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West Coast Environmental Law
DEREGULATION BACKGROUNDER

BILL 57 – ENVIRONMENTAL MANAGEMENT ACT 2003
Deregulating British Columbia's main pollution law

The BC government introduced Bill 57 in the Legislature May 13th, 2003, and is expected to pass the bill in the fall sitting of the Legislature. Bill 57 replaces BC's main pollution law, the *Waste Management Act*, with a new regime that is part of the BC government's deregulation initiative. It is expected that Bill 57 will eliminate about 80% or more of existing waste permits. While there are many questions about the new regime that are left unanswered by Bill 57, we have expressed the following concerns to the government:

Environmental "Risk Management"

Bill 57 represents a 'risk management' approach to environmental protection. The provincial government has said permits will only be required for 'high risk' industries. For 'medium risk' industries, there will codes of practice in place instead of permits. For 'low risk' industries there will be no permit and no code of practice. Unfortunately, the Bill does not provide any details about the risk categories, and does not identify which industries will fall into which risk category.

Enforcement Concerns

Currently, it is against the law for any industry, trade or business to introduce waste into the environment unless they have a permit. After Bill 57, that will only apply to a smaller subset of 'prescribed' industries. Under the new regime enforcement actions may become more difficult for government to carry out for industries that have neither permit nor code of practice. Enforcement staff will have to prove that there has been substantial alteration or impairment of the usefulness of the environment, rather than a contravention of a permit. This can require more costly expert evidence. However, due to cutbacks, it is unlikely that adequate government enforcement resources will be available.

Reduced Public Accountability

Currently, any person who is 'aggrieved' by a decision to issue a waste permit may appeal to the Environmental Appeal Board. The Board can hear evidence, and decide whether to confirm the government's decision, impose conditions in the permit to better protect the environment, or revoke a decision to issue a permit. Only a small fraction of permits are appealed in this way, but a significant reduction in the number of permits means that important checks and balances will no longer be in place. Bill 57 does not propose any alternative way for 'aggrieved persons' to have their issues addressed by the Environmental Appeal Board.

Reduced Ability to Deal With Siting Issues

When industries are not required to have permits government has little or no control over their location, so even medium risk activities could be located anywhere. Basically, the regulator is saying that the waste-related activity can occur anywhere so long as it follows the code of practice. No permit means no decision on allowing the introduction of waste at that location. Could it mean, for example, that hazardous waste is stored at inappropriate locations? It depends on what the regulations identify as "prescribed" activity. This approach leaves environmental protection to pollution abatement and

prevention orders, after an industrial operation is up and running or after problems occur. This approach is more reactive than preventive.

Environmental Awareness

The need to have a permit can be an important part of overall environmental awareness and education for an industrial operation. These benefits may be lost for those industries that will no longer need to get a permit from the Water, Land and Air Protection agency.

Changes to Contaminated Sites Management

Last year the provincial government appointed a review panel to recommend changes that would overhaul contaminated sites management. West Coast Environmental Law identified numerous key concerns with some of the panel's recommendations (see http://www.wcel.org/wcelpub/2002/13887.pdf).

Bill 57 keeps most of the former contaminated sites provisions intact, but it also signals intent to implement some of the panel's recommendations. The Bill does not contain sufficient detail to know exactly what or how. For example, a new definition of 'contaminated site' suggests the government wants to introduce a new degree of 'risk-based management' into the regime, but the critical details will be left to regulations. Also, the Bill signals intent to allow greater use of private sector professionals to perform statutory duties under the regulations, in the place of agency officials that are accountable to the Minister, but does not provide critical details as to how the regime might be structured. While any regime will inevitably rely on independent professional expertise, having those professionals make statutory decisions raises issues about potential conflicts of interest (particularly if the professional is also employed or retained by a party liable for the clean-up), and accountability to the public.

Some Potentially Positive Changes

Bill 57 does contain some potentially positive changes. For example "area based" management plans may allow problems such as cumulative pollution impacts to be dealt with through set pollution reduction targets among many polluters within an area. However, this power is somewhat weak in that agency other decision makers need only 'consider' the Minister's approved plan.

In addition, Bill 57 provides for "administrative monetary penalties," which could be an effective, cost-saving tool for dealing with non-compliance. Administrative penalties are common in many other regulatory regimes, such as forest practices and workers compensation.

For more information please contact

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