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West Coast Environmental Law
DEREGULATION BACKGROUNDER

ENVIRONMENTAL MANAGEMENT ACT
WASTE DISCHARGE REGULATION

On October 21, 2003 the BC government passed Bill 57, the *Environmental Management Act* (the "Act"). Bill 57 replaces BC's main pollution law, the *Waste Management Act*, with a new regime.

West Coast Environmental Law commented on the *Environmental Management Act* when it was first introduced into the Legislature in May, 2003, as well as on drafts of the main regulation under the new Act, the *Waste Discharge Regulation* (the "Regulation"). Our concerns about the Act remain very much unchanged, and can be found at http://www.wcel.org/issues/deregulation/#Pollution.

However, this backgrounder is intended to comment on new features appearing in the final version of the Regulation. Specifically, it examines a number of key industries that will not be regulated by government at all. In addition, we are pleased that the government has seen fit to increases in the fees paid by companies to pollute, although those rates are still too low.

PRESCRIBED INDUSTRIES AND CODES OF CONDUCT

The main purpose of the Regulation is to set out what industries and practices are to be regulated under the Act, and to set out which requirements of the Act will apply to those industries. Previously the Waste Management Act previously required all discharge of waste into the environment to be approved by a government permit, and the "risk management" approach of the new Environmental Management Act represents a major change in the approach to regulating pollution in B.C.

Basically there are three types of waste discharges contemplated by the Act and created through the Regulation:

- Industries, trades, businesses, activities or operations appearing in Schedule 1 of the Regulation will require a government issued permit or other authorization under the Act before the operator can introduce any waste into the environment. Prior to the Environmental Management Act, all discharge of waste into the environment required a permit.
- Industries, trades, businesses, activities or operations appearing in Schedule 2 of the Regulation will be able to operate without any government approval, provided that the operator follows a "Code of Practice" which has been developed for that particular type of waste disposal.
- If an industry or operation does not appear in either Schedule 1 or 2 to the Regulation, then the waste discharge is subject only to the general requirement that a person must not introduce waste into the environment so as to cause pollution. The Act defines "pollution" as "substances or contaminants [in the environment] that substantially alter or impair the usefulness of the environment."

NO SCHEDULE – INDUSTRIES FOR WHICH NO PERMIT IS REQUIRED

Our strongest objections to the Waste Disposal Regulation are reserved for those industries which do not appear on either Schedule 1 or Schedule 2, and which, therefore, will not be regulated by government at all, other than a vague requirement that their waste discharges should not "substantially alter or impair the usefulness of the environment."

We noted in our earlier papers that the mining of gravel and sand did not appear in Schedules 1 or 2 – an industry which has a long history of damage to salmon streams, and which are often situated near residential areas making them particularly contentious.

Between the last public draft of the Regulations and the final Regulation the provincial government removed various other key industries from the schedules. The following industries and activities were identified by WLAP staff in the last public draft as requiring of government regulation, but do not appear in either schedule to the final Regulation:

- Cooling water Management;
- Logging Industry (producing round wood and booming/rafting round wood);
- Product Storage – liquid; and
- Veneer and Plywood Industry.

Some of these exclusions are partially caught by other categories: ie. product storage - liquid is partially caught by a new category of petroleum storage, while Veneer/plywood storage may be caught in party by primary wood manufacturing industry.

At the same time, the final Regulation also redefined several industries to exclude cottage industries, educational facilities and hobbyists from regulation. This means that such operations will not be regulated, even when government has identified their industrial counter-parts as having a high-risk of harming human health or the environment.

While promoting small-scale or educational operations is understandable in some cases, the final version of the Regulation extended this exemption to many industries where it is not appropriate, either because of the high-risk nature of the pollution of even a small operation or because there is no real history of home-based operations. This raises the prospect of industrial operations trying to frame themselves as hobbyists, educational or home-based to escape the application of the *Act*. Some industries that include such exemptions include:

- aluminum and aluminum alloy products industry; chemical and chemical products industry;
- concrete and concrete products industry;
- dairy products industry;
- glass and glass products industry;
- iron and steel foundry and metal refining industry; and
- metal smelting.

SCHEDULES 1 AND 2

The Regulation sets out which industries will be regulated by permit, and which by Code of Practice. To date no Codes of Practice have been developed or listed in the regulation; until they are, Schedule 2 industries will also require permits to operate.

Until the Codes of Practice are publicly available it will be impossible to assess whether or not these codes will provide any legal protection for human health and the environment. As we have noted previously, unless the Codes are stringent and written in an enforceable manner they will not provide real protection against pollution.

We continue to be concerned by sections of the Regulation which allows industries covered by a code of practice to apply to have a government official replace some or all of the terms of the code with other requirements which "meet the intent of the Code." While we recognize the need for flexibility, this approach does little to ensure that new requirements continue to protect human health and the environment in a meaningful manner.

ANNUAL FEES

The final version of the regulation sets out the annual fees for industries discharging waste, and for the first time since 1993, increases the fees, as well as providing for fee increases in 2005 and 2006. We pleased to see that the regulation does provide for increased fees and the incremental increases of fees – something WCEL had recommended in its submissions concerning drafts of the regulation.

Nonetheless, the amount of the fees continue to be low. We suspect that few members of the public would be pleased to find that fees for dumping a tonne of arsenic, one of the more expensive, and toxic, substances listed, remains within most people's price range (at $339.20). Similarly, the current rate for the discharge of nitrogen oxides is now approximately 1/300th of the fee imposed on Swedish power generators (although this is an improvement from the previous rate, which was 1/1000th).

So while rate increases are a good first step, we encourage the provincial government to increase rates further as a means of creating a market incentive for companies to reduce waste emissions. At the current rates, pollution is still merely a minor cost of doing business, rather than an opportunity for cost savings.