

# **Brief to the Honourable Paul Ramsey Minister of Environment, Lands and Parks**

## **Recommendations for Improvement of Environmental Legislation, Regulations and Policy**

Ann Hillyer, Linda Nowlan, Chris Rolfe  
West Coast Environmental Law Association

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West Coast Environmental Law Association has provided legal services to citizens in British Columbia concerned about threats to the environment since 1974. One important area of our mandate involves working to improve environmental legislation, regulations and policy.

On behalf of West Coast, we congratulate you on your appointment as Minister of Environment, Lands and Parks. We look forward to working with you.

As the new Minister, we urge you to place a high priority on improved legal protection for the environment in British Columbia. Many important advances have been undertaken in the past few years in this province. We urge you to maintain the progress made to date and to build on these initiatives to promote sustainability in B.C.

West Coast works on a number of environmental legal issues and we would like to draw your attention to the following issues we see as most pressing:

- Pulp mill regulations
- Contaminated sites regulation
- Action to address global climate change
- Reform of the *Water Act*
- Enacting the *Fish Protection Act*
- Protection of biodiversity and endangered or threatened species
- Promoting protection of ecologically significant private land
- Improving the *Forest Practices Code*
- Enacting the *B.C. Environmental Protection Act*
- Strengthening pollution prevention initiatives
- Addressing environmental issues connected to urban growth

- Access to digital maps

### **ISSUE: Pulp mill effluent regulations**

B.C.'s *Pulp Mill and Pulp and Paper Mill Liquid Effluent Control Regulation* requires pulp mills to completely eliminate chlorinated organic compounds (AOX) produced in the bleaching process by the end of 2002. This regulation and other complementary standards have resulted in a host of environmental improvements, many achieved ahead of the regulatory schedule. The regulations also have driven -- and continue to drive -- technological developments that yield significant environmental improvements in the pulp production processes used in BC. Mills are moving to full recycling of chemicals and to eliminating altogether the discharge of pulp mill effluent -- a step that would also eliminate the remaining environmental problems linked to discharging pulp mill effluent into marine and freshwater environments.

### **RECOMMENDED ACTION:**

- Maintain B.C.'s progressive pulp mill effluent regulations requiring the elimination of AOX produced in the bleaching process by the end of 2002.
- Strengthen the provincial pulp mill regulations to reduce or eliminate other environmental impacts from pulp mills.
- Continue to strictly enforce all pulp mill regulations.

### **ISSUE: Contaminated sites regulation**

The *Waste Management Amendment Act, 1993*, B.C.'s contaminated site legislation, has not yet been brought into force despite full consultation over each of the three drafts of the regulation. Since 1993, B.C. has been developing draft regulations which, when finalized, will implement the legislation. The current version of the regulation and the 1993 legislation carefully balance many competing interests while maintaining the crucial "polluter pays principle." The legislation and the regulation provide substantially more certainty and fairness to industry, and have been supported by interests as diverse as the Canadian Bankers' Association, the Urban Development Institute and environmentalists. It is now time to bring the legislation and the regulations into force. B.C.'s legacy of historically contaminated sites must be dealt with soon.

### **RECOMMENDED ACTION:**

- Bring the *Waste Management Amendment Act, 1993*, and supporting regulations into force immediately, without further consultation.

### **ISSUE: Action to address global climate change**

B.C. has an opportunity to create jobs, boost the economy and protect the environment by implementing its *Greenhouse Gas Action Plan*. Global climate change from greenhouse gases is the largest long term threat to B.C.'s environment: threatening biodiversity, forests and the forest industry, water quality and fisheries. For instance,

the National Atmospheric Research Center has blamed accumulation of greenhouse gases as by far the most likely cause of the Pacific Ocean warming trends that have led to the collapse of many B.C. fish stocks. Canada has the third highest per capita emissions of greenhouse gases in the world and, with an expected 13 % increase from 1990 to 2000, our emissions are growing faster than any other major industrialized country. Despite a commitment to stabilize emissions at 1990 levels by 2000, B.C. is one of the chief culprits, with a nine percent increase from 1990 to 1994.

Aggressive greenhouse gas strategies will benefit the B.C. economy, particularly if action is taken quickly and B.C. capitalizes on the growing world wide demand for energy efficient products and technology. A study for Natural Resources Canada found that Canada, and B.C. in particular, would benefit economically by the unilateral implementation of an aggressive greenhouse gas emission strategy. The most aggressive policy package considered by Natural Resources Canada would increase the size of B.C. GDP by \$413,000,000 and increase B.C. employment by 100,000 in the first four years of the program (increasing to 190,000 in the period of 2001 to 2005).

Moreover, binding international protocols to reduce emissions of greenhouse gases are likely by 2000.

#### **RECOMMENDED ACTION:**

- Amend provincial policies and processes to explicitly consider greenhouse gases in public and private decision-making and in particular
  - establish a consistent policy for requiring the implementation of greenhouse gas plans through provincial environmental assessments, and
  - require consideration of climate change impacts in Treasury Board and Cabinet Submissions, including tax policies, and in Crown Corporation business plans, to avoid situations such as the B.C. Ferries purchase of Fast Ferries that emit four times as much as current ferries on a per passenger basis.
- Ensure that phase out of beehive burners does not simply lead to woodwaste being burned in a cleaner incinerator with energy wasted.
- Include greenhouse gases in the fee schedule to the *Waste Management Permit Fee Regulation*, while maintaining the fee schedule for other pollutants.
- Make Transportation Demand Management (TDM) a priority of the government, with one centralized authority with the mandate, budget and regulatory powers to aggressively pursue TDM.
- Continue with the adoption of the National Energy Codes for Houses and Buildings, without lowering existing standards.
- Investigate provincial tax policies which encourage reduction of greenhouse gas emissions.

#### **ISSUE: Reform of the *Water Act***

The *Water Act*, which controls water use and allocation of water rights in B.C., is embarrassingly out of date and ineffective to deal with a number of pressing

environmental issues. Under the present *Water Act*, there is no legal obligation to maintain instream flows for conservation purposes. Consequently, fish have no right to water in B.C. There are a number of streams and creeks in the province where withdrawal of water by licencees decreases stream flows to a level which jeopardizes fish and aquatic wildlife. There is no regulation of groundwater, sorely needed to address problems such as contamination of aquifers from fertilizers and pesticides; excessive withdrawals from wells in coastal areas causing saltwater intrusion; and poor well construction practices. Further, there are unnecessary restrictions on who can appeal decisions made under the *Water Act*, in contrast to the rights of appeal under the *Waste Management Act* and the *Pesticide Control Act*.

#### **RECOMMENDED ACTION:**

- Enact a new *Water Act* that will deal comprehensively with water protection for B.C.
- Provide legal protection for instream water flows.
- Regulate both the quantity and quality of groundwater.
- Implement enforceable measures to deal with non-point source pollution, including enforceable ambient water quality standards.
- Broaden the right of appeal to allow any person to appeal decisions under the *Water Act*.

#### **ISSUE: Enacting the *Fish Protection Act***

Depleted fish stocks and populations are a major concern in B.C. today. The 1995 Sockeye Review Panel and other recent expert reports have been unable to pinpoint the exact reasons for the declines. Degradation and destruction of fish habitat through urban, industrial and agricultural development appears to be one prime cause. The *Fish Protection Act* is B.C.'s proposal to better protect fish habitat by amending a number of existing statutes: the *Water Act*, the *Wildlife Act*, the provincial *Fisheries Act*, the *Municipal Act* and the *Special Accounts Appropriation Act*. While the proposals are a very positive step in the right direction, in our opinion they do not go far enough to achieve the goal of healthy fish and protection of fish habitat. The proposals and our responses are:

- Protection of instream flows for fish and fish habitat through amendments to the existing *Water Act*: In our opinion, instream flow protection is a crucial element in a new *Water Act* and it would be preferable to proceed with a complete overhaul of this *Act* rather than the piecemeal approach contemplated by including an instream amendment to the *Water Act* in the *Fish Protection Act*. Whichever approach the government chooses, it is essential to address this issue in the context of a review of the province's existing 40,000 water licences. The proposal in the *Fish Protection Act* would apply only to new licences.
- Amendments to the *Wildlife Act* to enable designation of fish, plants and invertebrates that form part of fish habitat as threatened or endangered: There is no reason to limit the proposed amendments solely to elements of fish habitat. A new *Fish, Wildlife and Endangered Species Act* has long been promised by this

government and is sorely needed to protect all endangered, threatened and vulnerable species in the province.

- Amendments to the provincial *Fisheries Act* to prohibit new major dams on the Fraser River and its major tributaries: This action will be beneficial for the protection of fish and fish habitat, as experience elsewhere in the Pacific Northwest demonstrates that dams have had and continue to have a major negative impact on fish populations.
- Amendments to the *Municipal Act* to enhance local government's ability to protect salmon habitat and other parts of the environment: These amendments are crucial, in order to allow the local level of government, which controls land use, to give higher priority to environmental protection. The proposals to enable the inclusion of environmental policies in Official Community Plans; enable the requirement of development impact assessments; and require consultation with MELP on environmental issues at key times are all welcome changes and should proceed without delay.
- Improvements to the Habitat Conservation Fund through amendments to the *Special Accounts Appropriation Act*: Funds from the Habitat Conservation Fund have been very important for wildlife and habitat protection in B.C. Converting the Habitat Conservation Fund into a trust fund and allowing the fund to be augmented by other methods, as proposed, will maximize the impact that these funds can have in our province.

#### **RECOMMENDED ACTION:**

- Proceed with the *Fish Protection Act* proposals to amend the provincial *Fisheries Act*, the *Municipal Act* and the *Special Accounts Appropriation Act*.
- Enact a new *Water Act* with instream flow protection and a mechanism to review existing water licences.
- Enact a new *Fish, Wildlife and Endangered Species Act* as described below.

#### **ISSUE: Protection of biodiversity and endangered or threatened species**

British Columbia is Canada's most biologically diverse province, but its laws protecting wildlife, especially wildlife at risk, are weak and entirely dependent on the discretionary decisions of the Minister and other government officials. The number of endangered species in B.C. continues to rise. There are 68 species of vertebrate animals and 224 vascular plant species that are threatened and endangered in the province. Yet the current provincial *Wildlife Act* has rarely been used to designate species as threatened or endangered and has been used only once to protect the critical habitat of an endangered species. Since 1980 only 4 species have been designated as endangered: the burrowing owl, white pelican, sea otter and Vancouver Island marmot. A new law is required which would require, rather than allow, the government to act.

A recent environmental indicator publication from the Ministry of the Environment, Lands and Parks commits the province to act by the year 2001 to improve the legal basis for protecting and managing animals, plants and their habitats, and developing status

assessments and recovery plans for all threatened or endangered species. This timetable is too slow and will continue to put species and biodiversity at risk in B.C.

**RECOMMENDED ACTION:**

- Enact a new *Fish, Wildlife and Endangered Species Act* for B.C. which requires legal designation of threatened and endangered species, requires legal designation of the critical habitat of these species, requires protection of this habitat, and provides incentives to landowners to conserve habitat on private land.
- Encourage greater use of the existing provisions of the *Wildlife Act* for protection of endangered and threatened species and their habitat.
- Amend the *Land Act* to provide for fuller protection for endangered and threatened species and other vulnerable wildlife on Crown land, including improved provisions for public participation in dispositions of Crown land, with appeals to the Environmental Appeal Board.

**ISSUE: Promoting protection of ecologically significant privately owned land**

Although private land is a small percentage of the British Columbia land base, many of the most ecologically productive and most threatened areas are privately owned. A 1994 amendment to the *Land Title Act* allows an owner to grant a "conservation covenant" to a non-governmental conservation organization, which binds future owners of the land to protect the land for ecological purposes. Unfortunately, the B.C. property tax system discourages these landowners from using conservation covenants. In many parts of B.C., landowners would prefer to keep their land in a relatively undeveloped state but require relief from rapidly increasing property taxes. The property tax system in British Columbia provides lower taxes for land used for activities such as farming or managed forestry, but not for land protected for conservation purposes. Conservation covenants provide a way to ensure that tax benefits are provided only where conservation is guaranteed in perpetuity.

**RECOMMENDED ACTION:**

- Implement a property tax incentive for owners of private land who voluntarily commit to environmental conservation of all or part of their land.
- To further encourage the voluntary protection of ecologically significant private land, amend the *Occupiers' Liability Act* to relieve a landowner from liability for injury suffered by a member of the public present on the land for non-commercial recreational purposes unless the landowner deliberately caused the injury.

**ISSUE: Improving the *Forest Practices Code***

Recent reports of severe environmental damage from logging practices on private lands, including extensive detrimental impacts on fish habitat, highlight the need for

regulations in B.C. to protect privately owned forest lands. While the *Forest Practices Code* was brought into effect to improve forest practices in B.C. and to prevent environmental damage from logging, it currently applies only to Crown land and does not adequately protect all biodiversity values.

**RECOMMENDED ACTION:**

- Apply the *Forest Practices Code* to private land.
- Strengthen the *Forest Practices Code* where existing provisions are not effective in maintaining biological diversity and the ecological integrity of B.C.'s forests.

**ISSUE: Enacting the *British Columbia Environmental Protection Act***

Updating British Columbia's anti-pollution legislation has been on the agenda of the last two provincial governments. British Columbia's main anti-pollution protection legislation, the *Waste Management Act (WMA)*, was introduced in 1982 and has a number of shortcomings in dealing effectively with pollution and other environmental problems. First, the *WMA* is designed to simply regulate end of pipe discharges rather than prevent the creation of polluting substances at source. Second, it relies solely on criminal procedures and penalties, involving proof beyond a reasonable doubt. Adding provisions to also allow administrative penalties, including automatic pre-set fines on emitters who break the law, would provide more effective enforcement with limited staff. Third, it does not provide the public with basic procedural rights and safeguards which ensure environmental regulation is undertaken in an open, accountable manner. For instance, unlike other provinces, the *WMA* does not have whistleblower protection to protect private and public sector employees against employer retribution if they inform enforcement agencies of suspected environmental violations. The draft *British Columbia Environmental Protection Act* has been under active discussion for the last three years as a solution to these and other problems with the *Waste Management Act*. Although virtually complete, it has not yet been introduced into the legislature.

**RECOMMENDED ACTION:**

- Enact the *British Columbia Environmental Protection Act*, as a matter of high priority.
- Provide enabling provisions for pollution prevention.
- Allow for administrative penalties including automatic fines for firms that exceed permitted emission levels.
- Include whistleblower protection for private and public sector employees informing regulators of suspected violations.

**ISSUE: Strengthening pollution prevention initiatives**

Pollution prevention is a powerful concept which, when properly implemented, can dramatically shift the way we use resources and significantly limit our impact on the environment. However, pollution prevention is not a substitute for environmental regulation. Rather, it should be the outcome of progressive and effective regulation. B.C.

has undertaken a number of pollution prevention initiatives to give this concept practical application in the province. These initiatives, supported by appropriate regulatory standards, should be encouraged and expanded.

**RECOMMENDED ACTION:**

- Make it clear that effective pollution prevention projects rely on strong regulatory standards and that they are not a substitute for regulations.
- Ensure that all pollution prevention projects include a mandatory energy audit to reduce energy consumption.
- Define pollution prevention in all legal tools so that it clearly focuses on preventing pollution before it happens rather than controlling pollution after it occurs.

**ISSUE: Addressing environmental issues connected to urban growth**

B.C. continues to grow at a rapid rate. In the Lower Fraser region alone the population increased by 11% from 1991 to 1995. The increased population growth, along with increased resource consumption and waste generation, threatens our environment. Unplanned and unmanaged growth has a number of negative impacts: impairment of local air quality due to increased traffic and tree removal; urban sprawl that destroys wildlife habitat and reduces green space; and impairment of the water quality and quantity of urban streams and rivers through paving, culverting, pollution and runoff. The new *Growth Strategies Statutes Amendment Act* allows, but does not require, regional districts to adopt regional growth strategies. These strategies are to "work towards" objectives such as protecting environmentally sensitive areas and protecting the quality and quantity of ground and surface water. Unfortunately, there are no minimum standards that regional districts must adhere to in order to curb urban growth and its negative environmental consequences.

**RECOMMENDED ACTION:**

- Strengthen the *Growth Strategies Act* by requiring regional districts to prepare growth strategies that meet minimum requirements for:
  - sustainable transportation,
  - limiting sprawl and encouraging settlement patterns that minimize the use of automobiles,
  - protection of environmentally sensitive areas,
  - protection of quality and quantity of ground and surface water,
  - protection of local air quality, and
  - preserving, creating, and linking urban and rural open space including parks and recreation areas.

**ISSUE: Access to digital maps**

Solving contentious land use disputes in B.C. is much more feasible when all parties involved work from the same maps. Today, maps are frequently in electronic form. The

B.C. government is using its monopoly on the sale of the digital base maps to charge extremely high prices, preventing non-profit groups from having access to digital base maps, the common denominator of land use decision-making. The Commissioner of Information and Privacy, David Flaherty, in a recent ruling, urged the government to consider a two-tiered pricing system which would recognize the potential public interest contributions of non-profit groups. The Commissioner noted "no one seems to have pointed out the cost to society of not using (the digital base maps) to the fullest advantage in the making of public policy with input from all affected and interested parties."

**RECOMMENDED ACTION:**

- Establish a two-tier pricing system for digital maps to allow non-profit organizations to obtain digital maps for the purpose of participating effectively in land use planning in B.C.