconsideration of this decision – a request which was referred to a public advisory panel. The panel agreed 100 percent with the residents, noting that siting rules did not recognize the risks associated with sour gas. Despite earlier indications from the Commission that sour gas wells near Old Hope Road posed unacceptable hazards, the Oil and Gas Commission rejected the Panel's recommendations and given Samson the go ahead to drill the well.

Also, a series of changes allow government to release oil and gas operators from environmental requirements. Government can now excuse companies from obligations to supply information on environmental impacts, exempt a company from any rules it establishes for 'oil sands' production, and allow companies to space wells closer together. The last change could result in 32 times as many wells in a given area and considerably more ecological damage caused by more wells, roads, and other facilities.

The OGC has also been given the power to make decisions about farm land protection in place of the Agricultural Land Commission. This could result

in at least an apparent conflict of interest for the Commission when trying to serve two mandates: oil and gas development and protection of agricultural land.

Mining laws: exemptions from pollution laws and guaranteed access to mines[18]

Mining laws were changed in 2002 and 2003 to:

- exempt some mining operations from permit requirements and pollution laws;
- increase mining industry rights of access to private land and repeal an existing provision against interference with private land;
- give mining approvals precedence over most other land use designations.
- eliminate detailed requirements for radiation testing in radioactively "hot areas" of the Province;
- reduce buffer zones between mineral exploration activities and streams; and
- eliminate preventative measures to avoid erosion from mineral exploration in community watersheds.

Land ownership means less as new powers given to subsurface owners

For years, Warren and Carolyn Bepple owned and carefully tended their woodlot and cabin near Kamloops. Unfortunately and unknown to them, Western Industrial Clay Products owned the subsurface rights, and the earth beneath them was rich in "diatomaceous earth," the chief ingredient in kitty litter. As a result of amendments to the *Mineral Tenure Act*, WICP no longer has to worry about whether its operations interfere with the Bepple's use of their cabin, grazing of cattle and woodlot operations. Although the Bepples were compensated $60,000 for the loss of their 40-acre property, they argued that the amount fell far short of the value they put on the land they loved.

Warren and Carolyn Bepple's land was converted into a kitty litter mine.

In BC, the government can sell subsurface rights without even informing local residents or surface land owners. Brad Hope of Princeton found this out the hard way. Government sold off rights to natural gas under his land without informing him or his neighbours or giving them a chance to bid even though there was some legal doubt as to whether Brad or the government owned the rights. The BC government subsequently passed legislation that took away any claim Brad or local residents had to ownership. Industry now wants to drill gas wells and local residents have no way of stopping them.

Under the *Mines Act*, mining companies are required to obtain a permit before conducting mining activity. As part of the application process, mining companies are often required to propose environmental protection measures. The Chief Inspector designated by the Act has been given a new power to exempt a mine from the permit requirements if the proposed activity meets certain requirements to be prescribed in a future regulation. The exemption in the Act is overly broad and could apply to mining works that pose environmental risk. But equally or more significant is that the exempted mining operations are also exempted from pollution laws. This means that mining activities carried out with no regulatory oversight from the Ministry of Mines, would be immune from prosecution for any environmental damage under the *Waste Management Act.*

Mining laws have long guaranteed considerable access to the land to encourage mineral development. In BC, the *Mineral Tenure Act* gives any 'free miner' a right to enter onto private land to explore for minerals. Until now, it also contained provisions that limit the extent to which mining can prevail over activities on private land. In 2002, the government repealed a section of the *Mineral Tenure Act* that prohibits mining companies from obstructing or interfering with activities on private land, including existing buildings.

The amendments also prevent the Mediation and Arbitration Board (created to resolve certain land use disputes) from denying access to mineral claims even where it determines there would be undue interference with a landowner's buildings or operations. Instead, the Board is now limited to specifying the conditions on which access must be permitted and the compensation to be paid in exchange for the access.

To 'increase certainty' for the mining industry, the government 'clarified' that mining companies have a right of access to all land in the province other than parks, ecological reserves, protected heritage property or areas specifically prohibiting mining under the *Environment and Land Use Act.*

In March 2003 the Mineral Exploration Code (MX Code) was radically rewritten, with extensive changes, and a shift from detailed prescriptive regulations to a few brief results based requirements. For instance, rules aimed at avoiding radioactive pollution and exposure from mineral exploration have been reduced from ten pages to *a single paragraph.*

In the process the threshold for the amount of uranium allowed in ore tripled from 0.05 percent by weight to 0.15 percent by weight. This was apparently the result of a typographical error but the Ministry of Energy and Mines has taken almost two years to correct this serious error. The shift to a results based approach has meant that there is no longer a prescriptive

regulation requiring miners to test for radiation in known "hot" areas.

Given that testing is the main basis for avoiding exposure to radiation or release of radioactive substances into the environment, this appears to be an example of inappropriate results based regulation. Local environmentalists have expressed concern that miners are no longer routinely testing for radiation and that Ministry staff are not enforcing the new results based approach.

Other amendments to the MX Code include:

- A reduction in stream/wetland set-backs from 50 metres down to between 10 and 30 metres;
- Elimination of detailed provision on building temporary access roads to avoid environmental impacts; and
- Elimination of soil erosion hazard assessments in community watersheds.

Parks: making way for tourist developments, mining, oil and gas[19]

Even parks are not spared in the "full-speed ahead" resource drive. In 2003, the Liberals changed the *Park Act* by weakening the provisions regarding recreational and tourism development in parks, making it easier to approve tourism developments such as lodges in protected areas. Changes authorized the removal of petroleum and natural gas from the subsurface of parks and protected areas (raising concerns that parks would be ringed by oil derricks); and changed the boundaries of seven parks. Graham-Laurier Provincial Park had a 1,000 hectare swath taken out of it for an oil and gas development, and the South Chilcotin Park was reduced in size by 14,600 hectares to make way for mining and tourist development. The old boundaries of the South Chilcotin Park had already been a compromise, resolving years of negotiation among various interests.

Fish farming: green light and inadequate regulation

Open net-cage salmon farms along BC's coast have been controversial because of the pollution (from pesticides, antibiotics and feces) that often accompanies them, and due to the risks to wild salmon stocks, such as increased parasites and possible inter-breeding when farmed Atlantic salmon escape. Evidence of these risks led in 1995 to a moratorium on fish farm expansion while the BC Environmental Assessment Office undertook a two-year review of the environmental impacts, known as the Salmon Aquaculture Review (the "SAR").

While some research scientists were critical that the review seemed biased towards acceptance of fish farming, the SAR nevertheless criticized the lack of "objective, measurable and enforceable standards" and came up with 49 recommendations upon which any fish farm expansion should be based.

Shortly after taking office, the Liberal government lifted the moratorium. A recent review of the provincial record on implementing the 49 recommendations found that only ten had been fully implemented.[20] Decisions on siting new fish farms have been made with little regard for how sites can lead to transmission of disease to wild salmon, and government has failed to relocate several farms that are believed to be causing serious environmental problems. Regulations allow pollution levels at fish farms that, according to a report by federal fisheries scientists, are too high to avoid loss of productive capacity and biodiversity in the vicinity of the fish farm.

These changes come at a time when there is mounting evidence of the environmental concerns with fish farming. Atlantic salmon have been found spawning in BC rivers and the Broughton Archipelago north of Campbell River has seen a severe increase in sea lice infestations, believed by many scientists to be a result of fish farming.

Forgetting the big picture: no integration of environmental, social and economic goals

Effective environmental protection increasingly requires integration of environmental, social and economic planning. Dealing with menaces such as climate change, protecting farm land near urban areas, and protecting many endangered species requires government to think about the big picture and develop plans that meet our environmental, economic and social goals. Yet the government has eliminated sustainability planning. More troubling, although 82 percent of BC's greenhouse gases come from fossil fuel production and use, BC's Energy Policy was developed with little consideration of climate change. Instead, Victoria is promoting an energy path of coal-fired electricity, and rapid development of oil and gas, coalbed methane, and offshore oil and gas. On a positive note, BC Hydro – a provincial crown corporation – has announced its intent to have no new net impact on the environment – a potentially far-reaching commitment depending on how it is implemented.

An energy plan that ignores the greatest challenge of the 21st century

Around the world, governments, industry and the public are grappling with the great challenge of the 21st Century: how to provide for the world's energy needs without wreaking havoc on the planet's climate system. Energy and climate change are inextricably linked. The world economy relies heavily on fossil fuels, and fossil fuels are responsible for roughly three quarters of greenhouse gas emissions.

In 2002, the BC government announced a far-reaching energy plan. The plan fundamentally restructures the energy business in BC. In particular, BC Hydro's transmission lines are shifted to a separate company that will give access to independent power producers, and the crown corporation's activities are limited to generation from existing facilities and distribution of electricity.

Although 82 percent of BC's greenhouse gases come from energy production (fossil fuel production and use), the government's Energy Policy Task Force was directed to not deal with climate change. The policy that eventually resulted encourages coal-fired electricity, and rapid development of oil and gas, coal bed methane, and offshore oil and gas.

Coal is inherently dirty, with twice the carbon dioxide emissions of natural gas, and far higher emissions of local pollutants and mercury. New air pollution standards for coal-fired plants do not put limits on mercury emissions, even though coal-fired power is the leading source of mercury emissions in North America, affecting human health, fish and wildlife.

On the other hand, the plan calls for increased energy conservation. BC Hydro has committed to acquiring 30 per cent of its new electricity supply from conservation and efficiency during the next 10 years. The Plan also promised review of a natural gas powered generation station on Vancouver Island, a move that lead to the cancellation of the project by the BC Utilities Commission. And, the plan calls for increased access of independent power producers to the electricity transmission system, a change that makes it easier for green power producers to sell their product.

The plan also calls on electricity distributors to voluntarily acquire 50 percent of new electricity from "BC Clean Electricity" sources. At first blush, this seems to be a good target, but the devil is in the details. The definition of "BC Clean Electricity" includes inherently dirty technologies, so long as they are cleaner than in the past. In particular, it may allow electricity from coal, the dirtiest source of power, to count as "clean electricity" if the generation station also produces heat for industrial purposes. For

instance, a pulp mill can burn coal in its boilers and produce electricity. While this is better than just producing electricity from coal, it is dirtier than using natural gas, and poses grave air pollution threats. Finally, the target is voluntary, does not apply to large industrial purchasers who buy directly from producers, and may be limited by requirements that BC Hydro and other distributors buy least cost supplies.

On a positive note, the BC Hydro has committed to having no new net environmental impact. This is potentially far-reaching, depending on details of how this commitment is implemented. Key issues include whether BC Hydro commits to offsetting environmental impacts of electricity produced by independent power producers for BC Hydro customers (the main source of new impacts under the energy policy), mechanisms to ensure impacts are not simply shifted to large industrial buyers that purchase directly from independent power producers, and the ability of BC Hydro to meet this commitment under the BC *Utilities Act*.

Eliminating accountability for sustainability

In the last decade, governments and businesses have increasingly recognized the need to weave environmental sustainability into their programs. Sustainability requires the incorporation of environmental, economic and social goals into all operations of businesses and government. This integration is essential to ensure against the familiar pattern of well meaning environmental protection efforts being completely overwhelmed and reversed by government agencies pursuing incompatible goals.

This was reflected in the *Budget Transparency and Accountability Act* that would have required government agencies to incorporate environmental sustainability objectives into their planning and required assessment of service plans and major capital projects against these objectives. The Act also created the position of Commissioner for Environment and Sustainability, modelled after a similar federal official, who was empowered to report, independently of government, on the government's efforts to achieve sustainability and protect BC's environment. These requirements and the position of Commissioner for Environment and Sustainability were eliminated in August 2001.

Protection from pollution and toxins reduced

Changes to pesticide and pollution laws mean that opportunities for members of the public to appeal authorizations to pollute or spray pesticides have been lost, and many small polluters have been deregulated. On a positive note, government has backed away from proposals that would have either lead to fewer clean-ups of toxic sites or shifted responsibility for contaminated site clean-up from industry to the taxpayer.

Deregulating pesticide use while giving local government regulatory powers[21]

Canada's Commissioner for the Environment, Johanne Gelinas, has said Canadians should not assume "the pesticides available in Canadian stores today are safe because the work that needs to be done to ensure their safety hasn't been done." Only four out of 600 pesticides have been re-evaluated, and these resulted in a ban or restrictions on their use.

On New Year's Eve 2004, the province repealed the *Pesticide Control Act* and replaced it with new legislation. Under the new pesticide laws, Government will only require permits in about 10% of the cases where they were previously required. The new Act only requires pesticide use permits for certain "prescribed" pesticides, for aerial spraying of urban areas and in few other circumstances. Government will no longer be reviewing and approving pest management plans. Instead, users of pesticides must simply notify government that they have prepared the required plan.

Vernon parents are worried that pesticide laws don't recognize the risk of spraying pesticides on playgrounds

When parents in Vernon saw pesticides being sprayed on local playgrounds, they got worried. They formed a parents' group, Parents for Healthy Play Spaces, to oppose the use of pesticides in playgrounds.

These parents, and others in BC, may be disappointed by the new *Integrated Pest Management Act* and draft Regulations. Although the new Act is described as taking a "risk-based" approach, nothing in the new act and draft regulations recognizes the special risks associated with application of pesticides to schools, hospitals, playgrounds. Unless a school district is treating 20 hectares or more with pesticides, all that will be required to apply pesticides in these locations will be for the operator to have a licence, not a pest management plan or a specific government-approved permit. Although school principals are to be notified of pesticide applications, there are no requirements for parents to be notified or for staff to take steps to minimize exposure – despite the strong desire of many parents to have this information so they can make choices on how best to protect their own kids.

Endangered grizzlies out of luck?

The Granby Grizzly is one of the most endangered grizzly populations in the province; only 26 to 38 Grizzlies, including only three to six adult breeding females, remain in the Granby area. And that was before the province's Ministry of Forests developed a pesticide management plan in May 2003 that called for spraying pesticides Glyphosate (Vision) and Triclopyr (Release) in clearcuts on the very plants that the grizzlies rely on for food.

Alarmed, the Granby Wilderness Society, with support from West Coast Environmental Law, appealed the Ministry's pesticide management plan to the provincial Environmental Appeal Board. Alan Andison, Chair of the Environmental Appeal Board, concluded in June 2004 that:

> [S]ome of the measures set out in ... the Plan, for the purpose of protecting grizzly bears, have little practical effect ... [We] are not satisfied that [the Plan's] provisions provide sufficient protection to reduce the risk of an adverse effect on grizzly bears from a loss of food plants to a reasonable level.

The Board ordered the government to prohibit the use of Glyphosate in areas with "exceptional amounts of grizzly bear foods."

Under the new *Integrated Pest Management Act*, the Granby Grizzly would have been out of luck. The new Act and regulations would not have required a permit for glyphosate applications and do not contain any requirements that the food sources for endangered species be identified or protected. There is simply a requirement not to apply pesticides to visible wildlife and to have a 'strategy' to avoid adverse effects. There are no minimum requirements for the strategy – it could be as simple as avoiding spraying on wildlife during aerial spraying – and the strategies do not need to be approved by government.

These changes will lead to a huge reduction in the public's ability to raise concerns over pesticide misuse or harmful impacts with the Environmental Appeal Board. In the past, the public has often been able to successfully appeal inappropriate use of pesticides to the EAB. However, since permits can be appealed but pest management plans cannot be appealed, the public's ability to challenge pesticide applications is reduced by 90 percent.

The public's ability to challenge pesticide applications is reduced by 90 percent

Theoretically, government's role will shift from 'front end' authorization to detecting and punishing companies that are not following their own plans or government technical standards. However, when these changes are coupled with staff and budget cuts, it is questionable whether government will in fact be able to effectively monitor the amount of pesticides applied in BC and sanction against misuse.

To its credit, the Province has passed regulations under the *Community Charter* allowing municipalities to regulate and prohibit the use of pesticides on lawns and gardens.

Pollution laws: deregulating and removing public appeal rights[22]

Until July 2004, BC's main pollution law was the *Waste Management Act*. It outlawed businesses from discharging pollution into the environment unless they are authorized to do so by regulation or permit.

Under the old system, regulations ensured an equal level of protection within an industry. Permits made polluters aware of environmental protection requirements and allowed government to address site-specific issues, such as the need for stronger standards to deal with a sensitive salmon stream or to protect the health of local residents. Some large emitters were covered by both regulation and permits, ensuring a minimum level of protection and allowing for site-specific requirements.

The permit system also allowed citizens or local government to challenge the authority of industry to pollute. Permits could be appealed to the Environmental Appeal Board, and citizens affected by pollution could call for more stringent standards or better monitoring.

In July 2004, government adopted new legislation and regulations. Under the new approach, the largest emitters such as pulp mills and refineries will still require a permit. The remaining 80 percent of polluters who are considered to be of medium and low risk to the environment, will fall under either a 'code of practice' or nothing other than a general rule against substantially altering or impairing the usefulness of the environment.

The new system has a number of disadvantages:

- In 80 percent of cases, citizens and local governments lose their ability to challenge authorizations to pollute. Industries that have been de-permitted include asphalt plants, steel foundries, petroleum tank farms and sawmills.
- Government can only impose more stringent site-specific standards "if necessary for to protect the public or environmental" but can, at the request of industry, lower standards contained in Codes of Practice so long as officials believe the "intent of the Code is met" – a weak standard given that the intent of code provisions are not specified.
- Polluters that are deemed to be low risk are essentially unregulated.[23]

The government claims the new system will free up resources to put to-

wards enforcement, but it is not clear whether this goal will be met. Developing Codes of Practice that apply to entire industries is a large, time-consuming task, and government will still need to process industry requests for exemptions from Codes of Practice. The system could result in a loss of effective environmental regulation without being able to move any significant amount of resources to enforcement.

And the critical designation of polluters by risk level is in itself flawed. We have known for many years that gravel pits are not a low risk industry. According to the Georgia Straight Alliance, in 1994-95 alone, $326,500 has been spent to clean up gravel pit damage on the Coquitlam River. In 1994, Lafarge Canada was convicted and fined $85,000 under the *BC Waste Management Act* for failure to maintain pollution controls at its gravel pit in Egmont, BC. Yet gravel pits are considered to be a low risk industry under the *Environmental Management Act* and have been deregulated. They are governed by neither environmental permit nor regulation, subject to only a vague and difficult to enforce prohibition on causing substantial impairment of the environment.

In 1994-95 alone, $326,500 has been spent to clean up gravel pit damage on the Coquitlam River. Yet gravel pits have been deregulated, subject to only a vague and difficult to enforce prohibition on causing substantial impairment of the environment.

The government also rolled back pulp pollution laws that would have forced mills to eliminate chlorine compounds from their effluent. This decision followed recommendations by a government panel whose terms of reference did not allow it to consider several of the main reasons for eliminating chlorine from pulp effluent. The panel noted that regulations brought in by the Social Credit and NDP governments had reduced emissions by over 90 percent and concluded that elimination of the remaining chlorinated compounds was unnecessary to protect fish. The panel found that black liquor (black liquor is a by-product of the pulping process) pollution from mills was a threat to the marine environment, and that BC mills were not following worldwide pollution prevention practices. While the government followed panel recommendations to reduce chlorine standards they did not act to regulate black liquor discharges.

Government reduced performance standards for recycling. Earlier regulations required beverage retailers to develop plans for ensuring an 85 percent rate for return of beverage containers for recycling. This was to be achieved within two years. The government changed this to a target rate of 75 percent return within "a reasonable time frame."

While Sweden charges roughly $7,000 per tonne of nitrous oxide emissions, providing an effective incentive to reduce pollution, BC charges only $11.29.

On a positive note, in March 2004, the government increased the fees paid for pollution permit holders by 50 percent. This helps ensure that polluters pay for the cost of government services related to permitting. Unfortunately, fee levels are still far too low to effectively encourage emission reductions. For instance, while Sweden charges roughly $7,000 per tonne of nitrous oxide emissions (a key contributor to smog and acid rain), creating a strong incentive to reduce pollution, BC charges only $11.29.

Contaminated sites: unfinished agenda?[24]

Early in its mandate the government announced a major overhaul of the laws dealing with contaminated sites. This was surprising, as the contaminated sites laws were still relatively new, and had undergone about three years of extensive consultations prior to being implemented. It seemed that the government was persuaded by oil industry complaints that they should not be responsible for cleaning up sites that they and their franchisees had polluted in the past.

A government appointed Advisory Panel on Contaminated Sites made recommendations for sweeping changes to liability, clean-up standards, the role of civil servants, and the ability of landowners to sue polluters for contamination of their property. West Coast Environmental Law was highly critical of the proposed changes. We pointed out that the changes would relieve responsible parties from liability, meaning taxpayers would be responsible for clean-up costs or fewer sites would be cleaned up.

As a result of broad concern about the extent of the proposed changes expressed by developers, bankers, lawyers and remediation experts, changes introduced to contaminated sites laws and regulations were less radical than what the Advisory Panel had proposed, and most of the former contaminated sites provisions were kept intact. The main shift is toward a risk-based approach where contamination can be left at a site so long as it doesn't pose a significant risk.

Also, the new law shifts responsibility for determining the contamination of sites and approving site clean-up plans from government onto consultants hired by companies responsible for the clean-up. While consultants are required to follow procedures set out by government, they are not accountable to the public, and there is a clear conflict between their duty to ensure effective clean-up, and their employer's desire to cut clean-up costs. In the past, audits of consultants' work have disclosed significant problems.[25]

The government has not rejected the recommendations of its advisory panel. This raises the specter that the liability system may still be dismantled, allowing those that benefited from contaminating activities to escape responsibility for clean-up.

Wildlife, ecosystem and human health protection reduced

New wildlife legislation is not likely to address the lack of political will that has bedevilled species protection in the past in BC. Regulations that are supposed to protect fish bearing streams from urban development no longer include clear requirements for streamside protection. Drinking water protection plans can now be ordered only in very limited circumstances.

Endangered species: law improved but central problem ignored[26]

In the past, only terrestrial animals could be designated as endangered species. Changes to the provincial *Wildlife Act* allow provincial politicians to designate fish and plants as endangered species and pass regulations protecting "species residences." While these changes are a step in the right direction, they do *not* overcome the fundamental problem that politicians have been unwilling to protect species. Over the last 24 years, the 'leave it to the politicians' approach has led to protection for only four of the 138 species in BC that scientists say are endangered or threatened. Even if an endangered species is listed, nothing requires government or industry to take actions to protect it.

Over the last 24 years this 'leave it to the politicians' approach has led to protection for only four of the 138 species in BC that scientists say are endangered or threatened.

Urban stream protection: flexible approach can only reduce streamside buffers[27]

In 2004, the province repealed the *Streamside Protection Regulation* and replaced it with the *Riparian Areas Regulation*. Unlike the old regulation, under which local governments were required to pass bylaws mandating streamside buffers, the new regulation only requires local governments to mandate streamside buffer assessment reports prior to development. Local governments can require developers to protect buffers, but they are not explicitly required to do so.

While the earlier regulation set minimum standards for how close a new building could be to a fish-bearing stream, the new regulation gives developers a choice in standards. A professional hired by the developer must determine appropriate set-backs, on the basis of either the same formula used in the old regulation, or a more complicated calculation which, for many streams, will automatically result in a reduced set-back requirement.

Drinking Water Protection Act: restricting health officers

In order to protect drinking water from the sorts of dangers that led to six deaths in Walkerton, Ontario, the NDP government established the *Drinking Water Protection Act* in 2001. A key part of the Act allowed government to order the development of legally binding drinking water protection plans that were aimed at protecting drinking water from pollution and industrial forestry. Drinking water protection plans could impose limits on logging, issuance of waste management permits and can bind local governments.

The *Drinking Water Protection Act* was amended in 2002 to restrict when plans could be developed. Previously, local health officials or water utilities had a right to petition the Minister to order development of a drinking water protection plan. Now, the Minister can only act on recommendation of the Provincial Health Officer, and the PHO can only make recommendations if there are no other alternatives under the *Act*.

Citizen disempowerment

The ability of citizens and organizations to influence environmental protection efforts in the province has also been reduced. Information about which industries are not complying with environmental laws are no longer made public, reducing the ability of the public to protect themselves and pressure for environmental reform. Land and Water BC has been charged with selling off vast tracts of public land with no direction as to how to incorporate their societal or environmental values, greatly reducing the role of the public in control of these lands. And, more citizens may find themselves defending frivolous legal suits when they publicly oppose development projects.

No more reporting on non-compliance

In an era where almost all businesses and governments espouse their commitment to sustainability and environmental protection, public reporting of businesses that are breaking environmental laws is an important incentive to remain in compliance. Starting in 1990, the BC government began publishing lists of polluters who were breaking the law by not complying with environmental standards set out in permits and regulations. When

Social Credit Minister of Environment, John Reynolds announced BC's non-compliance list in 1990, he described it as "a clear indication of our government's intention to deal forthrightly and decisively with pollution concerns."

The current government cancelled the non-compliance list in 2002, citing inconsistencies in how different regions treated and reported non-compliance. However, according to one senior environmental protection official, the list was an effective enforcement tool because companies hated to be placed on it.

BC now stands out amongst Canadian provinces as providing the public with virtually no information on compliance of individual companies or enforcement statistics. All provinces other than BC, Saskatchewan, Nova Scotia and Newfoundland publish basic statistical information on enforcement activities. In Alberta, Ontario, Quebec, and throughout the US, it is possible to find out if a company has been recently inspected, if they were found to be in compliance, what if any laws they violated, what steps enforcement officials have taken to ensure compliance, and what steps the company has taken. None of this information is published in BC.

Crown land: public trust or just another profit centre?

British Columbia's public lands provide a range of benefits for the province's residents. These lands are used for recreation, are a source of revenue for the province and provide important environmental benefits. Not surprisingly, British Columbians are very protective of their public lands.

This is not to say that public lands are never sold. Sometimes the government acquires and then resells private land. In other cases, a municipality requires the sale of public lands in order to grow as a community. It was to facilitate sales of such "surplus" lands that the previous government created a Crown corporation called BC Assets and Lands.

Under the current government BC Assets and Lands became Land and Water BC (LWBC) and was instructed by the Premier to "optimize the financial return from the use of Crown land and water resources..." LWBC envisages itself as "an advocate for economic development and revenue generation by aggressively pursuing and encouraging investment and optimal use of Crown land and water resources." This "advocate" has been given sweeping government powers to sell off, lease or licence public land and water resources with few restrictions.

In practice this means that LWBC is no longer limited to selling "surplus" lands, but instead has an aggressive strategy for identifying and marketing

public lands for sale based on perceived market demand for the lands. LWBC is expecting to begin by selling $73.5 million worth of public land each year for the next 3 years, and a further $36.6 million to $38 million per year from leasing and licensing public lands over the same period.

LWBC has received no specific direction from the provincial government about what lands are to be retained or how environmental, recreational or social values are to be accommodated.

The result is that large areas of Crown land are being privatized with little consideration of what is in the public interest. Crown land is no longer a buffer to urban sprawl. Indeed, LWBC has taken on the role of developer, developing detailed plans for large scale golf course resorts and applying to local governments to change community plans to accommodate these new, and massive, developments. In several cases, these sales or planned sales have occurred behind closed doors with little or no public input, even when they took place in areas where little publicly owned land remained.

LWBC has sold, or is proposing the sale of, public lands with high environmental values, including those with known endangered plant communities. Similarly, the company has sold, or is planning to sell, lands that were already designated for forest recreation sites or leased for logging operations (i.e. a small scale woodlot) or other businesses. Government has granted long-term leases allowing intensive, and in some cases exclusive, recreational activities over huge areas of public land, including lands critical to the survival of the endangered Mountain Caribou. Water licences, traditionally granted by the Ministry of Environment, are now granted by LWBC with an eye to the bottom line.

Repealing the *Public Participation Act*

In a growing number of cases citizens or advocacy groups have been sued after they spoke up in public forums or in the media and criticized everything from industrial projects to new urban developments. In one incident, a group of residents were sued after they petitioned and lobbied municipal councillors against a development proposal. The result of cases like this is a growing reluctance of community groups and citizens to speak out at public hearings or in the media.

To deal with this problem, the previous government passed the *Protection of Public Participation Act* – an act that gave the courts additional powers to protect citizens and organizations from lawsuits designed to put a chill on public debate. It in no way restricted someone who was a true victim of defamation, but was instead aimed at putting a stop to so called "SLAPP suits." SLAPP suits – Strategic Lawsuits Against Public Participation – are

law suits that have no reasonable chance of success but are intended to intimidate or financially force citizens into silence.

One of the first acts of the current government was to repeal the *Protection of Public Participation Act,* arguing that courts had sufficient powers to deal with the problem. The repeal sends an unfortunate message to the public, to the courts and to those who want to silence public opposition.

Finding the Common Threads

When BC started the process of rewriting environmental laws the goals were to "eliminate red tape," and show that BC was "open for business again." But government also promised that environmental protection would be maintained and spoke of the need for openness and accountability. Unfortunately, the record shows otherwise. West Coast Environmental Law has identified some trends of the last four years.

1. Reduced ability to enforce environmental standards

The 1998 Organized Crime study done for the Solicitor General of Canada found that organized environmental crime had a greater impact on Canadians, primarily in terms of public health and environmental health, than all types of organized crime other than illicit drug trafficking. A 2004 Organization for Economic Cooperation and Development report raised concerns about the ability of Canadian provinces to enforce environmental laws.

Research by criminologists suggests that environmental laws will be broken so long as profits or savings to be made by breaking the law outweigh risks. Companies and individuals are more likely to obey the law if the chances of getting caught are high, if the chances of government taking enforcement action are high, if the chances of being found guilty are high, and if the penalties imposed are substantial. Research has shown that size of the penalty is the least effective of these variables; it is the chances of getting caught and convicted that matter most.[28]

This West Coast Environmental Law report identifies a number of trends and actions that reduce the chances of getting caught and convicted:

- Reductions in staff carrying out inspections and investigating offences.
- Virtual elimination of unannounced inspections.

- Reduced ability of staff to get out into the field because of closed offices, limited travel budgets and lack of clerical support.
- Allowing industry to write alternative standards with no incentive to draft enforceable standards.
- Far fewer enforcement officials in BC than in Alberta or Saskatchewan.
- Deregulating of small polluters, making them subject only to a difficult to enforce prohibition on causing 'substantial alteration or impairment of the usefulness of the environment.'
- Creation of new defences and loopholes, e.g., compliance with a forest plan may be a defence even if the plan is never submitted to government.

The government has also eliminated public reporting of environmental law breakers, a system that had been in place for twelve years.

2. Limiting government's ability to protect the environment

A number of changes have put constraints on the ability of government to take actions to protect the environment. Nowhere is this more evident than with regard to new forest practices regulations that impose extraordinary restrictions on agency decision-makers. As discussed above, the government cannot designate wildlife habitat areas, scenic areas, or sensitive watersheds without jumping through a series of hoops. In some cases, these hoops involve a one-sided accounting of costs and benefits where the benefits of taking any *single* environmental protection action must outweigh the *cumulative* impact of past and proposed environmental protection on logging companies. Forest practices laws also require the Minister to approve key operational plans so long as they are consistent with vaguely worded objectives, and the law has been amended so that government can be forced to approve plans that have been certified by professional foresters. Gone are long established government powers to reject logging plans that do not adequately manage forest resources.

Changes to the *Drinking Water Protection* Act limit when the Minister can develop legally binding plans to protect the sources of drinking water. The *Environmental Management Act* makes it more difficult for government to put site-specific protections in place for small polluters and businesses subject to Codes of Practice.

Government oversight of industrial activities that affect public land, air and water resources have been repeatedly reduced. Government oversight has been reduced by eliminating environmental assessments, reducing the information flow and content requirements for plans and permits; and by

cuts in staffing that mean habitat biologists no longer review logging plans or urban development proposals.

3. Flexibility to lower standards without regard for results

Although the BC government consistently claims it is taking a results-based approach, none of recent legal changes specify clear, measurable results, or contain the basic elements needed for effective results based regulation.[29] Instead, the government has generally specified a few prescriptive standards, and given government officials the power to waive these, substituting alternate requirements. Alternate requirements need not be equally effective, or for that matter, effective at all. And no one is responsible if basic objectives are not met.

For instance, the *Forest and Range Practices Act* allows government to approve alternative forest practices regardless of whether they provide equal protection. The *Significant Projects Streamlining Act* allows government to waive any law, regulation or policy and replace it with a weaker requirement. Even where criteria exist for government approval of alternate requirements, they are weak. For instance, the *Environmental Management Act* allows government officials to lower standards contained in Codes of Practice, so long as, in the opinion of officials, the intent of the Code is met.

4. Increasing politicians' powers

Changes to environmental laws have tended to concentrate decision-making power in ministers or cabinet. This reverses the trend over the last decade, and in environmental legislation generally, to create some distance between statutory decision-makers and their political masters.

In some cases, Cabinet has been delegated extraordinary powers to suspend or replace environmental laws passed by the Legislature. The *Significant Projects Streamlining Act* gives ministers the power to unilaterally replace laws that they deem to be impediments to whatever Cabinet designates as a 'significant project.' The law appears to be unprecedented in modern democracies.

The government has also given Cabinet considerable powers to exempt industry from environmental requirements in the new *Environmental Assessment Act,* the *Mines Act* and the *Petroleum and Natural Gas Act.*

5. Science, professional opinion discounted when they recommend higher standards

A series of government actions suggest that Victoria's commitment to science and professional opinion is limited. Under the *Drinking Water Protection Act*, the Provincial Health Officer – a highly regarded professional – can only recommend development of a legally binding drinking water protection plan if no alternatives exist. If the Provincial Health Officer can order greater use of chlorine, add expensive filtration or other treatment to curb a public health hazard, he or she is prohibited from recommending a protection plan that might affect logging or industrial pollution permits. This restriction applies even if the most cost effective and environmentally friendly approach is restrictions on industrial pollution or logging.

Similarly, under the *Riparian Areas Regulation* professionals assessing necessary setbacks from streams will often be required to reduce standard setbacks, regardless of their opinion as to what is required to protect fish.

Although the government has stated a preference for decisions based in science, they have continued with the "leave it to the politicians" approach for the listing of endangered species. They have not followed the federal government's lead in allowing scientists to recommend species protection.

Government has followed the recommendations of its own scientific panel to weaken pulp pollution standards for chlorine, but has not adopted recommendations for stronger action on black liquor. And, many of the Environmental Assessment Office's recommendations on fish farming have only been partially implemented.

6. Less public involvement

A thread that runs through many of the legal changes made in the last three and a half years is less opportunity for meaningful public involvement. For instance, for 80 percent of the cases where the public was previously notified of plans to start a polluting business, and given an opportunity to appeal a pollution permit, the public will no longer have an avenue to raise objections. Similarly, the public only has the ability to raise objections to pesticide applications in ten percent of the cases they previously could.

Changes to environmental assessment legislation eliminate guarantees of public involvement in key stages of the environmental assessment process. Public involvement is also reduced by changes that eliminate what needs to undergo environmental assessment. For instance, environmental assessments are no longer required for large short-term hazardous waste storage facilities, even if located near residences.

A typical example of reduced public involvement is the new forest practices regime. Vague and general plans mean there is less to respond to. Members of the public no longer have an opportunity to comment on where roads and cut blocks are located. The terms of plans are extended to five years, with a possible extension to ten years, meaning fewer opportunities for public input. Someone concerned about logging adjacent to their home could be told that he or she missed the opportunity to raise concerns nine years ago, and their concerns do not have to be considered. Moreover, when government decides whether to approve a logging plan, they are not required to consider whether logging companies responded to public concerns.

The deregulation process itself has suffered from a lack of public input. Much of it has happened without public notice or opportunity for comment. Major deregulation bills, such as the *Significant Projects Streamlining Act*, have been passed in the Legislature in a matter of days with little public discussion. Likewise for changes to mining, oil and gas, environmental assessment, private forest land, agriculture land reserve and park legislation.

7. No integration of environmental, economic and social concerns

One of the key lessons of the last three decades is that environmental and social concerns need to be integrated into economic planning. It is no longer possible to simply treat environmental problems by "end of the pipe" technology. Instead, government policy and program decisions, urban development, industrial strategies and transportation plans must all take into account environmental and social factors.

Government needs to consider cumulative impacts of oil and gas development to avoid unacceptable impacts.

However, British Columbia has no strategy for how to move to a more sustainable future. The disconnect between science, environmental concerns and policy could not be more stark than in the government's new energy policy. Greenhouse gas concentrations in the atmosphere are at their highest level of the last 420,000 years, and temperatures are higher now than at any time for the last 1,000 years (prior to which measurement is difficult). Scientists say that global emission reductions of over 60 percent are needed to stabilize climate, and international law requires Canada to reduce its emissions to 6 percent below 1990 levels by 2010. British Columbia on the other hand has had a 28 percent increase in its emissions from 1990 to 2002. Despite the fact that 82 percent of BC's

greenhouse gas emissions are from energy production, the government's energy policy failed to consider the greenhouse gas issue. Instead, it calls for increased use of coal, a fossil fuel that has twice the greenhouse gas emissions of natural gas.

The failure of the government to integrate environmental concerns also lies at the heart of many of the concerns raised in this report. A green light is given to aquaculture and offshore oil and gas without adequate protections. Government has set an objective of doubling oil and gas production without any effort to consider cumulative impacts of oil and gas development. Land and Water BC has been directed to optimize revenue from public land sales, leases and tenures, without any guidance on protecting the public interest.

8. Putting the public good in the hands of the private sector

Government has transferred decision-making authority over many environmental protection issues from public servants to professionals employed by industry. The *Forest and Range Practices Act* allows professional foresters to certify that logging plans comply with the act, and government is required to accept the plans, even if government officials believe the plans do not meet requirements. The *Riparian Areas Regulation* allows environmental professionals employed by developers to establish the streamside buffers that protect fish from urban development. Under the *Environmental Management Act* government can transfer responsibility for determining whether a site is contaminated or cleaned up to a licensed environmental professional. There are several problems with this approach.

First and foremost, all these decisions involve judgement as to what is needed to protect a public good, whether it be health, fish or forests. Judgements of what is in the public interest need to be exercised by officials responsible to the public.

Second, professionals making decisions often have a conflict of interest. They are employed by parties that stand to loose from stringent environmental protection. While government can conduct periodic audits of professionals' work, audits are only effective in limited circumstances: there needs to be clear guidelines of what is acceptable practice. Also, since fish can't sue if there is damage to a stream due to negligent work, there need to be clear consequences for not doing work that meets the high standards of environmental protection.

9. Less precaution

It is well accepted that modern industrial societies must adopt a precautionary approach to environmental protection. In recent years, the BC government has consistently rejected a precautionary approach. For example:

- The rush to develop offshore oil and gas while scientific uncertainties remain about the impacts of seismic testing on fish and marine mammals.
- The rush to accelerate oil and gas development in the northeast without considering long-term impacts on communities and the environment.
- Removing the moratorium on aquaculture without consideration of mounting evidence on the spread of sea lice and escapements of Atlantic salmon, or full implementation of the Environmental Assessment Office's recommendations.

All of these are examples of a lack of precaution when it comes to protecting environmental values from economic development.

Regulatory changes also reflect this trend. Fewer projects require environmental assessment. In the area of forestry, government has eliminated requirements for forest companies to conduct stability assessments before logging on steep slopes. (At the same time making liability for land slides much less likely.) The impacts of these changes are unknown and may not be felt for years after logging.

10. Less power for local government

Often municipal and regional governments have proven their commitment to environmental protection by passing stronger standards than the province. For instance, the Greater Vancouver Regional District limits particulate pollution from greenhouse heaters to 7.5 micrograms per cubic meter, while the province allows emissions that are 24 times higher.

There is a general perception that the provincial government has granted greater powers and autonomy to local government through initiatives such as the *Community Charter*. However, the *Community Charter* only allows local government to pass environmental and public health bylaws if they have provincial government permission to do so. While regulations under the *Charter* allow local governments to regulate lawn and garden pesticides, there are many more instances where the Province has limited local government environmental protection efforts in order to protect favoured interests.

When Delta residents raised concerns about rampant greenhouse development destroying migratory bird habitat, paving arable land and leading to

air pollution, their local council tried to pass bylaws regulating greenhouses. But both times bylaws were passed, they were over-ruled by the Province.

Similarly, when regional district bylaws threatened plans to develop the Quinsam Coal mine, the government removed the regional district's authority over the mine by making the mine part of the municipality of Campbell River – despite a 15-kilometre gap between the mine and town.

Other examples of reduced powers for local government include amendments to the *Farm Practices Protection (Right to Farm) Act* that can be used to stop local governments from controlling the location of fish farms. The *Significant Projects Streamlining* Act also allows government to override local bylaws. The *Private Managed Forest Land Act* was amended so that local governments no longer have a right to be consulted if a major logging company wants to withdraw private land from the forest reserve in order to allow residential development. And, the new *Environmental Assessment Act* no longer provides for local government participation on project review committees.

11. More industry control over public resources

In addition to weakened standards, weakened enforcement, and transferring decision-making authority from government to the private sector, government has taken a number of additional steps to pass control over public resources to industry:

- Passing legislation that increases industrial rights and access to public and private land.
- Making timber rights more like private property, by eliminating requirements for logging companies to maintain investments in local communities.
- Eliminating government approvals of tenure transfers.
- Weakening annual allowable cut restrictions.
- Reducing the environmental information required of industries in their applications to extract resources and alter the environment;
- Cutting government-led forest research funding and then making millions of dollars available to industry-led research through the Forest Investment Account.

What does it all mean and why?

Together these trends have torn holes in the environmental safety net. The average British Columbian has a reduced ability to challenge or have a say in the decisions that affect their environment. They can no longer challenge pesticide spraying that may affect their health. There is less reason to believe that government will protect them from environmental crimes like illegal dumping of waste, or that government will protect them from an industrial facility in an inappropriate location. They have less assurance that their health and their environment will be protected for them and for future generations. Changes to the forest tenure system have led to mill closures and lay offs, as industry has been handed increased control over publicly owned resources.

There are exceptions to these trends. Small positive steps have been made in areas such as increased funding for air quality monitoring. BC Hydro's recent commitment to eliminate additional impacts on the environment is a very positive step. But the exceptions are limited.

Why? The current government, like any government, knows that British Columbians value a clean, healthy environment, and that British Columbians want to pass that environment onto future generations. Repeated polls show that almost all British Columbians value strong environmental protection. Motives of any large institution are seldom clear, especially when dealing with far ranging changes. Within any government there will be individuals, both politicians and civil servants, who value a sustainable environment. Nonetheless, there appears to have been a few assumptions and dictates motivating changes of the last four years.

The changes started with the assumption – an oft repeated mantra – that BC was over-regulated and that BC businesses were constrained by "unnecessary red tape and regulation." This assumption was never challenged, and there was limited attempt to compare BC laws with other jurisdictions or to openly review our laws to determine if they were unnecessarily restrictive or whether they could be reformed to meet the needs of both industry and environment.

Changes were also dictated by budget cuts. Drastic cuts to an already stressed civil service created a government that was desperate to reduce demands on government.

Also, there were high level political directions to show that BC was open for business. This appears to have been clear direction to develop regulations that were as "flexible" as possible for business. At the same time, government lacked either the resources or political will to develop true "results based" regulation – regulations that provide flexibility to industry but also ensure acountability.

The result has been regulations that create flexibility for industry but eliminate public appeal mechanisms, laws that give industry flexibility but don't make either industry or government accountable for meeting environmental goals. The result has been laws that shift responsibility for environmental decision-making to the private sector, and laws that can be waived by politicians. Finally, in certain sectors changes appear to be "pay-back" for political support: regulations that were developed in a closed industry government process, regulations which restrict government's ability to protect the environment, regulatory changes that create barriers to effective enforcement.

Is There a Better Way?

The Supreme Court of Canada has strongly affirmed the importance of environmental protection in recent years. The court views environmental protection is "a fundamental value in Canadian society" and recognizes "an emerging sense of inter-generational solidarity and acknowledgement of an environmental debt to humanity and to the world of tomorrow."

Environmental laws in British Columbia need to embrace these principles. British Columbians should have the right to a clean environment. Our laws should reflect our obligation to future generations. Decision-makers should be guided in the legislation they administer by international law's precautionary principle. The polluter pay principle should be the basis for all environmental regulation, so taxpayers aren't left holding the bag. In addition, we need procedural safeguards that will ensure that changes to environmental policies and laws undergo proper scrutiny and debate in the public domain, and can't be overhauled virtually overnight without the opportunity for input.

What then is to be done? Effective environmental protection in BC will require new approaches to law. Key elements of effective laws to protect the environment and achieve sustainability include:

1. **Strategies for sustainability: long-term vision and short-term action.** Government needs to follow the lead of Sweden and adopt clear long-term objectives for sustainability and short-term milestones to measure progress. Legislation needs to require the development and regular updating of sustainability strategies that integrate sustainability into key policy areas such as energy, urban development, and taxation. A high priority is development of sustainability strategies for energy, measured oil and gas development, and increased focus on energy efficiency and renewables. All governments – local, provincial and federal – need to review and report on the consistency of today's actions and our goals for the next generation. Independent audits are needed to measure progress towards these goals.

2. **Results-based regulation that focuses on real results.** Results-based regulation is not just a euphemism for allowing government to waive environmental protection standards at the request of industry. Regulations should be designed to give industry flexibility in how they achieve environmental protection objectives, while ensuring

the achievement of such goals. True results-based regulation includes clearly identified objectives that are converted to clearly identified performance measures; a comprehensive system of monitoring to accurately determine whether performance measures are being achieved; steps that must be taken when objectives are not met, and responsibility for failure to meet objectives. At the same time, government must be aware of the limits of results-based regulation: sometimes up-front planning or minimum standards are needed to avoid environmental harm, and sometimes a prescriptive approach may be appropriate because it provides clear guidance to business and is easily enforced.

3. **Adequate resources and tools for enforcement.** Government must restore staffing levels needed for proper monitoring and enforcement. Regulations and legislation needs to be reviewed to eliminate loopholes that block effective enforcement. Environmental protection staff needs access to effective enforcement tools that can be easily used to penalize law-breakers. A system of administrative penalties which is fair but effective and efficient is needed.

4. **Establishment of a public trust for public land.** Public land needs to be managed for the public good. Legislation should clearly identify that government holds public lands in trust for present and future generations. Before government sells or gives away interests in public land – whether it be outright ownership, commercial recreational tenures, forest tenure, or subsurface rights – the individuals and communities affected need to be notified, given a chance to engage meaningfully in decision-making, and government must be guided by a legal duty to act in the best interests of the present and future generations of British Columbia, making decisions that maintain or enhance environmental, social and economic sustainability. These basic rights, duties and responsibilities are key components of the *Forest Solutions for Sustainable Communities Act* draft legislation promoted by a coalition of BC eco-logging businesses, environmental groups, unions and first nations. Government decision-making needs to be guided by what is in the best interest of the public, not just what realizes the quickest profit.

5. **Ecosystems-based management.** BC needs to experiment with new approaches to encouraging sustainable behaviour. Regulatory models that encourage ecosystem-based management – where, for instance, logging or urban development is done in a way that mimics natural systems – need to be applied.

6. **Encouraging sustainable behaviour.** Environmental laws should both prohibit unacceptable behaviour, and encourage and facilitate sustainable practices. Regulations need to be designed so that they do not inhibit sustainable behaviour. And economic instruments that encourage environmental performance need to be used. For instance, development cost charges for developers could be designed to encourage economically and environmentally sustainable urban development. Sweden imposes a revenue neutral pollution charge and rebate on large polluters, creating a strong incentive to reduce pollution.

7. **Improved rights for public participation and a clean environment.** Laws need to give citizens the right to be involved in processes that affect them and their environment. France, India and South Africa have built environmental rights into their constitutions. And across Europe, the *Aarhus Convention* sets out numerous rights including access to information, public participation in decision-making and access to justice in environmental matters. In the US, the *Administrative Procedure Act* requires public notice and comment periods for changes to laws, regulations and policy, and provides safeguards against arbitrary decision-making by government. In Ontario, the *Environmental Bill of Rights* gives citizens the right to be notified and comment on all changes to laws, regulations and even policies that affect the environment. Citizens can request an independent commissioner to review the need for new policies and laws to protect the environment. Federal law allows citizens to petition the federal department about environmental issues under their jurisdiction. Ontario and federal law also give citizens an ability to apply for an investigation of alleged violations of environmental laws, and allow citizens to launch legal actions to protect against contraventions of environmental laws. British Columbia has no similar protections, and many of the actions taken by various BC governments in the last decade would be illegal in other provinces and elsewhere.

8. **Tax shifting and removal of subsidies.** BC needs to shift taxes from jobs and employment to environmentally damaging activities, and reduce subsidies to resource industries. The Organization for Economic Cooperation and Development has recommended phasing out of subsidies for the resource industries. BC has far to go in this regard. For instance, a wide array of subsidies and tax credits have been granted to the highly profitable oil and gas industry, including a $50,000 royalty credit for every coalbed methane well drilled; and

royalty reductions for summer drilling, "marginal" well drilling, and "deep" well drilling.

9. **Limits on discretion.** BC environmental laws are characterized by far-reaching discretion, allowing politicians and government officials to waive and change environmental standards. While the discretion to set and strengthen environmental standards is often limited, the discretion to lower environmental standards or approve ineffective environmental protection plans is seldom limited. Government discretion needs to be limited and guided by clear environmental protection objectives.

10. **Precautionary approach.** According to the Supreme Court of Canada: "Scholars have documented the precautionary principle's inclusion in virtually every recently adopted treaty and policy document related to the protection and preservation of the environment." This needs to be reflected in BC laws. So long as there is a substantial body of scientific evidence suggesting that industries such as offshore oil and gas or aquaculture may cause long-term irreparable damage to the environment, they should not be allowed to expand. Strategic environmental assessment needs to be applied to new or rapidly expanding industries that pose real environmental concerns.

British Columbians are blessed with a beautiful province. But we need to find solutions that ensure a healthy environment, allow a robust sustainable economy to thrive and which support sustainable communities. West Coast Environmental Law believes that the above approaches point the way to real environmental protection and real sustainability.

Endnotes

[1] *Ontario v. Canadian Pacific Ltd.*, [1995] 2 S.C.R. 1031.

[2] Michael Porter and Claas van der Linde. "Toward a New Conception of the Environment-Competitiveness Relationship," The Journal of Economic Perspectives 9, no. 4 (Fall 1995). Northeast States for Coordinated Air Use Management, *Mercury Emissions from Coal-Fired Plants: the case for regulatory action,* (Boston, Mass.:NESCAUM, 2003) Online: NESCAUM site http://bronze.nescaum.org/airtopics/mercury/rpt031104mercury.pdf (date accessed: 12 November, 2004)

[3] Committee on the Status of Endangered Wildlife in Canada, *Canadian Species at Risk,* May 2003 lists 60 endangered species in Ontario and 56 in BC, and 40 threatened species in Ontario and 27 in BC.

[4] Bob Caton and D.M.Crawley, RWDI West Inc, "Clean Air Issues in BC" Discussion Paper, p 4.

[5] D.R. Boyd, *Unnatural Law: Rethinking Canadian Environmental Law and Policy,* Vancouver: UBC Press, 2003, [herinafter: *Unnatural Law*]

[6] Examples include atrazine, lindane, and carborfuran. *supra* note 5, *Unnatural Law* c.4.1

[7] See government website, at http://www.deregulation.gov.bc.ca/

[8] *Premier Gordon Campbell, Cabinet Swearing In, June 5, 2001.*

[9] For more information on changes to the environmental assessment scheme, see West Coast Environmental Law's Deregulation Backgrounder, *Bill 38: The New Environmental Assessment Act,* available at http://wcel.org/deregulation/bill38.pdf

[10] Does not apply to all types of treatment plants.

[11] For more information on changes to forestry regulation, see the following West Coast Environmental Law Deregulation Backgrounders: *Bill 33- Forest Statutes Amendment Act, 2004* available at http://www.wcel.org/deregulation/bill33.pdf; *"Timber Rules" Forest Regulations Lower Standards, Tie Government Hands and Reduce Accountability,* available at http://www.wcel.org/deregulation/Timber_Rules.pdf; *Changes to the Forest Act and Forest Practices Code (Bills 22 & 35 –2002)* available at http://www.wcel.org/deregulation/dereg_forest1.pdf; *Bill 74 – The Forest and Range Practices Act: Key Environmental Concerns* available at http://www.wcel.org/deregulation/bill74.pdf

[12] We hope that courts and enforcement authorities will not allow such facile defences to succeed, but the wording of legislation suggests they could.

[13] The law establishes due diligence (e.g. "we were diligent in trying to make sure we didn't break the law") and officially induced error ("a civil servant told us it was okay") as defences for administrative penalties. (s.101 *Forest and Range Practices Act,* SBC 2002,c.69) West Coast supports absolute liability for administrative penalties, an approach analogous to parking tickets, where fines have to be paid regardless of whether a driver is diligent in his or her effort to avoid over-parking. Creating these defences for administrative penalties is problematic as reduces the ability of government to impose a fine without long legalistic proceedings.

[14] Forest Practices Board, News Release, "Report Finds Limited Implementation of Measures to Protect Biodiversity" (18 March 2004); online: Forest Practices Board site <http://www.fpb.gov.bc.ca/News/Releases/2004/03-18.htm> (date accessed: 10 November 2004)

[15] The province has referred to a takeback of 20 percent , but actual volume affected is 8.3 million cubic meters out of a 74 million cubic metre provincial allowable annual cut.

[16] Dale Marshall, "Down the Value Chain: the politics and economics of raw log exports" Vancouver: Canadian Centre for Policy Alternatives, 2002.

[17] For more information on changes to regulation of oil and gas, see West Coast Environmental Law's Deregulation Backgrounder, *Bill 36: The Energy and Mines Statutes Amendment Act: Double production, reduce regulations, and reduce staff: Not a formula for environmental protection*, available at http://www.wcel.org/deregulation/bill36.pdf

[18] For more information on changes to mining regulation, see West Coast Environmental Law's Deregulation Backgrounder, *Bill 54 – Miscellaneous Statutes Amendment Act 2002: Changes to Mining Laws threaten private property rights and environmental protection*, available at http://www.wcel.org/deregulation/bill54.pdf

[19] For more information on changes to parks regulation, see West Coast Environmental Law's Deregulation Backgrounder, *Bill 84 Weakens Park Act*, available at http://www.wcel.org/deregulation/bill_84.pdf

[20] Georgia Straight Alliance *Regulating Salmon Aquaculture in BC – A Report Card* (Vancouver, 2004) online: Georgia Straight Alliance site http://www.farmedanddangerous.org/fad%20website%20files/BCFishFarmReportCard.pdf (date accessed: 10 November, 2004)

[21] For more information on changes to pesticide regulation, see West Coast Environmental Law's Deregulation Backgrounder, *Bill 53: The New Integrated Pesticide Management Act,* available at http://www.wcel.org/deregulation/bill53.pdf

[22] For more information on changes to pollution regulation, see the following West Coast Environmental Law Deregulation Backgrounders: *Bill 57: Environmental Management Act 2003: Deregulating British Columbia's main pollution law*, available at http://www.wcel.org/deregulation/bill57.pdf; *Environmental Management Act Waste Discharge Regulation,* available at http:www.wcel.org/deregulation/bill57-2.pdf; Also see Gage, A., *West Coast Environmental Law's Response to the Proposed Waste Discharge Regulation*, January 2004, available at http://www.wcel.org/wcelpub/wrapper.cfm?docURL=http://www.wcel.org/wcelpub/2004/14096.htm

[23] Small polluters who are not subject to permits or Codes of Practice are still required to avoid "substantial alteration or impairment of the usefulness of the environment." This is virtually useless, since most impairment to the environment results from multiple polluters none of whom are solely responsible for impairing the environment. Moreover, proving substantial alteration or impairment is much more difficult than proving contravention of a permit. At best, this is likely to require more costly expert evidence. However, due to cutbacks, it is unlikely that adequate government enforcement resources will be available.

[24] For more information on changes to contaminated sites regulation, see C. Rolfe and M. Haddock, *Comments on the Interim Report of the Advisory Panel on Contaminated Sites*, West Coast Environmental Law, October 2002, online: http://www.wcel.org.wcelpub/2002/13887.pdf (date accessed: 10 November, 2004)

[25] Audits that are publicly available relate to work done by consultants prior to the increased reliance on consultants. Of four audits available, one found that a site reported as clean was not clean. In only one case was the consultants work judged to be of excellent quality see Ministry of Water, Land and Air Protection, Roster Audit Findings. October 10, 2002, online: WLAP site: http://wlapwww.gov.bc.ca/epd/epdpa/contam_sites/roster/rosterauditfindings.html (last updated: 10 October, 2002)

[26] For more information on changes to endangered species protection regulation, see West Coast Environmental Law's Deregulation Backgrounder, *Bill 51- Wildlife Amendment Act, 2004*, available at http://www.wcel.org/deregulation/bill51.pdf

[27] For more information on the urban stream protection see West Coast Environmental Law's Deregulation Backgrounder, *Riparian Areas Regulation*, available at http://www.wcel.org/deregulation/RAR.pdf

[28] Environment Canada, *Administrative Monetary Penalties: Their Potential Use in CEPA*. (Number 14 of Reviewing CEPA, the Issues Report series, 1994) at 11.

[29] Necessary features for results-based regulation include: clearly identified objectives that can be converted to performance measures; clearly identified performance measures, a comprehensive system of monitoring to accurately measure industry impacts, and a clearly identified set of procedures industry must do when monitoring indicates that they are not meeting objectives. See Ben Cashore, Assistant Professor, Sustainable Forest Policy "Analysis of BC Government's Results-Based Code Discussion Paper" (2002), Yale School of Forestry and Environmental Studies.

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