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West Coast Environmental Law DEREGULATION BACKGROUNDER

BILL 36: THE ENERGY AND MINES STATUTES AMENDMENT ACT

Double production, reduce regulations, and reduce staff:
Not a formula for environmental protection

SUMMARY

Bill 36, the *Energy and Mines Statutes Amendment Act*, has 'deregulated' the oil and gas industry and weakened environmental protection measures that are currently in place for the oil and gas industry. For example,

- **Government can now allow the Oil and Gas Commission (OGC) to exempt a company from all or part of the Geophysical Regulations.** The OGC, for example, can now release an oil and gas company from obligations to supply information on environmental impacts, or restore a campsite to its original condition.
- **Government can now allow the Minister or the OGC to exempt a company from any rules it establishes for 'oil sands' and from other regulations.**
- **It is easier now for Government to allow companies to space wells closer together,** which could result in 32 times as many wells in a given area and the considerably more ecological damage that more wells, roads, and other facilities will cause.
- **The OGC can now issue 'approval in principle' for oil and gas activities in a specific area** which could result in less scrutiny of environmental protection permits.
- **There is now the potential for the OGC to make non-farm use and subdivision decisions on agricultural land reserve land** which could result in at least an apparent conflict of interest for the Commission when trying to serve two mandates: sound development of the oil and gas sector and protection of agricultural land.
- **For all OGC decisions, the 'tie breaking vote' has been given to the Deputy Minister of Energy and Mines who has now been appointed Chair of the formerly 'neutral' OGC.** This will mean that environmental permits once issued by the environmental ministry and then by a 'neutral' OGC will now be decided in some cases by a Deputy whose Ministry's first objective is to increase oil and gas investment in BC.

These changes, combined with previously announced policies to double oil and gas production and significantly reduce staff, suggest a provincial strategy that has little regard for environmental protection.

BACKGROUND

With Bill 36 and the recent budget, the Provincial Government is intending to double oil and gas production, reduce regulation, and reduce staff.

1. Double production

The Province has announced that over the next five years it wants to double investment in oil and gas and double the number of wells in production.

2. Reduce regulations

Bill 36 enacts some changes to the *Petroleum and Natural Gas Act* that will reduce the need for paperwork in the oil and gas industry. For example, a statutory officer can now prescribe forms instead of the Minister (s. 2), and a geophysical licence doesn't automatically expire at the end of the calendar year (s. 32(3)).

But the Bill also proposes the following changes that will potentially erode environmental protections that currently exist:

- **Cabinet regulation-making power to allow the Commission to exempt a company from all or part of the Geophysical Regulations.** The Geophysical Regulations, among other things, require an oil and gas company to supply information about terrain conditions and anticipated environmental impacts of access to an area before it begins any geophysical exploration [s. 4(1)]. It also prohibits a company from abandoning a campsite until all garbage and slash has been disposed of 'in a manner that will not have an adverse effect on the environment' and the site is been 'levelled and restored as nearly as possible to the conditions that prevailed when operations were commenced' [s. 15]. [see s. 28 of the Bill, amending s. 36 of the *PNG*].
- **Cabinet regulation-making power to allow the Minister or the Commission to exempt a company from 'oil sands' regulations.** Added regulation-making power would allow Cabinet to authorize either the Minister or the Commissioner to exempt a company from all or part of a number of other regulations, including any regulations governing the exploration, development and production of oil sand (s. 133(2)(f)). [see s. 37 of the Bill, amending s. 133 of the *PNG*].
- **Ministerial and Commission powers to allow wells to be closer together.** The government's interest in coal-bed methane is likely behind changes that would allow the Minister (previously Cabinet) to allow a project to 'space' its wells closer together. Coal-bed methane projects require a higher concentration of wells because wells produce less gas at a much lower rate compared to conventional wells. Spacing for coal-bed methane wells in some parts of the US is as close as one well every 20 acres; the current BC standard is approximately one every 640 acres. This extremely high density of wells and their associated roads, power lines and compressor stations has led to some exceptionally high environmental costs. Coal bed methane is located wherever coal is found, which in B.C. includes the Peace River area, the Fernie-Elk Valley area in the southeast, and parts of Vancouver Island and the Interior. [see ss. 29, 36, and 37 of the Bill, amending ss. 65(3), 100(3), 133(2)(r) of the *PNGA*].
- **Power for the Commission to issue 'approval in principle' for oil and gas activities in a specific area.** This amendment would authorize the Commission to issue a 'general development

permit' as approval in principle for oil and gas activities and pipelines in an area of BC. Although it doesn't appear to replace the need for approvals under the *PNGA*, *Pipeline Act*, *Waste Management Act*, *Water Act*, or *Forest Act*, presumably the advantage of such a permit is less scrutiny of applications for subsequent approvals under these Acts.

- **Potential power for the Commission to make non-farm use and subdivision decisions on ALR land.** Another Bill recently passed by the Legislative Assembly (Bill 22, the *Agricultural Land Commission Act*) will allow the Agricultural Land Commission to delegate non-farm use and subdivision decision-making authority to agents of the government, public bodies, or local governments. This means that decisions to allow non-farm uses or subdivisions on ALR land could be delegated to the Oil and Gas Commission. If delegated, the mandate of the Oil and Gas Commission to facilitate oil and gas development is potentially in conflict with the purposes of the Agriculture Land Commission as set out in section 6. Some of these conflicts can be avoided perhaps through the terms of a delegation agreement, but there are no provisions in the draft legislation to provide legislative assurance.
- **Proposed changes to environmental assessment legislation** will allow the government to waive environmental assessment requirements for the few oil and gas projects that are currently covered by the legislation.

Note: Bill 36 does not update the penalty provisions in the *PNG*, which remain at \$500 to \$5000 per day—considerably less than the penalties authorized by the *Waste Management Act*. (For more information on compliance and enforcement, see No. 5 below).

3. Reduce staff

Under the *Oil and Gas Commission Act*, the Commission and the line ministries are each responsible for enforcement of the key oil and gas approvals. Despite the projected growth in workload, the Ministry of Energy and Mines will lose 38% of its staff. The Oil and Gas Commission compliance and enforcement unit is expected to remain at 7 members. The BC Government has recently announced a 35% reduction in what used to be services formerly provided by the environment ministry (now split into two ministries). Over the previous seven years, services at the environment ministry had already been reduced by as much as 50%. Regional offices of the Ministry of Forests have been cut.

4. More power to the OGC, but less independence

Bill 36 would give the Commission more power but less independence.

In addition to power to grant a general development permit, Bill 36 would give Cabinet power to transfer more approvals from line ministries to the Commission (e.g. powers in regulations under the *Forest Act*, *Forest Practices Code of BC Act*, *Land Act*, *Waste Management Act*, and *Water Act*) [s. 16 (e) of the Bill, amending s. 1 of the *OGCA*]. It would also transfer enforcement powers under the Forest Practices Code from the Ministry of Forests to the Commission [s. 22 of the Bill, repealing s. 17(5) of the *OGCA*].

The Commission was originally designed to have financial and administrative flexibility and a considerable degree of independence from ministerial control. It was created as a corporation with only two directors (Commissioner and Deputy Commissioner), both independent of government. The province retained certain controls through the power to appoint the directors, policy setting, and general regulation powers. As a result, there was some comfort transferring environmental approvals from the environment ministry to the Commission because it was perceived as neutral—at least relative to the Ministry of Energy and Mines.

Bill 36 would change the relationship by appointing the Deputy Minister of Energy and Mines as a director and chair of the Commission. The Deputy is also given the casting vote in case of a tie [s. 17 of the Bill, amending s. 2 of the *OGCA*]. Although the exercise of Commission authority to issue environmental approvals is still subject 'in all respects' to the Act that contains the environmental approval [s. 17(2) *OGCA*], the Deputy's casting vote is still cause for concern. Environmental approvals previously issued by the environmental ministry and then by a 'neutral' Commission, could now be decided by the Deputy of Energy and Mines whose Ministry's first objective is to 'increase investment in energy and mineral resource development in BC' [see Ministry of Energy and Mines Service Plan 2002/03-2004/05]. This apparent conflict would extend to the protection of agricultural land if the Commission is delegated decision making responsibility over non-farm and subdivision use within the ALR [see above].

Bill 36 would also give the newly constituted Commission power to pass resolutions it considers 'necessary or advisable to direct its affairs, exercise its power or perform its duties' [s. 19 of the Bill, amending s. 5 of the *OGCA*]. Although this power could likely be used to shape the Commission and its decision-making processes, it is not clear that it could be used to influence specific decisions.

5. Already considerable ecological impacts, insufficient enforcement

The Bill 36 changes are proposed at a time when environmental trends related to BC's oil and gas industry are already worrisome.

In January and March of 2001 WLAP, MOF, and OGC officials conducted 540 inspections as part of a compliance review. The review found 'major' non-compliance of 44% for activities related to stream crossings, and 'minor' non-compliance of 57% for well sites, as well as 'significant' major non-compliance in relation to sewage disposal, and the handling of invert cuttings (special waste).

OGC inspection statistics for the period January 2000 to December 2001 indicate 146 major infractions and 1499 minor infractions in relation to wells (out of 4368 inspections). Facility inspection statistics for the same period indicate 44 major infractions and 128 minor infractions out of 333 total inspections.

A recent special investigation by the Forest Practices Board concluded that the Commission does not have the enforcement powers to enforce non-compliance (since corrected), the Commission suffers from a lack of policy and procedures, it extremely difficult for operators to get on-site time with government staff to ensure their operations are appropriate, and that a significant increase in oil and gas activities in recent years has put further strains on the ministry's resources.

Reports such as WCEL's *Undermining the Law* have raised serious doubts about compliance and enforcement in another sector governed by the Ministry of Energy and Mines: the mining sector.

The Ministry of Water, Land and Air Protection recently reported that climate change is already responsible for infestations of forest-destroying beetles in BC, and threats to temperature-sensitive sockeye salmon on the Fraser River. [*Indicators of Climate Change*, <http://wlapwww.gov.bc.ca/air/climate/indicat/index.html>]