



GOOD RIDDANCE:

Waste Management Law in Alberta

3rd Edition

Environmental Law Centre
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The Environmental Law Centre (Alberta) Society

The Environmental Law Centre (ELC) has been seeking strong and effective environmental laws since it was founded in 1982. The ELC is dedicated to providing credible, comprehensive and objective legal information regarding natural resources, energy and environmental law, policy and regulation in the Province of Alberta. The ELC's mission is to educate and champion for strong laws and rights so all Albertans can enjoy clean water, clean air and a healthy environment. Our vision is a society where laws secure an environment that sustains current and future generations.

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EXECUTIVE SUMMARY

Good Riddance: Waste Management Law in Alberta 3rd Edition

Garbage is often considered to be the stuff we no longer need or want. We put it out of sight. We bury it, we burn it, we dump it, we hide it. Garbage is a nuisance and a bother. Unfortunately, the truth is that garbage can be much worse than a nuisance.

A general term for garbage, and the term that will be used throughout this report, is “waste”. Waste is defined by what we do with it and how we choose to handle it and the definition can be contentious – as you will read in a later section. If we have no use for certain materials other than to dispose of them, then these materials are often considered to be waste, with the rules for their safe disposal set out in our laws and regulations. Waste can also be defined by type, or where it comes from. For example, separate laws in Alberta deal with biomedical waste or agricultural waste. There is also a differentiation between waste and recycling.

This report is designed to provide an overview of the law that applies to waste management in Alberta, including a summary of the governing statutes and regulations. It is the third edition of our Good Riddance reports. The second edition, on which this volume is based, can be obtained through the Environmental Law Centre (ELC) archives.¹ Further, this third edition report will be accompanied by a companion report focusing on extended producer responsibility.

Part 1 of this third edition will highlight basic legal concepts and describe the institutions involved in waste management. Part 2 will focus on the basic waste management laws that apply; looking at common law principles, the criminal law, and the regulatory system that regulates waste management. Part 3 will then look at the law that applies to specific types of waste including: non-hazardous waste, hazardous waste, agricultural waste, biomedical waste, oilfield waste, and nuclear waste. Each section will highlight some of the relevant statutes, regulations, and court or tribunal decisions that apply. Part 4 focuses on recycling and the differences

¹ Andrew R. Hudson, “[Good Riddance: Waste Management Law in Alberta Second Edition](#)” (2003) Environmental Law Centre.

between recyclable materials and waste and finally, Part 5 looks more closely at the import and export of waste.

This volume should be considered a primer on the waste management system in Alberta and while it will attempt to be as comprehensive as possible, some areas will be left out including sewage treatment; air and water emissions; intensive livestock operations; contaminated sites; and specific municipal waste bylaws. The ELC report "[The Polluter Pays Principle in Alberta Law: Survey and Gap Analysis](#)" provides further context in relation to how Alberta is holding polluters like those in these industries accountable for their waste streams.

Also, this report focuses primarily on provincial legislation and the accompanying waste management regime. This means that while it makes note of relevant federal legislation, particularly in the overview of regulatory law, this is not the focus.

Before we delve into specifics, it may be helpful to identify some of the general problems that accompany waste management. Waste is both an economic and environmental problem. Environmentally, waste can impact species, habitats, air quality, water quality, and human health, and each type of waste impacts other overlapping areas of the environment.

Economically, waste can be quite costly to manage. Currently, our waste management system is lacking in preventive measures which often means that materials are used once and then disposed of. This reflects a market where manufactured goods require the use of virgin materials, rather than reusable materials. These virgin materials are often non-renewable and can be expensive and time-consuming to produce.

Despite the costs associated with the use of virgin materials, the waste disposal process is also quite costly. It is expensive to properly dispose of waste and to properly clean recyclable materials to begin the recycling process. We have seen these costs raised as global issues as Canada has come under fire internationally for shipping waste to developing countries for disposal. In 2019 alone, the Philippines and

Malaysia have both promised to send back sea cans full of Canadian waste that have been languishing at their ports.²

Many of these challenges first came to light when China stopped accepting Canada's contaminated recycling (contaminated recycling often ends up as waste because it is too costly or difficult to properly recycle).³ Before this, most of the materials being diverted from landfills in Canada were sent to China but, without this option, more waste will end up either in a Canadian landfill or on the shores of another unwilling country.⁴ Going forward, it will be important to find a more sustainable solution for this waste.

Keeping these general concerns in the back of our minds, let's begin with a review of the waste management regime in Alberta.

² Eric Zimmer, "Malaysia to ship more plastic waste back to Canada and other countries" (15 June 2019) Daily Hive Vancouver online: <https://dailyhive.com/vancouver/malaysia-ship-plastic-waste-garbage-canada-may-2019>; Mia Rabson, "Canada hasn't issued any permits for companies to ship waste, government says" (29 May 2019) CBC News online: <https://www.cbc.ca/news/politics/garbage-recycle-permits-mckenna-1.5154278>.

³ Michaela Marini Higgs, "America's new recycling crisis, explained by an expert" (2 April 2019) Vox online: <https://www.vox.com/the-goods/2019/4/2/18290956/recycling-crisis-china-plastic-operation-national-sword>.

⁴ Kayla Hounsell, "Canadian municipalities struggling to find place for recyclables after China restricts foreign waste" (29 March 2018) CBC News online: <https://www.cbc.ca/news/technology/garbage-recycling-china-plastics-canada-1.4586602>; Sasa Petricic, "China is no longer world's dumping ground, but cleaning up its own backyard is proving to be a challenge" (28 March 2019) CBC News online: <https://www.cbc.ca/news/world/pollution-recycling-china-petricic-1.4593078>.

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Waste Management Law: Introduction



Federal and provincial environmental protection legislation sets out some of the main legislative purposes of a waste management regime. For example, protection of the environment, including from waste, is one of the goals of Alberta's *Environmental Protection and Enhancement Act (EPEA)*.⁵ The purposes of the Act include:⁶

... to support and promote the protection, enhancement, and wise use of the environment while recognizing the following:

- (a) the protection of the environment is essential to the integrity of ecosystems and human health and to the well-being of society;...
- (c) the principle of sustainable development, which ensures that the use of resources and the environment today does not impair prospects for their use by future generations;
- (d) the importance of preventing and mitigating the environmental impact of development and of government policies, programs, and decisions;...

⁵ *Environmental Protection and Enhancement Act*, RSA 2000, c E-12 [EPEA].

⁶ *Ibid*, s 2.

- (f) the shared responsibility of all Alberta citizens for ensuring the protection, enhancement, and wise use of the environment through individual actions;
- (h) the responsibility to work co-operatively with governments of other jurisdictions to prevent and minimize transboundary environmental impacts;
- (i) the responsibility of polluters to pay for the costs of their actions; and
- (j) the important role of comprehensive and responsible action in administering this Act.

The federal government is also charged with protecting the environment in the *Canadian Environmental Protection Act, 1999* (CEPA) which states:⁷

In the administration of this Act, the Government of Canada shall...

- (a) exercise its powers in a manner that protects the environment and human health, applies the precautionary principle that, where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation, and promotes and reinforces enforceable pollution prevention approaches;...
- (f) facilitate the protection of the environment by the people of Canada;
- (g) establish nationally consistent standards of environmental quality;...
- (j) protect the environment, including its biological diversity, and human health, from the risk of any adverse effects of the use and release of toxic substances, pollutants, and wastes; and
- (k) endeavour to act expeditiously and diligently to assess whether existing substances or those new to Canada are toxic or capable of becoming toxic and assess the risk that such substances pose to the environment and human life and health...

We will look at both of these statutes more closely, as well as others that deal with waste management in the province, including legislation in effect up to spring 2020.

⁷ *Canadian Environmental Protection Act*, SC 1999, c 33, s 2(1) [CEPA, 1999].

Part One: Legal Concepts and Institutions



All branches of government (legislative, executive, and judiciary) are responsible for making and enforcing the law in Canada. The *Constitution Act, 1982*⁸ (the “Constitution”) affords them this responsibility and supersedes individual law-making power. The division of power between the Parliament of Canada and the provincial legislatures is also set out in the Constitution.⁹ The courts then interpret the Constitution, statutes, and regulations and in doing so, make further law. The following section provides a brief introduction to these levels of law and how they are connected with our waste management system.

Constitution Act, 1982

The *Constitution Act, 1982*¹⁰ [the “Constitution”] sets out Canada's basic political structure, assigns legislative responsibility between federal and provincial levels of government, and defines certain basic rights that apply in Canada. Neither the environment, in general, nor waste management more specifically, have been assigned to any particular level of government in the Constitution.

⁸ *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), c 11 [*Constitution Act*].

⁹ *Ibid*, ss 91(10), (12), (24) & (27), 92(5), (1), (13) & (16), 92(A).

¹⁰ *Constitution Act*, *supra* note 8.

To help clarify the role of each level of government, the Supreme Court of Canada considered the issue of jurisdiction over the environment in the seminal 1992 case *Friends of the Oldman River Society v Canada*.¹¹ This case dealt with the environmental assessment for a dam on the Oldman River but contains an important discussion about government responsibility for the environment in general. The Court in this case stated:¹²

[T]he *Constitution Act, 1867* has not assigned the matter of “environment” *sui generis* to either the provinces or Parliament. The environment, as understood in its generic sense, encompasses the physical, economic and social environment touching several heads of power assigned to the respective levels of government... When viewed in this manner it will be seen that in exercising their respective legislative powers, both levels of government may affect the environment, either by acting or not acting.

It must be noted that the exercise of legislative power, as it effects concerns relating to the environment, must, as with other concerns, be linked to the appropriate head of power, and since the nature of the various heads of power under the *Constitution Act, 1867* differ, the extent to which environmental concerns may be taken into account in the exercise of a power may vary from one power to another.

What is important is to determine whether either level of government may legislate. One may legislate in regard to provincial aspects, the other federal aspects. Although local projects will generally fall within provincial responsibility, federal participation will be required if the project impinges on an area of federal jurisdiction...”

Clearly both levels of government hold some degree of legislative power over the environment and waste management. Specifically, section 92 of the Constitution assigns the following activities, each with some degree of waste management characteristics, to the provinces:¹³

- Local works and undertakings;
- Property and civil rights; and
- All matters of a merely local or private nature.

¹¹ *Friends of the Oldman River Society v Canada*, [1992] 1 SCR 3.

¹² *Ibid*, para 63.

¹³ *Constitution Act*, *supra* note 8, s 92.

In turn, the Constitution assigns other matters to the federal government. These include:¹⁴

- Criminal law;
- The regulation of trade and commerce;
- Coastal and Inland fisheries;
- Indians and lands reserved for the Indians; and
- Militia, military and naval service, and defence.

The federal government also retains the power to pass laws that provide for “peace, order and good government” and can assert federal jurisdiction over certain activities [with limitations].¹⁵ For example, nuclear energy, which did not exist at the time, is now under federal control and therefore the federal government sets the rules that apply to radioactive waste. In general, waste management activities fall under provincial jurisdiction as they relate more closely to property and civil rights and matters of a local nature. Despite this, certain areas of waste management do fall clearly under federal jurisdiction – specifically interprovincial and international trade, the import/export and transportation of waste, the transport of toxic substances, the regulation of general toxic substances, and the regulation of pesticides.

The federal government has also indicated that they will be expanding their role in our waste management regime through an evaluation of their role in managing single use plastics – beginning as early as 2021.¹⁶ Thus far, little has been released on the details of this plan but it will be a major policy change if, and when, it comes into effect.

Statutes and Regulations

The laws that are debated and passed by the Legislative Assembly of Alberta or by the Parliament of Canada are called “statutes” or “acts”. Once in force, statutes can then authorize the cabinet, a minister, or others to make subsidiary laws to deal with certain specific matters - known as “regulations” or “orders.” The statute authorizing these regulations will set out who can make, amend, and repeal them. Generally, it is

¹⁴ *Constitution Act*, *supra* note 8, s 91.

¹⁵ *Ibid*, s 91.

¹⁶ Environment Canada, *Canada Gazette: Government Notices*, Part 1, Vol 54, No. 5 (1 February 2020) online: <http://gazette.gc.ca/rp-pr/p1/2020/2020-02-01/html/notice-avis-eng.html#nl3>; Canadian Council of Ministers of the Environment, “Canada-Wide Action Plan on Zero Plastic Waste: Phase 1” (2019) online: https://www.ccme.ca/files/Resources/waste/plastics/1289_CCME%20Canada-wide%20Action%20Plan%20on%20Zero%20Plastic%20Waste_EN_June%2027-19.pdf.

the cabinet, reflected by the decisions of the Lieutenant Governor in Council (for a province) or the Governor in Council (for the federal government). However, this authority may also be assigned to a minister or tribunal.

Statutes will also prescribe what matters can be dealt with by way of regulation. If the regulation does not conform to these parameters, it will not be enforceable.

Common Law

In conjunction with statutes, much of our law consists of principles that have been established by the courts through decisions on past cases. This body of judge-made law is called the “common law.” Each of these individual decisions make up what is known as “precedent”. Judges rely on this precedent to make decisions about current fact scenarios. Additionally, the hierarchy of the court system means that lower courts must abide by decisions made by higher courts, with the Supreme Court of Canada as the highest court in the land – binding on all lower courts. In Alberta, the hierarchy of court levels ends with the Alberta Court of Appeal.

The court system also offers the opportunity to bring a case for a cause of action grounded in the common law. In the context of environmental law, some of the important causes of action include nuisance, negligence, trespass, and strict liability.¹⁷ These are known as “torts” which is a legal action defined as “an injury other than a breach of contract for which recovery of damages is permitted by law.”¹⁸

Courts and Administrative Tribunals

Generally, the courts are charged with the responsibility of resolving disputes and interpreting the meaning of statutes and regulations. In particular, courts can deal with criminal and civil matters – both of which may arise when dealing with waste management. In Alberta, three levels of courts may hear waste management matters. The lowest level is the Provincial Court, which hears the least serious criminal matters and small civil claims. The Court of Queen’s Bench is the trial level for the most serious criminal charges and for civil matters with more money at stake. The Court of Appeal then hears appeals from these lower courts and from certain other tribunals.

¹⁷ E.J. Swanson & E.L. Hughes, *The Price of Pollution* (Edmonton: Environmental Law Centre, 1990) at 13-73.

¹⁸ D.A. Dukelow & B. Nuse, *The Dictionary of Canadian Law*, 2d ed (Toronto: Carswell, 1995).

In conjunction with, and often running parallel to the court system, statutes can create special tribunals to hear certain matters outside of the formal court system. For example, the *EPEA* establishes the Environmental Appeals Board which hears appeals of decisions made by officials from Alberta Environment and Parks (AEP). Generally, after a hearing, the Environmental Appeals Board makes a recommendation to the Minister of Environment and Parks who retains final decision-making authority.

Legislation can also set out a right to appeal a tribunal's decision to the courts or can limit the appeal process available – sometimes making a tribunal decision final. Despite these limitations, the courts retain the right to review decisions to determine if the tribunal had the jurisdiction to make the decision that it did and to determine whether the decision was lawfully made. This process is called “judicial review.” If the court determines that the tribunal lacked jurisdiction to make the decision, the court can quash or invalidate the decision.

Environmental & Waste Management Agencies



Alberta

Alberta Environment and Parks

The Alberta Ministry for the Environment is called Alberta Environment and Parks (AEP) and the Ministry's stated role includes to “support environmental conservation and protection, sustainable economic prosperity, quality of life and outdoor recreation

opportunities.”¹⁹ Some of the areas of priority for AEP include air quality, provincial parks, climate change, fish and wildlife, land, and waste management.²⁰

Waste management under AEP is concerned with the management of:²¹

- hazardous waste and recyclables in Alberta;
- landfill and composting facilities;
- waste facilities;
- waste legislation and resources; and
- waste reduction and recycling.

Much of AEP's jurisdiction over waste management in the province is derived from the *EPEA* which assigns powers and responsibilities to AEP Directors to uphold sections of the Act and associated regulations.

AEP is also involved in policy making, often to supplement regulations and legislation. Despite the importance of policy, this paper focuses primarily on regulatory structures – in part due to the enforceability of the regulatory regime and because policy can be amended without formal procedure, making it more apt to change.

Natural Resources Conservation Board

The Natural Resources Conservation Board (NRCB) was created by the *Natural Resources Conservation Board Act*²² and is “responsible for reviews of proposed major natural resources projects.”²³ Projects that are reviewable by the NRCB include mining, forestry, water management, and recreation.²⁴ Some of the significant completed projects relevant to waste management include the Consumer's Paper

¹⁹ Government of Alberta, “Ministry of Environment and Parks” online: <https://www.alberta.ca/ministry-environment-parks.aspx>.

²⁰ *Ibid.*

²¹ Alberta Environment and Parks, “Waste Management: Waste reduction and management in Alberta” Government of Alberta online: <https://www.alberta.ca/waste-management.aspx>.

²² *Natural Resources Conservation Board Act*, RSA 2000, c N-3 [*Natural Resources Conservation Board Act*].

²³ Natural Resources Conservation Board, “What We Do” online: <https://www.nrcb.ca/about/what-we-do>.

²⁴ Natural Resources Conservation Board, “Natural Resource Projects” online: <https://www.nrcb.ca/natural-resource-projects/natural-resource-projects-listing>.

Corp. – Waste Paper Recycling Project;²⁵ the Swan Hills Special Waste Treatment Centre Expansion;²⁶ and the Treatment of Hazardous Waste from Other Provinces decision.²⁷

The Natural Resources Conservation Board also regulates under the *Agricultural Operations Practices Act* and related manure management.²⁸

Alberta Energy Regulator

The Alberta Energy Regulator (AER) is the sole provincial regulator for natural resource energy activities, including coal, oil, and natural gas. It is a quasi-government agency designed to “keep energy companies in check as they develop resources across the province.”²⁹ The AER regulates oil, natural gas, oil sands, coal, and pipelines and will conduct hearings and make decisions about energy applications in the province.³⁰

Environmental Appeals Board

The Environmental Appeals Board (EAB) is:³¹

“an independent board that gives Albertans an opportunity to appeal certain decisions made by Alberta Environment and Parks under the *Environmental Protection and Enhancement Act*, the *Water Act*, and Schedule 5 of the *Government Organization Act*. These decisions may include approvals, water

²⁵ Natural Resources Conservation Board, “Consumer’s Paper Corp. – Waste Paper Recycling Project” (27 April 1993) online: <https://www.nrcb.ca/natural-resource-projects/natural-resource-projects-listing/137/consumers-paper-corp-waste-paper-recycling-project>.

²⁶ Natural Resources Conservation Board, “Swan Hills Special Waste Treatment Centre Expansion” (8 May 1992) online: <https://www.nrcb.ca/natural-resource-projects/natural-resource-projects-listing/131/chem-security-alberta-ltd-swan-hills-special-waste-treatment-centre-expansion> [Swan Hills Special Waste Treatment Centre Expansion].

²⁷ Natural Resources Conservation Board, “Treatment of Hazardous Waste from Other Provinces” (3 November 1994) online: <https://www.nrcb.ca/natural-resource-projects/natural-resource-projects-listing/113/chem-security-alberta-ltd-treatment-of-hazardous-waste-from-other-provinces>.

²⁸ *Agricultural Operations Practices Act*, RSA 2000, c A-7.

²⁹ Alberta Energy Regulator, “How does the AER regulate energy development in Alberta” online: <https://www.aer.ca/protecting-what-matters/holding-industry-accountable/how-does-the-AER-regulate-energy-development-in-alberta>.

³⁰ Alberta Energy Regulator, “Regulating Development” online: <https://www.aer.ca/regulating-development> [AER - Regulating Development].

³¹ Environmental Appeals Board, “Welcome” online: <http://www.eab.gov.ab.ca/>.

licences, preliminary certificates, remediation certificates, administrative penalties, enforcement orders, and environmental protection orders.”



Canada

Environment and Climate Change Canada

The federal department for the environment is known today as Environment and Climate Change Canada (ECCC). It was started in 1971, upon the passing of the *Department of the Environment Act*.³² The ECCC states that its mandate is to “inform Canadians about protecting and conserving our natural heritage, and ensuring a clean, safe and sustainable environment for present and future generations.”³³

Some of the ECCC departments most relevant to waste management include climate change, national pollutant release inventory, water and the environment, managing and reducing waste, air pollution, and control over federal acts and regulations. In particular, ECCC is responsible for regulating the import and export of

³² *Department of the Environment Act*, RSC 1985, c E-10.

³³ Government of Canada, “Environment and Climate Change Canada” online: <https://www.canada.ca/en/environment-climate-change.html>.

hazardous waste and hazardous recyclables in Canada as well as regulating inter-provincial transportation of these substances.³⁴

Canadian Council of Ministers of the Environment

The Canadian Council of Ministers of the Environment (CCME) is comprised of environment ministers from the federal, provincial, and territorial governments. These 14 ministers meet twice a year to discuss national environmental priorities and determine work and research priorities. Expert working groups are then convened to work collaboratively to accomplish specific goals. The CCME focuses on issues that are Canada-wide in scope and that require collective attention by a number of governments.³⁵

Commission for Environmental Cooperation

The Commission for Environmental Cooperation (CEC)³⁶ was created by the North American Agreement on Environmental Cooperation (NAAEC) which was a side agreement accompanying the 1994 North American Free Trade Agreement (NAFTA). The NAAEC was developed to support the environmental provisions of NAFTA, to avoid trade distortions, and to promote environmental cooperation.³⁷ The CEC is then responsible for overseeing implementation of the agreement and receives support and funding from Canada, Mexico, and the United States.

The CEC also has a quasi-judicial role of reviewing submissions from the public on enforcement matters and in supporting an arbitral panel process to resolve disputes between the parties on specific trade-related issues associated with failures to effectively enforce environmental laws and regulations.³⁸

³⁴ Environment and Climate Change Canada, "Export and Import of Hazardous Waste and Hazardous Recyclable Materials Regulation" (Gatineau: Environment and Climate Change Canada, 2018) online: https://www.canada.ca/content/dam/eccc/documents/pdf/pollution-waste/6016%20Canadian%20Notice%20and%20Manifest%20Tracking%20System%20User%20Guide_En2.pdf.

³⁵ Canadian Council of Ministers of the Environment, "About" online: <https://www.ccme.ca/en/about/index.html>.

³⁶ Commission for Environmental Cooperation, "About the CEC" online: <http://www.cec.org/about-us/about-cec>.

³⁷ *Ibid.*

³⁸ Commission for Environmental Cooperation, "Enforcement" online: <http://www.cec.org/our-work/enforcement>.



Part Two: Waste Management & the Law

Waste Management and the Common Law

The common law has developed several causes of action particularly applicable to waste management. In general, common law actions are applied to resolve disputes between private parties and have not been used to deal with conduct that is considered harmful to the public at large.

Common law remedies are also limited because court actions tend to be reactive (occurring only after the damage or harm has already occurred) rather than preventative – like regulatory schemes can be. This can be a significant downside when attempting to focus on waste prevention. However, common law remedies are still available, and the courts can be an important tool for plaintiffs. The following section highlights some of the causes of action most applicable to waste management.

Tort Law

Tort law is an area of law that attempts to provide a remedy for individuals who have been injured, or whose property has been damaged by the wrongdoing of others. The purpose of tort law is to provide damages to victims as compensation for their loss and most tort law has been created through the common law process. Today, some of these torts have also been codified in statute.

One of the notable aspects of tort law is that it does not require a contractual relationship between the two parties. This is distinct from contract law, which is discussed later.

The next section will outline some of the common law torts that are applicable to waste management including:

- Nuisance;
- Negligence;
- Trespass; and
- The rule in *Rylands v Fletcher*.

Nuisance

Nuisance is defined as the unreasonable interference with public or private rights to the enjoyment of property.³⁹ It can be found anytime the interference is considered to be unreasonable, regardless of whether intentional, negligent, or entirely accidental. Therefore, it is the role of the court to decide what is reasonable.

A smelly garbage dump (if considered to be unreasonable for the context) can be an example of a nuisance. This means that an individual could bring an action against another to prevent the improper disposal of garbage if it creates a nuisance on the individual's property – like smell. Similarly, commercial premises that do not properly dispose of garbage can be subject to an action for nuisance especially if they impact a residential area.⁴⁰

³⁹ Bruce Pardy, *Environmental Law: A Guide to Concepts* (Toronto: Butterworths Canada Ltd. 1996) at 193.

⁴⁰ *Ball v Imperial Oil Resources*, 2010 ABCA 111; *Friedel v Vavrek*, 2012 ABQB 703.

In a successful action in nuisance, the plaintiff can recover damages as compensation and the activity can be restrained by an injunction, which is an order of the court requiring that the activity constituting the nuisance stop. Only those with an interest in the property affected by the nuisance have the right to bring an action.

An important note – a *Municipal Government Act* amendment limited the liability that municipalities face during a claim for nuisance. Following this change, municipalities are no longer liable in an action based on nuisance, or on any other tort that does not require a finding of intention or negligence. This applies if the damage arises either directly or indirectly, from roads or from the operation of a public utility, or a dike, ditch or dam.⁴¹ Further, the definition of a ‘public utility’ includes any system or works used to provide waste management services.⁴²

Negligence

Negligence is the most common tort action. A plaintiff has an action for negligence against a defendant if all of the following elements are met:

- a duty is owed by the defendant to the plaintiff;
- the duty has been breached by the defendant; and
- the defendant has suffered damage because of that breach of duty.

Those who dispose of their waste or carry on waste management activities owe a duty to others to carry them out in a manner that does not cause harm, or they may be responsible for damages in compensation.

Public bodies can also be plaintiffs in a negligence action. For example, in Ontario the municipality of North York successfully sued a chemical manufacturer and recovered for the damage caused to the municipality’s sewer system by the manufacturer when corrosive chemical wastes were allowed to enter the system.⁴³

⁴¹ *Municipal Government Act*, RSA 2000, c M-26, s 528 [MGA].

⁴² *Ibid*, s 1(y).

⁴³ *North York v Kerr Chemical Industries*, (1985) 33 CLT 184 (Ont HC).

Trespass

The tort of trespass to land consists of entering onto someone else's land without justification. It may also consist of "placing or projecting any object upon" that land.⁴⁴ For our purposes, this also includes the placing of garbage or rubbish on the land of another.⁴⁵ For example, in the case of *Kerr v Revelstoke Building Materials Ltd*, the plaintiffs' motel had to be shut down because of the smoke, sawdust, fly ash, and objectionable sounds that the defendant's adjacent sawmill produced.⁴⁶ The Court found the interference to be a trespass and awarded damages to the plaintiff.

Strict Liability – Rylands v Fletcher

In common law, strict liability refers to liability which is not based upon the principle of fault, also known today as the rule in *Rylands v Fletcher*.⁴⁷ (This is to be contrasted with strict liability offences under regulatory laws) The rule is stated in the case as follows:

"The person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and if he does not do so, is *prima facie* answerable for all the damage which is the natural consequence of its escape."⁴⁸

Liability is described as 'strict' because fault is not a factor. Liability will follow if the presence of the offending substance constitutes a dangerous use of land and the substance escapes from the land and causes harm. A more recent example occurred in Ontario when operators of a landfill were held strictly liable after the methane gas that was emitted onto a neighbouring residential property exploded and caused both property damage and personal injury.⁴⁹

Courts have since worked to more narrowly define the rule in *Rylands v Fletcher* - setting out specific circumstances under which the rule can apply. The cases *Smith v*

⁴⁴ R.F.V. Heuston & R.S. Chambers, *Salmond & Heuston on Torts*, 18th ed (London: Sweet Maxwell, 1981) at 36.

⁴⁵ *Gregory v Piper*, (1829) 9 B & C 591; *Kynoch Ltd v Rowlands*, [1912] 1 Ch 527.

⁴⁶ *Kerr v Revelstoke Building Materials Ltd*, (1976) 71 DLR (3d) 134 (Alta).

⁴⁷ *Rylands v Fletcher*, (1866) LR 1 Ex 265; aff'd (1898) LR 3 HL 330.

⁴⁸ *Ibid* at para 279.

⁴⁹ *Gertsen v Municipality of Metropolitan Toronto*, (1973) 41 DLR (3d) 646 (Ont HC).

*Inco*⁵⁰ from Ontario and *Windsor v Canadian Pacific Railway Ltd.*⁵¹ from Alberta, both seek to clarify and narrow the rule's applicability. However, despite these cases, the rule is still available in certain circumstances.

Contract Law

Contract law, in contrast with tort law, is centered around a contractual document.

A contract is a legally binding promise between two or more parties which sets out certain requirements and standards that must be upheld by all parties - or risk being in breach.

As an example, contracts may set out the requirements for waste facility operators or those transporting and disposing of waste.

Deceit

An action for deceit or fraud applies when a defendant intentionally misleads and thereby causes harm to the plaintiff.⁵² This can occur after a contractual agreement has been established and it is found that one party has lied about certain aspects of the agreement.

In one British Columbia case, a vendor of land told the purchaser that a pile of slag on the property was "excellent fill," as a means to induce the sale.⁵³ The vendor, however, knew that the slag contained radioactive material, despite leaving this information out during the sale process.⁵⁴ The Court concluded that the slag induced the purchaser to buy the land without knowing all of the facts and therefore, that the vendor acted deceitfully in making the statement.⁵⁵ The vendor was ordered to compensate the purchaser for the decreased value of the property.⁵⁶

⁵⁰ *Smith v Inco*, 2011 ONCA 628.

⁵¹ *Windsor v Canadian Pacific Railway Ltd.*, 2014 ABCA 108.

⁵² William Statsky, *Legal Thesaurus Dictionary* (St. Paul: West Publishing Company, 1985) *sub verbo* "fraud".

⁵³ *CRF Holdings Ltd. v Fundy Chemical International Limited* (1982) 2 WWR 385 (BCCA) at para 1.

⁵⁴ *Ibid* at para 1.

⁵⁵ *Ibid* at para 6.

⁵⁶ *Ibid* at para 29.

Evidentiary Issues

Standard of Proof

In order to receive a favourable decision, plaintiffs must provide sufficient proof of the defendant's liability. They must provide evidence upon which the court may decide in the plaintiff's favour. If the plaintiff does not provide sufficient evidence, then the plaintiff will not succeed.

The amount of evidence required is known as the standard of proof. For common law civil actions, the standard of proof is known as the "balance of probabilities."⁵⁷ This standard requires a determination that it is more likely than not that the defendant's behaviour caused the damage claimed.⁵⁸

This standard of proof is different in criminal cases, where the prosecution must prove guilt "beyond a reasonable doubt."



⁵⁷ Department of Justice, "Civil and criminal cases" (16 October 2017) Government of Canada online: <https://www.justice.gc.ca/eng/csj-sjc/just/08.html> [Department of Justice - Civil and criminal cases].

⁵⁸ William Statsky, *Legal Thesaurus Dictionary* (St. Paul: West Publishing Company, 1985) *sub verbo* "preponderance of evidence".

Waste Management and the Criminal Code

The *Criminal Code* is the statute which defines which activities are considered criminal and prescribes penalties that the courts can impose on those found guilty of these activities.⁵⁹ It is the federal government that is constitutionally responsible for the criminal law⁶⁰ and administering the *Criminal Code*.⁶¹

The majority of *Criminal Code* offences require proof of intention, or what is called a “guilty mind.” In order for most criminal charges to be valid, one must prove that the criminal act was committed and that there was intention to do so – actus reus and mens rea, respectively. Criminal law also requires that guilt be proven “beyond a reasonable doubt.”⁶² This is a high standard of proof and is significantly higher than the standard of proof in a civil cause of action (balance of probabilities).

Criminal offences are divided into two categories - the most serious offences are called “indictable offences” and carry the most severe penalties. Because of the potential consequences of a conviction, indictable offences undergo a more elaborate court procedure, thus providing more protection to the accused. Less serious offences are called “summary conviction offences.” They carry less severe penalties and follow a more streamlined procedure.⁶³

Some of the *Criminal Code* provisions that may apply to the waste management regime include:

- If waste material is explosive, the relevant *Criminal Code* section places a legal duty upon the person who possesses or has care or control of an explosive substance “to use reasonable care to prevent bodily harm or death to persons

⁵⁹ William Statsky, *Legal Thesaurus Dictionary* (St. Paul: West Publishing Company, 1985) *sub verbo* “preponderance of evidence”.

⁶⁰ *Constitution Act*, *supra* note 8, s 91(27).

⁶¹ *Criminal Code*, RSC 1985, c C-46 [*Criminal Code*]

⁶² Department of Justice - Civil and criminal cases, *supra* note 57; William Statsky, *Legal Thesaurus Dictionary* (St. Paul: West Publishing Company, 1985) *sub verbo* “beyond a reasonable doubt”.

⁶³ Department of Justice, “Criminal offences” (24 July 2015) Government of Canada online: <https://www.justice.gc.ca/eng/cj-jp/victims-victimes/court-tribunaux/offences-infractions.html>.

or damage to property by that explosive substance.”⁶⁴ Failure to perform that duty without lawful excuse is an indictable offence;⁶⁵

- “Criminal negligence” is a general provision that could have applicability to waste management activities. This section states that (1) everyone is criminally negligent who (a) in doing anything, or (b) in omitting to do anything that it is his duty to do, shows wanton or reckless disregard for the lives or safety of other persons. (2) For the purposes of this section, “duty” means a duty imposed by law.⁶⁶ If criminal negligence causes death, the offender is guilty of an indictable offence;⁶⁷
- If someone represents that dangerous waste substances are safe, that person could be guilty of fraud or false pretence;⁶⁸ and
- Improper handling of waste substances may be considered mischief under the code because mischief includes “rendering property dangerous.”⁶⁹

Despite these options, most waste management is dealt with in what is known as the quasi-criminal realm. A quasi-criminal offence is a non-criminal offence that carries a penalty similar to that of a true *Criminal Code* offence, but which is subject to a less complex court procedure and which does not come with the same burden of proof. Often these quasi-criminal offences are set out in regulatory law. This means that although fines and sometimes even imprisonment can be used to punish waste management offences, they do not need to have the hallmark qualities of a crime. For example, it is not required to prove *mens rea*, they are decided based on the balance of probabilities, and the defence of due diligence is available. It should be noted however that various regulatory laws have been deemed a valid exercise of federal jurisdiction based on their “criminal law” power in section 91 of the Constitution.

⁶⁴ *Criminal Code*, *supra* note 61, s 79.

⁶⁵ *Ibid*, s 80.

⁶⁶ *Ibid*, s 219.

⁶⁷ *Ibid*, s 220.

⁶⁸ *Ibid*, s 380(1).

⁶⁹ *Ibid*, s 430(1).

The next section will take a closer look at the regulatory system in charge of waste management, but it is important to recognize both the similarities and differences they hold with the criminal law.

Waste Management and Regulatory Law

The following section will focus on regulatory law. This is the area of law that constitutes the majority of waste management rules and regulations and is often considered quasi-criminal.

An important distinction, particularly for the realm of waste management is that regulatory law is often accompanied by a defence of due diligence. This means that if a defendant can demonstrate that they took all reasonable care to prevent an offence from occurring, they can avoid liability. Throughout the following sections we will point out some of the areas where this occurs.

Regulatory law can also be enacted by both the provincial and federal governments. First, we will highlight some of the most relevant Alberta statutes and then move to the federal ones.

Alberta

Environmental Protection and Enhancement Act

In 1993, the *EPEA* was passed.⁷⁰ This omnibus environmental statute replaced a number of other statutes including several that dealt with waste management. Two of the relevant waste management focuses of the *EPEA* include: regulating the provincial environmental assessment process and the approval process for waste management facilities. Additionally, certain waste management activities are regulated under the Act.

A list of activities automatically subject to the *EPEA* (and the related standards and authorizations) is set out in the Schedule of Activities. These include the construction, operation, or reclamation of:

⁷⁰ *EPEA*, *supra* note 5.

- Facilities for the storage, treatment, processing, or disposal of hazardous waste;⁷¹
- Facilities for the storing and processing of hazardous recyclables;⁷²
- Facilities for the storage, treatment, processing, or disposal of batteries;⁷³
- Waste management facilities;⁷⁴
- Landfarms for petroleum, drilling, or other wastes;⁷⁵
- Incinerators;⁷⁶
- Sites for subsurface disposal of solid or liquid waste, except private subsurface sewage disposal systems;⁷⁷
- Sites for the demolition of automobiles;⁷⁸ and
- Sites where scrap metal is stored.⁷⁹

Additional activities may also be added to the list by regulation.⁸⁰

Environmental Assessment

The EPEA is responsible for creating and regulating the environmental assessment process in the province. This process is designed to identify the consequences of certain activities before they occur, in order to develop plans to mitigate any potential adverse environmental effects.

The full assessment process applies to certain “mandatory activities”⁸¹ and to other activities where the Director decides “that the potential environmental impacts of the

⁷¹ EPEA, *supra* note 5, Schedule of Activities, s 2(t).

⁷² *Ibid*, Schedule of Activities, s 2(v).

⁷³ *Ibid*, Schedule of Activities, s 2(aa).

⁷⁴ *Ibid*, Schedule of Activities, s 5(d).

⁷⁵ *Ibid*, Schedule of Activities, s 5(e).

⁷⁶ *Ibid*, Schedule of Activities, s 5(g).

⁷⁷ *Ibid*, Schedule of Activities, s 5(l).

⁷⁸ *Ibid*, Schedule of Activities, s 5(t).

⁷⁹ *Ibid*, s 5(u).

⁸⁰ *Ibid*, Schedule of Activities, s 11.

⁸¹ *Ibid*, s 39(c).

proposed activity warrant further consideration under the environmental assessment process."⁸²

Activities that must undergo an environmental assessment are set out in Schedule 1 of the *Environmental Assessment (Mandatory and Exempted Activities) Regulation*. This regulation only makes an environmental assessment mandatory for hazardous waste incinerators and landfills that accept hazardous waste from an off-site source.⁸³ The proponents of these activities must therefore prepare an environmental impact assessment report and the activities are then also subject to review under the *Natural Resources Conservation Board Act*.⁸⁴

The environmental assessment process involves four steps. The first is notification by AEP that the process will apply to the activity at hand.⁸⁵ The second is screening by the Director to determine the next step of the process.⁸⁶ The third step, if required, is the preparation of an environmental assessment report.⁸⁷ The final step is referral of the report to the Natural Resources Conservation Board, the AER, the Alberta Utilities Commission, or the Minister, as the case may be.⁸⁸

EPEA - Waste Related Authorizations

Under the *EPEA*, the authorization of most waste management facilities is done in one of three ways, through an approval, a registration, or a notification procedure. The *Activities Designation Regulation* designates activities by authorization level and activities are grouped into schedules and divisions. Generally, activities with a greater potential to impact the environment require approvals.⁸⁹ Registrations are required for activities with a lesser impact and these authorizations may also require

⁸² *EPEA*, supra note 5, ss 43 & 44(1).

⁸³ *Environmental Assessment (Mandatory and Exempted Activities) Regulation*, Alta Reg 111/1993, ss (z) & (aa) [*Environmental Assessment (Mandatory and Exempted Activities) Regulation*].

⁸⁴ *Natural Resources Conservation Board Act*, supra note 22.

⁸⁵ *EPEA*, supra note 5, s 43.

⁸⁶ *Ibid*, s 44.

⁸⁷ *Ibid*, s 45.

⁸⁸ *Ibid*, s 53.

⁸⁹ *Activities Designation Regulation*, Alta Reg 276/2003, s 2 [*Activities Designation Regulation*].

compliance with a Code of Practice.⁹⁰ Activities that have minimal impact require notification only.⁹¹

If an activity requires an approval or registration, it is an offence to commence or continue the project without one.⁹² The approval process requires prior compliance with the environmental assessment process, public notification, and public notice of the decision.⁹³ People who may be directly affected by a potential project can also provide input by filing a statement of concern regarding a specific application.⁹⁴

Waste management activities requiring an approval are included in Schedule 1, Division 1 of the *Activities Designation Regulation* and include:⁹⁵

- The construction, operation, or reclamation of a fixed facility where more than 10 tonnes per month of waste is treated;
- The operation of a mobile incinerator that treats waste that contains certain halogenated organic compounds or heavy metals;
- The construction, operation, or reclamation of certain large facilities for the collection and blending of hydrocarbons and organics to produce fuel from waste;
- The construction, operation, or reclamation of certain fixed facilities for long term storage of large amounts of hazardous recyclables or hazardous waste;
- The construction, operation, or reclamation of certain fixed facilities for processing hazardous recyclables;
- The construction, operation, or reclamation of landfills that accept hazardous waste, receive more than 10,000 tonnes per year of waste, or are located in a ravine, gully, or coulee over a buried valley;
- The construction, operation, or reclamation of certain large facilities for cleaning empty chemical containers;
- The burning of certain prohibited debris by means of an open fire; and

⁹⁰ *Activities Designation Regulation*, *supra* note 89, s 3.

⁹¹ *Ibid*, s 4.

⁹² *EPEA*, *supra* note 5, ss 60 & 61.

⁹³ *Ibid*, ss 63, 72 & 74.

⁹⁴ *Ibid*, s 73.

⁹⁵ *Activities Designation Regulation*, *supra* note 89, Schedule 1, Div 1.

- The construction, operation, or reclamation of a compost facility that accepts more than 20,000 tonnes of waste per year for composting.

Approvals incorporate a wide variety of terms and conditions that set out the rules for design operating, monitoring and reclamation, and decommissioning.

Activities listed in Schedule 2, Division 1 that require a registration include:⁹⁶

- The construction, operation, or reclamation of a facility where land treatment of waste is carried out;
- The construction, operation, or reclamation of a small incinerator;
- The construction, operation, or reclamation of a landfill where not more than 10,000 tonnes per year of waste is disposed;
- The construction, operation, or reclamation of a facility where alternate fuel is burned in a combustion unit or where used oil is burned in a space heater;
- The construction, operation, or reclamation of a compost facility that accepts not more than 20,000 tonnes of waste per year for composting; and
- The construction, operation, or reclamation of a fixed facility for the land treatment of soil containing hydrocarbons.

These activities are also typically overseen by a related Code of Practice which sets out various design, operating, monitoring, and reclamation and decommissioning rules.

Activities listed in Schedule 3 that require notification include:⁹⁷

- The construction, operation, or reclamation of a small compost facility; and
- The construction, operation, or reclamation of a non-hazardous waste storage site.

The Minister retains the power to order that no approval or registration be given if they are of the opinion that doing so is in the public interest.⁹⁸ Additionally, the

⁹⁶ *Activities Designation Regulation*, *supra* note 89, Schedule 2, Div 1.

⁹⁷ *Ibid*, Schedule 3.

⁹⁸ *EPEA*, *supra* note 5, s 64.

Director may issue approvals subject to certain terms and conditions or may cancel, suspend, or modify an approval if they consider it appropriate to do so.⁹⁹

Municipal Government Act

The *Municipal Government Act* authorizes municipalities in Alberta to engage in and regulate the logistics of solid waste disposal.¹⁰⁰ Larger municipalities will often run their own waste management systems while smaller municipalities can cooperate in this task through regional waste management corporations, each of which is created by its own regulation.¹⁰¹

More specifically, the *Subdivision and Development Regulation* under the *Municipal Government Act* sets out the minimum distances that must separate certain waste management facilities and other developments.¹⁰²

Natural Resources Conservation Board Act

The *Natural Resources Conservation Board Act* establishes the Natural Resources Conservation Board (NRCB) and sets out the Board's purpose, stating:

The purpose of this Act is to provide for an impartial process to review projects that will or may affect the natural resources of Alberta in order to determine whether, in the Board's opinions, the projects are in the public interest, having regard to the social and economic effects of the projects on the environment.¹⁰³

The Act makes certain projects subject to review and those projects cannot proceed until approval under the Act is given.¹⁰⁴ Reviewable projects consist of major non-energy natural resource projects that have the potential for significant environmental, social, and economic effects. Currently, none of the listed types of projects relate to

⁹⁹ EPEA, *supra* note 5, ss 68(2) & 70.

¹⁰⁰ MGA, *supra* note 41.

¹⁰¹ For example, *Central Alberta Regional Waste Management Commission Regulation*, Alta Reg 211/2000.

¹⁰² *Subdivision and Development Regulation*, Alta Reg 212/95.

¹⁰³ *Natural Resources Conservation Board Act*, *supra* note 22, s 2.

¹⁰⁴ *Ibid*, ss 4 & 5.

waste management although new project types can be created through regulation or the Lieutenant Governor in Council may prescribe specific projects for review.¹⁰⁵ For example, it was the Lieutenant Governor in Council who authorized an NRCB review of the Swan Hills Hazardous Waste Treatment Centre.¹⁰⁶

The Board must give persons who may be directly affected by a reviewable project an opportunity to review relevant information and participate in the Board's review.¹⁰⁷ If a directly affected person submits a written objection to a proposed project, the Board will hold a hearing to evaluate the objection.¹⁰⁸

The Board can only grant an approval with prior authorization from the Lieutenant Governor in Council.¹⁰⁹ Authorization is not required for refusals or deferrals.¹¹⁰ Finally, an approval by the Board does not dispense with the requirement to obtain a licence, permit, approval, or other authorization for the project.¹¹¹

Occupational Health and Safety Act

The *Occupational Health and Safety Act*¹¹² requires employers to ensure, as far as reasonably practicable, the health and safety of those working for them¹¹³ and requires workers to take reasonable care to protect themselves and their co-workers from harm.¹¹⁴ This includes protection from the dangers posed to workers from waste products.

¹⁰⁵ *Natural Resources Conservation Board Act*, *supra* note 22, ss 4(e) & (f). See the Swan Hills Hazardous Waste Treatment Centre as an example of a project prescribed by the Lieutenant Governor in Council for review.

¹⁰⁶ Swan Hills Special Waste Treatment Centre Expansion, *supra* note 26.

¹⁰⁷ For a recent discussion of the test for 'directly affected' see: *Normtek Radiation Services Ltd. v Alberta (Environmental Appeals Board)* 2019 ABQB 911.

¹⁰⁸ *Natural Resources Conservation Board Act*, *supra* note 22, s 8.

¹⁰⁹ *Ibid*, s 9(1)(a).

¹¹⁰ *Ibid*, ss 9(1)(b) & (c).

¹¹¹ *Ibid*, s 9(3).

¹¹² *Occupational Health and Safety Act*, RSA 2000, c O-2 [*Occupational Health and Safety Act*].

¹¹³ *Ibid*, s 2(1).

¹¹⁴ *Ibid*, s 2(2).

Officers under the Act are authorized to inspect for hazards and to issue orders to control or stop dangerous activities.¹¹⁵ Appeals of these orders can be made to the Occupational Health and Safety Council.¹¹⁶

Additionally, workers who may be exposed to hazardous waste may be required to be registered under the Act and have regular medical examinations.¹¹⁷ In turn, the Act provides supporting requirements for dangerous substances¹¹⁸ and for accidents which occur on the jobsite.¹¹⁹

Maximum penalties for failure to comply with the Act include fines of up to \$300,000, daily fines of \$10,000 for continuing offences, and up to 12 months' imprisonment.¹²⁰

Public Health Act

The *Public Health Act* may apply to waste issues where improper waste management practices create a nuisance.

A nuisance is defined as:¹²¹

a condition that is or that might become injurious or dangerous to the public health, or that might hinder in any manner the prevention or suppression of disease.

The Act gives local health officials ("executive officers") broad control over nuisances.¹²² If, as a result of an inspection of a premises, an executive officer has reasonable and probable grounds to believe that a nuisance is occurring, the executive officer may issue a written order to address or remove the nuisance.¹²³ The order can be issued to the person registered as owner of the premises at the Land

¹¹⁵ *Occupational Health and Safety Act*, *supra* note 112, ss 8-11, 42.

¹¹⁶ *Ibid*, ss 16 & 17.

¹¹⁷ *Ibid*, s 20.

¹¹⁸ *Ibid*, s 29.

¹¹⁹ *Ibid*, s 18.

¹²⁰ *Ibid*, s 41.

¹²¹ *Public Health Act*, RSA 2000, c P-37, s 1 (ee) [*Public Health Act*].

¹²² *Ibid*, s 59.

¹²³ *Ibid*, s 62.

Titles Office or to some other person who is in actual or apparent possession and control of the premises.¹²⁴ If the order is issued to someone other than the registered owner, that person must be served with a copy of the order.¹²⁵

Orders can enumerate things such as the closure of the premises, removal of the nuisance, and doing of specified work.¹²⁶ If an order is not obeyed, the health authority can cause the work to be done and, once completed, has the authority to recover the costs from the person to whom the order was issued.¹²⁷ If those costs are not paid, they can be added to the municipal property tax as an additional tax on the land. Non-payment can ultimately result in a sale of the property.¹²⁸ The person to whom an order is issued retains the option to appeal the order to the Public Health Appeal Board.¹²⁹

Dangerous Goods Transportation and Handling Act

Dangerous waste that is transported within Alberta is regulated by the *Dangerous Goods Transportation and Handling Act*¹³⁰ which provides for safety in the handling and transporting of dangerous goods, defined by reference to the regulations. The regulations refer to the federal regulations under the *Canadian Transportation of Dangerous Goods Act, 1992*,¹³¹ which all provinces and territories have adopted.

Safe handling and transportation of dangerous goods, including waste, is accomplished under the Act by designating and classifying those goods and prescribing the safety requirements for each class. Regulations also provide guidelines for appropriate documentation, insurance, and certain prohibitions.

¹²⁴ *Public Health Act*, supra note 121, s 1(ff).

¹²⁵ *Ibid*, s 62(3).

¹²⁶ *Ibid*, s 62(4).

¹²⁷ *Ibid*, s 62.

¹²⁸ *Ibid*, s 63.

¹²⁹ *Ibid*, s 4.

¹³⁰ *Dangerous Goods Transportation and Handling Act*, RSA 2000, c D-4 [*Dangerous Goods Transportation and Handling Act*].

¹³¹ *Transportation of Dangerous Goods Act, 1992*, SC 1992, c 34 [*Transportation of Dangerous Goods Act, 1992*].

The Act also provides for inspectors to ensure compliance.¹³² These inspectors are empowered to stop, inspect, and sample the contents of any vehicle or place if they believe that dangerous goods are being handled or conveyed.¹³³ The person in charge of the dangerous goods is obligated to assist the inspector in doing so.¹³⁴

If an inspector is satisfied on reasonable and probable grounds that there is a spill, the danger of a spill, or a breach of the regulations, the inspector may seize and dispose of the dangerous goods.¹³⁵ To help with this, the person in charge of dangerous goods must report all spills and accidental discharges to an inspector. In addition, that person must take all reasonable emergency measures to reduce the danger and comply with any directions from an inspector.¹³⁶

Federal

The federal government plays a significant role in waste management, particularly when it comes to the interprovincial and international import/export and transportation of waste; the transport of toxic substances; the regulation of toxic substances; and control over pesticides. Additionally, federal statutes such as the *Impact Assessment Act* or the *Canadian Environmental Protection Act, 1999* both impact waste management efforts, despite having broader environmental purposes.

Canadian Environmental Protection Act, 1999

The *Canadian Environmental Protection Act, 1999* (CEPA) is primarily concerned with protecting the environment and human health; applying the precautionary principle; and promoting and reinforcing enforceable pollution prevention approaches.¹³⁷ For waste management purposes, CEPA is important because it can be used to prohibit certain materials that may end up as waste products. It can do so by regulating

¹³² *Dangerous Goods Transportation and Handling Act*, *supra* note 130, s 6.

¹³³ *Ibid*, s 7.

¹³⁴ *Ibid*, s 11.

¹³⁵ *Ibid*, s 12.

¹³⁶ *Ibid*, s 13.

¹³⁷ *CEPA, 1999*, *supra* note 7.

materials that are toxic to the environment and human health and by prohibiting the manufacture and sale of any such products.¹³⁸

An example of CEPA being used in the waste management context is the recent federal ban on microbeads.¹³⁹ Under the auspices of the CEPA regime, the federal government was able to ban plastic microbeads (plastic beads that are < 5mm in size)¹⁴⁰ by adding them to the List of Toxic Substances in Schedule 1 of the CEPA. This triggered a regulatory process enabling them to pass a regulation which prohibits the manufacture, import, or sale of products containing microbeads.¹⁴¹ This is an important waste management strategy because microbeads are considered a dangerous type of marine plastic waste.¹⁴²

More recently, the federal government announced a plan to ban 'harmful single-use plastics' as early as 2021.¹⁴³ As of writing, no specific plan has been released; however, one option to accomplish this goal would be the addition of certain types of plastic to the toxic substances list under CEPA.

Impact Assessment Act

The *Impact Assessment Act*¹⁴⁴ is the new federal act responsible for the impact assessment of certain large-scale activities and the prevention of significant adverse environmental effects. It replaced the *Canadian Environmental Assessment Act, 2012*.

The *Impact Assessment Act* establishes the impact assessment procedure at the federal level. The Act's purposes include "to protect the components of the

¹³⁸ CEPA, 1999, *supra* note 7, part 5.

¹³⁹ *Microbeads in Toiletries Regulations*, SOR/2017-111 [*Microbeads in Toiletries Regulations*].

¹⁴⁰ Government of Canada, "Microbeads" online: <https://www.canada.ca/en/health-canada/services/chemical-substances/other-chemical-substances-interest/microbeads.html>.

¹⁴¹ *Microbeads in Toiletries Regulations*, *supra* note 139, s 3.

¹⁴² Environment and Climate Change Canada, "Microbeads – A Science Summary" (July 2015) at 4.2 online: <http://www.ec.gc.ca/ese-ees/default.asp?lang=En&n=adda4c5f-1>.

¹⁴³ Justin Trudeau, Prime Minister of Canada, News Release, "Canada to ban harmful single-use plastic and hold companies responsible for plastic waste" (10 June 2019) online: <https://pm.gc.ca/en/news/news-releases/2019/06/10/canada-ban-harmful-single-use-plastics-and-hold-companies-responsible>.

¹⁴⁴ *Impact Assessment Act*, SC 2019, c 28 [*Impact Assessment Act*].

environment, and the health, social and economic conditions that are within the legislative authority of Parliament from adverse effects caused by a designated project.”¹⁴⁵ To do so, impact assessments under the *Impact Assessment Act* must take into account factors including:¹⁴⁶

- (a) the changes to the environment or to health, social or economic conditions and the positive and negative consequences of these changes that are likely to be caused by the carrying out of the designated project...;
- (b) mitigation measures that are technically and economically feasible and that would mitigate any adverse effects of the designated project;...
- (h) the extent to which the designated project contributes to sustainability;
- (i) the extent to which the effects of the designated project hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change;
- (j) any change to the designated project that may be caused by the environment;... and
- (t) any other matter relevant to the impact assessment that the Agency requires to be taken into account.

Similar to the *Canadian Environmental Assessment Act, 2012* before it, the *Impact Assessment Act* takes a ‘project list’ approach which means that to qualify for an impact assessment under the Act, projects must first be included in the list of “designated projects” or be qualified as a designated project by the Minister.¹⁴⁷ The list of designated projects is set out in the *Physical Activities Regulations* and includes:¹⁴⁸

¹⁴⁵ *Impact Assessment Act*, *supra* note 144, s 6(1)(b).

¹⁴⁶ *Ibid*, s 22(1).

¹⁴⁷ *Ibid*, s 9(1).

¹⁴⁸ *Physical Activities Regulations*, SOR/2019-285 [*Physical Activities Regulations*].

- a waste management facility located in a wildlife area, migratory bird sanctuary, or protected marine area;¹⁴⁹
- the disposal at sea, in a national marine conservation area, of waste or other matter at a new disposal at sea site or a new part of an existing disposal at sea site;¹⁵⁰
- the construction and operation of a new facility for the storage of irradiated nuclear waste;¹⁵¹
- the construction and operation of a new facility for the long-term management or disposal of irradiated nuclear waste;¹⁵²
- the expansion of an existing facility for the long-term management or disposal of irradiated nuclear waste, if the expansion would result in an increase in the area of the facility, at ground level, of 50% or more;¹⁵³
- the construction, operation, decommissioning or abandonment of a new facility that is not more than 500m from a natural water body and is used exclusively for the treatment, incineration, disposal, or recycling of hazardous waste;¹⁵⁴ and
- the expansion of an existing facility that is not more than 500m from a natural water body and is used exclusively for the treatment, incineration, disposal, or recycling of hazardous waste, if the expansion would result in an increase in hazardous water input capacity of 50% or more.¹⁵⁵

The Act also establishes the Impact Assessment Agency¹⁵⁶ (the “Agency”) whose work includes conducting or administering impact assessments, consultation procedures, research and compliance with the Act.¹⁵⁷ The Agency also has the

¹⁴⁹ *Physical Activities Regulations*, *supra* note 148, Schedule, s 1.

¹⁵⁰ *Ibid*, Schedule, s 3.

¹⁵¹ *Ibid*, Schedule, s 28(a).

¹⁵² *Ibid*, Schedule, s 28(b).

¹⁵³ *Ibid*, Schedule, s 29.

¹⁵⁴ *Ibid*, Schedule, s 56.

¹⁵⁵ *Ibid*, Schedule, s 57.

¹⁵⁶ *Ibid*, s 153.

¹⁵⁷ *Ibid*, s 155.

power to undertake studies and conduct research relating to environmental assessment.¹⁵⁸

Pest Control Products Act

The *Pest Control Products Act* governs the use and production of pesticides and other pest control products.¹⁵⁹ It includes the registration process for pest control products and authorizes the Minister to control the manufacture, possession, handling, storing, transport, import, distribution, or use of a pest control product unless it is properly registered or authorized under the legislation.¹⁶⁰

Canadian Energy Regulator Act

The new *Canadian Energy Regulator Act* (formerly the *National Energy Board Act*) establishes the Canadian Energy Regulator as an independent energy regulator.¹⁶¹ This is the new board under which oil and gas pipelines and electrical transmission lines are approved and regulated. The Canadian Energy Regulator also administers the *Canada Oil and Gas Operations Act* which oversees oil and gas development in the North.¹⁶²

The Canadian Energy Regulator's jurisdiction over pipeline construction and operation involves regulating the waste management associated with these developments.

Canada Labour Code

The occupational health and safety of employees working for organizations under federal jurisdiction is governed by Part II of the *Canada Labour Code*.¹⁶³ The Code requires employers to "ensure that the health and safety at work of every person employed by the employer is protected."¹⁶⁴ Safety is defined to include protection

¹⁵⁸ *Physical Activities Regulations*, *supra* note 148, s 156(2).

¹⁵⁹ *Pest Control Products Act*, SC 2002, c 28 [*Pest Control Products Act*].

¹⁶⁰ *Ibid*, s 6(1).

¹⁶¹ *Canadian Energy Regulator Act*, SC 2019, c 28, s 10.

¹⁶² *Canada Oil and Gas Operations Act*, SC 1992, c 35.

¹⁶³ *Canada Labour Code*, RSC 1985, c L-2 [*Canada Labour Code*].

¹⁶⁴ *Ibid*, s 124.

from danger and the definition of danger includes exposure to hazardous substances such as hazardous waste materials.¹⁶⁵

The Act, together with the *Occupational Health and Safety Regulations Canada*¹⁶⁶ detail the obligations of employers and the rights of employees related to exposure to hazardous substances, including hazardous waste.

Fisheries Act

The federal government is constitutionally responsible for fisheries and primarily extends this power through the *Fisheries Act*.¹⁶⁷ It is the *Fisheries Act*, which provides for some protection of fish habitat and limits waste disposal in areas of fish habitat.

Specifically, the *Fisheries Act* prohibits the 'throwing overboard of certain substances' stating:¹⁶⁸

36(1) No one shall

(a) throw overboard ballast, coal ashes, stones or other prejudicial or deleterious substances in any river, harbour or roadstead, or in any water where fishing is carried on;

(b) leave or deposit or cause to be thrown, left or deposited, on the shore, beach or bank of any water or on the beach between high and low water mark, remains or offal of fish or of marine animals; or

(c) leave decayed or decaying fish in any net or other fishing apparatus...

(3) Subject to subsection (4), no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where the deleterious substance or any other deleterious substance that results from the deposit of the deleterious substance may enter any such water.

¹⁶⁵ *Canada Labour Code*, *supra* note 163, s 122.

¹⁶⁶ *Occupational Health and Safety Regulations Canada*, SOR/86-304.

¹⁶⁷ *Fisheries Act*, SC 2019, c 14 [*Fisheries Act*].

¹⁶⁸ *Ibid*, ss 36(1) & (3).

The Act provides for exceptions to these prohibitions and states that the authority to authorize disposal can be written into a regulation.¹⁶⁹

Canada National Parks Act

The *Canada National Parks Act*¹⁷⁰ is the federal statute under which the various national parks in Canada are operated. The *National Parks Garbage Regulations*,¹⁷¹ authorized by this Act, provide the detailed regulations for dealing with solid waste in national parks.

Nuclear Safety and Control Act

The *Nuclear Safety and Control Act* regulates all aspects of nuclear energy and radioactive materials including waste products.¹⁷²

Indian Act

Under the *Indian Act*,¹⁷³ the *Indian Reserve Waste Disposal Regulations* govern the management of Indian Reservations.¹⁷⁴

¹⁶⁹ *Fisheries Act*, *supra* note 167, ss 36(4) & (5).

¹⁷⁰ *Canada National Parks Act*, SC 2000, c 32 [*Canada National Parks Act*].

¹⁷¹ *National Parks Garbage Regulations*, SOR/80-127 [*National Parks Garbage Regulations*].

¹⁷² *Nuclear Safety and Control Act*, SC 1997, c 9 [*Nuclear Safety and Control Act*].

¹⁷³ *Indian Act*, RSC 1985, c I-5 [*Indian Act*].

¹⁷⁴ *Indian Reserve Waste Disposal Regulations*, CRC, c 960 [*Indian Reserve Waste Disposal Regulations*].

Part Three: Types of Waste

Non-Hazardous Waste



The disposal of non-hazardous waste, often what you or I may think of as ordinary garbage, is mainly the responsibility of municipalities (with this power delegated by the provinces). The *Municipal Government Act (MGA)*¹⁷⁵ authorizes municipalities to engage in and regulate waste management activities as a public utility within their borders and it does so by including waste management facilities in the definition of “public utility”.¹⁷⁶

The MGA also allows a municipality, where it provides a municipal utility service, to prohibit any person other than the municipality from providing the same or a similar type of utility service in all or part of the municipality – enabling a waste management monopoly.¹⁷⁷ A municipality that provides waste management services as a public utility “must, when it is able to do so and subject to any terms, costs, or charges established by council, provide the municipal utility service to the parcel on the request of the owner or occupant of the parcel.”¹⁷⁸ Regional services

¹⁷⁵ MGA, *supra* note 41.

¹⁷⁶ *Ibid.*, s 1(y).

¹⁷⁷ *Ibid.*, s 33.

¹⁷⁸ *Ibid.*, s 34.

commissions were also established under the MGA to provide services, including waste management, on a regional basis.¹⁷⁹ These commissions are established by regulation and are located across the province.

The general waste management regulation in Alberta is the *Waste Control Regulation*,¹⁸⁰ which came into force on September 1, 1996. Authority for the *Waste Control Regulation* is found in the *EPEA* which states:¹⁸¹

The Lieutenant Governor in Council may make regulations

- (a) Designating anything as waste and exempting anything from the definition of waste;...
- (c) Respecting the collection, storage, treatment or disposal of waste on, into, or under land, water or ice; and...
- (e) Respecting the design, location, establishment, construction, operation and reclamation of waste management facilities.

The following section will explain what is considered to be non-hazardous waste, what the process for non-hazardous waste facility approval is, as well as some specifics about litter and the limited federal regulation of non-hazardous waste. To begin; however, it is important to first identify what is characterized as non-hazardous waste.

Definitions of Waste

General non-hazardous waste is known as municipal waste and is what is left after separately defining:

- Hazardous waste;
- Biomedical waste;
- Nuclear waste; and
- Oilfield waste.

¹⁷⁹ MGA, *supra* note 41, part 15.1.

¹⁸⁰ *Waste Control Regulation*, Alta Reg 192/1996 [*Waste Control Regulation*].

¹⁸¹ *EPEA*, *supra* note 5, s 187.

More specifically, the *Waste Control Regulation* defines waste as:¹⁸²

Any solid or liquid material or product or combination of them

- (i) That is intended to be treated or disposed of; or
- (ii) That is intended to be stored and then treated or disposed of,

but does not include oilfield waste or recyclables.

An identical definition of waste is also found in the *Activities Designation Regulation*,¹⁸³ the regulation that designates those activities requiring an environmental assessment under *EPEA*.

Why is the definition of waste important?

The definition of waste is critical because a different definition will result in different materials being characterized as a waste (or not), thereby impacting how and where they must be disposed of.

This issue was clearly seen in a recent Environmental Appeals Board decision which hung upon how waste should be defined.¹⁸⁴ This tribunal decision stemmed from a project proponent (“Cherokee”) being issued an environmental protection order (EPO) from the regional Director and immediately appealing that order to the Alberta Environmental Appeals Board.

The Director, when issuing the initial EPO, found that once Cherokee moved contaminated material from one place on the site to another and then used the material to build a berm, the material became waste. In turn, the Director found that if the material was contaminated, once becoming waste, it would be characterized further, as hazardous waste.¹⁸⁵ This finding was particularly relevant because if the

¹⁸² *Waste Control Regulation*, *supra* note 180, s 1 (II).

¹⁸³ *Activities Designation Regulation*, *supra* note 89, s 2 (t).

¹⁸⁴ *Cherokee Canada Inc. et al. v Director, Regional Compliance, Red Deer-North Saskatchewan Region, Operations Division, Alberta Environment and Parks* (26 February 2019) Appeal Nos. 16-055-056, 17-073-084, and 18-005-010-R [*Cherokee Canada Inc.*].

¹⁸⁵ *Ibid* at para 39.

contaminated material was considered to be hazardous waste, the site would be defined as an unauthorized hazardous waste landfill.¹⁸⁶

The Board, however, did not agree with the Director's characterization of the contaminated material as waste, finding that this interpretation was both "unreasonable and incorrect."¹⁸⁷ To make this finding, the Board relied on the definition of waste from the *Waste Control Regulation*, which states that to be considered waste, there must be an "intention" to dispose of the material.¹⁸⁸ This was differentiated by the Board from the remediation and reclamation work undertaken by the site operator – remediation and reclamation were not considered to be 'disposal'.¹⁸⁹ The Director did attempt to counter this viewpoint arguing that once the contaminated material was placed in its 'final resting spot', it had been disposed of, however, this argument was not adopted by the Board.¹⁹⁰ The Board reasoned that if this definition of waste was used, large amounts of contaminated materials currently on sites across the province would need to be transported to hazardous waste facilities – a feat which the Board considered to be difficult and unnecessary.¹⁹¹ It could be argued that the Board relied extensively and perhaps inappropriately on the policy implications of a specific legal interpretation rather than a strict reading of the statute.

The definition of waste also differentiates it from recyclables and case law across the country has severally ruled on the point in time when materials can be distinguished as either waste or recyclables. The British Columbia case of *R v Jopp Ventures Corp.* held that any recyclable material could be considered waste once discarded.¹⁹² This means that these materials would no longer be considered waste once/if they were converted into compost but, before that time and after disposal, they were rightfully considered waste and waste provisions would apply.¹⁹³ In a similar BC case, the Court

¹⁸⁶ *Cherokee Canada Inc.*, *supra* note 184 at para 39.

¹⁸⁷ *Ibid* at para 41.

¹⁸⁸ *Waste Control Regulation*, *supra* note 180, s 1(II); *Cherokee Canada Inc.*, *supra* note 184 at para 41.

¹⁸⁹ *Cherokee Canada Inc.*, *supra* note 184 at para 41.

¹⁹⁰ *Ibid* at para 42.

¹⁹¹ *Ibid* at para 43.

¹⁹² *R v Jopp Ventures Corp.*, 2001 BCSC 1051.

¹⁹³ *Ibid* at para 19.

of Appeal found that discarded materials remain 'waste' even if they have value, until such time as the material is converted into a useful material.¹⁹⁴

An Alberta decision also differentiates between waste and recyclables through the eyes of a landfill operator. In the case of *Bighorn (Municipal District No. 8) v Bow Valley Waste Management Commission*, the Court found that although materials may be waste to the person disposing of them in the landfill, they can also be valuable recyclables to the landfill operators and would therefore be defined as recyclables, rather than waste.¹⁹⁵ Notably, this decision was upheld at the Alberta Court of Appeal.¹⁹⁶

Facilities for Non-Hazardous Waste

The *EPEA* states that no person shall dispose of waste except¹⁹⁷

"at a waste management facility, or in a container the contents of which will be taken to a waste management facility, that is the subject of the appropriate approval, registration or notice required under this Act."

A waste management facility is then defined in the *EPEA* as "a facility for the collection, storage, treatment or disposal of waste."¹⁹⁸

Waste management facilities are categorized in two different manners under the *EPEA* and associated regulations. One type of categorization determines the type of authorization that a facility requires. A second categorization determines the

¹⁹⁴ *British Columbia (Minister of Environment, Lands and Parks) v Alpha Manufacturing Inc.* (1997) 150 VLR 4th 193. This idea is echoed in the New Brunswick decision of *Greenisle Environmental Inc. v New Brunswick*, 2007 NBCA 9 at para 22.

¹⁹⁵ *Bighorn (Municipal District No. 8) v Bow Valley Waste Management Commission*, 2013 ABQB 723 at para 97.

¹⁹⁶ *Ibid.*

¹⁹⁷ *EPEA*, *supra* note 5, s 176; The disposal of waste in an area outside of a designated waste facility can result in the issuance of a fine – see, for example, *Telus Communications Inc. v Director, Upper Athabasca Region, Alberta Environment and Parks* 2019 AEAB 12.

¹⁹⁸ *EPEA*, *supra* note 5, s 1 (ttt).

standards and requirements of the facility. The following section will outline these authorizations.

Authorizations for Waste Management Facilities

Waste management facilities that require an authorization must receive either an approval, a registration, or be subject to notification requirements.¹⁹⁹ The Schedule of Activities in the *EPEA* categorizes these waste management facilities by type, which means that those waste management facilities that present the most significant risk to the environment must receive an approval under *EPEA*. Those that pose a lesser risk must have a registration and those that pose the least risk are subject to notification provisions.²⁰⁰

It is against the law for a person to build or operate a waste management facility without the necessary approval or registration.²⁰¹ Similarly, it is prohibited to commence or continue any activity that requires notice without first providing the same²⁰² and the penalties for operating a waste management facility without the required authorization can be significant.²⁰³ Knowingly doing so could attract the highest penalty provided for under the *EPEA*. For an individual, that penalty could be a fine of up to \$100,000, imprisonment of up to two years, or both. For a corporation the fine could be as much as \$1,000,000.²⁰⁴

For other offences, the penalties range from \$50,000 for an individual to \$500,000 for a corporation.²⁰⁵ It is, however, a complete defence to prove that the accused did

¹⁹⁹ See also *EPEA*, *supra* note 5, Schedule of Activities, s 1(aa) the storage, treatment, processing or disposal of batteries, 5(e) landfills for petroleum, drilling or other waste, 5(g) an incinerator and 5(l) a site for subsurface disposal of solid or liquid waste, except private subsurface sewage disposal systems.

²⁰⁰ *Activities Designation Regulation*, *supra* note 89, s 2.

²⁰¹ *EPEA*, *supra* note 5, ss 60 & 61.

²⁰² *Ibid*, ss 87 & 88.

²⁰³ Fines can also be issued for the improper storage of waste – see for example *R v Universe Machine Corp* 2001 Carswell Alta 1816 in which the defendant company was fined \$25,000 for the improper storage of hazardous waste and hazardous recyclables.

²⁰⁴ *EPEA*, *supra* note 5, s 228(1).

²⁰⁵ *Ibid*, s 228(2).

everything reasonably possible to prevent the offence from occurring, even though it occurred anyway.²⁰⁶

The procedure for obtaining an approval or registration is also set out in the *EPEA*. Specifically, this Act sets out preconditions that must be fulfilled before an application for approval or registration can be successful.²⁰⁷ Firstly, it is important to note that if the provisions of the *EPEA* require that an environmental assessment be completed, no approval or registration can be issued until that is complete.²⁰⁸

Notably, waste management facilities that accept non-hazardous waste do not require an environmental assessment.²⁰⁹ However, an environmental assessment could be required for a non-hazardous waste facility if a Director directs it under Part 2, Division 2 of the *EPEA*. In deciding whether or not to do so, the Director must consider:²¹⁰

- (a) the location, size, and nature of the proposed facility;
- (b) the complexity of the activity of the facility and the technology to be employed in it;
- (c) any concerns in respect of the facility that have been expressed by the public;
- (d) the presence of other similar activities in the same general area; and
- (e) any other factors that the director considers relevant or that are established by regulation.

Whether an environmental assessment is required or not, the Minister retains the power to withhold an approval or registration if the Minister is of the opinion that it should not proceed because it is not in the public interest, having regard to the

²⁰⁶ *EPEA*, *supra* note 5, s 229.

²⁰⁷ *Ibid*, ss 61-75.

²⁰⁸ *Ibid*, s 63.

²⁰⁹ *Environmental Assessment (Mandatory and Exempted Activities) Regulation*, *supra* note 83, Schedule 1, Mandatory Activities.

²¹⁰ *EPEA*, *supra* note 5, s 44(3).

purposes of *EPEA*.²¹¹ If an applicant for an approval or a registration is indebted to the Government, the Director can also refuse to issue an approval or registration.²¹²

An authorization similar to an approval or registration is also required for an expansion or other changes to a waste management facility.²¹³

The detailed requirements for an approval or registration are contained in the *Approvals and Registrations Procedure Regulation*.²¹⁴ This regulation includes details about the location, capacity, and size of the activity; the nature of the activity; any information about approvals from the AER or NRCB; whether an environmental impact report was required; any existing approvals or registrations; any substances that will be released into the environment and justification for doing so; any environmental monitoring information; any measures to minimize the amount of waste produced; any impacts including surface disturbance; conservation and reclamation plans; public consultation plans; and any other required information.²¹⁵

The Regulation also enables the Director to waive these requirements if the Director is satisfied that they are not relevant to a particular application or if it is otherwise appropriate to do so.²¹⁶ However, the Director may not begin to consider an application until all of the required information is provided and the application is complete.²¹⁷

Before a decision is made on an application for an approval or registration, the Director may "require the applicant to hold meetings in the area where the activity or the proposed activity is or will be carried on in order that the public may obtain information from the applicant respecting the application."²¹⁸

²¹¹ *EPEA*, *supra* note 5, s 64.

²¹² *Ibid*, s 65.

²¹³ *Ibid*, s 67.

²¹⁴ *Approvals and Registrations Procedure Regulation*, Alta Reg 113/1993 [*Approvals and Registrations Procedure Regulation*].

²¹⁵ *Ibid*, s 3(1).

²¹⁶ *Ibid*, s 3(2).

²¹⁷ *Ibid*, s 4.

²¹⁸ *Ibid*, s 5(2).

Finally, the Director will review applications to determine whether the impact of the activity “is in accordance with the Act and the regulations made under the Act.”²¹⁹ This section also lists a number of matters that may be addressed in the review including:²²⁰

- proposed disposal methods and available alternate technologies;
- design plans and specifications;
- site suitability;
- the proposed monitoring programs;
- proposed reclamation plans; and
- the past performance of the applicant in ensuring environmental protection in respect of the activity.

If necessary, referral committees may also be established to help review applications for approvals, including those for waste management facilities.²²¹ If a referral committee is established, it has 90 days to make written recommendations to the Director.²²²

During the approval process, the Director must give notice of an application for an approval of a waste management facility or require the applicant to do so. The details of this process can be found in the *Environmental Protection and Enhancement (Miscellaneous) Regulation*.²²³ This notification process is designed to ensure that the public is aware of the application, enabling those members of the public who are “directly affected” by the application to submit to the Director a written statement of concern setting out that person’s concerns with respect to the application.²²⁴ Any statements of concern must be filed within 30 days of the last notice or within any longer time set out in the notice.²²⁵

²¹⁹ *Approvals and Registrations Procedure Regulation*, *supra* note 214, s 6(1).

²²⁰ *Ibid*, s 6(2).

²²¹ *EPEA*, *supra* note 5, s 10(2).

²²² *Approvals and Registrations Procedure Regulation*, *supra* note 214, s 7.

²²³ *Environmental Protection and Enhancement (Miscellaneous) Regulation*, Alta Reg 118/93, s 2.

²²⁴ *EPEA*, *supra* note 5, s 73(1).

²²⁵ *Ibid*, s 73(2).

In contrast, no advance notice is required for an application for a registration and there is no provision for a “directly affected” person to file a statement of concern for these projects. As a result, there is no legislated public participation process for waste management activities that require a registration.

Before making a final decision about an approval, the Director may circulate the proposed decision for comment from the applicant and those who have filed statements of concern.²²⁶ Then, in making a decision on an application for an approval or registration, the Director:²²⁷

- (a) shall, in addition to any criteria that the Director is required by the regulations to consider, consider any applicable written decision of the AER, the Alberta Utilities Commission, the Board, as defined in the *Agricultural Operation Practices Act*, under Part 2 of that Act, or the NRCB in respect of the subject-matter of the approval or registration, and
- (b) may consider any evidence that was before the AER, the Alberta Utilities Commission, the Board, as defined in the *Agricultural Operation Practices Act*, under Part 2 of that Act, or the NRCB in relation to that written decision.

Further, if security or insurance is required for a waste management facility, the Director may not issue an approval or registration until the security or insurance has been provided.²²⁸

The majority of these provisions apply to both approvals and registrations of non-hazardous waste management facilities. However, only approvals come with a right to appeal.²²⁹

The approval process for waste management facilities was a focus in the case of *Fenske v Alberta (Minister of Environment)*.²³⁰ This was an application for judicial review, meaning that the Court was being asked to review the legality of the decision

²²⁶ EPEA, *supra* note 5, s 74.

²²⁷ *Ibid*, s 68(4).

²²⁸ *Approvals and Registrations Procedure Regulation*, *supra* note 214, s 9.

²²⁹ EPEA, *supra* note 5, s 91(1).

²³⁰ *Fenske v Alberta (Minister of Environment)*, 2002 ABCA 135 [*Fenske v Alberta (Minister of Environment)*].

of the Minister of the Environment following a report and recommendation from the Environmental Appeals Board. The applicants were families living near a landfill operated by the Beaver Regional Waste Management Services Commission and the proponent was the Waste Management Services Commission who had applied to the AEP for a large expansion of a landfill.²³¹ The expanded landfill would occupy three quarter sections of land and would contain waste material both below and above the surface of the land to a total depth equivalent to a nine-storey building.²³²

The Director granted the project, finding that the changes were merely an expansion and no assessment was necessary – despite normally being required.²³³ This decision was appealed first to the Environmental Appeals Board where the Board recommended to the Minister that a new application for the facility be required.²³⁴

The Minister rejected the recommendation of the Board and that decision was appealed all the way up to the Court of Appeal where the Justices found that the standard of review for a Minister's decision was patent unreasonableness and that the Minister's decision not to follow the Board's recommendations was not patently unreasonable – thereby letting the Minister's decision stand.²³⁵ With this decision, the Minister's order to approve the waste management facility expansion without the use of an environmental impact assessment was restored.

Waste Control Regulation

Waste management facilities are also categorized under the *Waste Control Regulation*.²³⁶ Part 1 of the Regulation deals with hazardous waste and Class I landfills. Part 2 deals with hazardous recyclables and Part 3 deals with non-hazardous waste and the facilities that handle this waste including Class II and Class III landfills; Class I and Class II compost facilities; and waste storage sites.

²³¹ *Fenske v Alberta (Minister of Environment)*, *supra* note 230 at para 2.

²³² *Ibid* at para 2.

²³³ *Ibid* at para 5.

²³⁴ *Mizera v Director, Northeast Boreal and Parkland Regions, #2*, Alberta Environmental Protection re: Beaver Regional Waste Management Services (13 July 1999) Report & Recommendations, Appeal No. 98-231-98-233.

²³⁵ *Fenske v Alberta (Minister of Environment)*, *supra* note 230, at para 3.

²³⁶ *Waste Control Regulation*, *supra* note 180.

Each class of landfill can accept different types of waste. A Class II landfill can accept all solid waste, except hazardous waste.²³⁷ A Class III landfill accepts inert non-hazardous material such as demolition debris, concrete, asphalt, glass, ceramic materials, scrap metal, and wood.²³⁸ A Class I compost facility can accept all non-hazardous compostable waste²³⁹ and a Class II facility can accept only vegetative matter and manure.²⁴⁰ The *Waste Control Regulation* prohibits the deposit of waste anywhere other than in a waste management facility authorized under the regulation.²⁴¹ However, this prohibition does not apply to agricultural waste that a farmer disposes of on the farm or to inert waste used for reclamation.

Other Requirements

In addition to complying with the provisions of the *Waste Control Regulation*, operators of Class II and III landfills and Class I and II compost facilities (non-hazardous waste facilities) must comply with the standards and requirements set out in the appropriate Code of Practice – either for landfills²⁴² or compost facilities.²⁴³ A Code of Practice is a set of standards that apply to facilities that have received a registration under the *EPEA*.

These facilities must also be supervised by a certified operator or their assistant, with all names provided to the Director.²⁴⁴ The process of certification is outlined in sections 76 -79 of the *EPEA*.

Other prohibitions also apply to these facilities. For example, burning garbage is prohibited at waste management facilities unless²⁴⁵

²³⁷ *Waste Control Regulation*, *supra* note 180, s 1(j).

²³⁸ *Ibid*, s 1(k).

²³⁹ *Ibid*, s 1(e).

²⁴⁰ *Ibid*, s 1(f).

²⁴¹ *Ibid*, s 23.

²⁴² Alberta Environmental Protection, *Code of Practice for Landfills* (Edmonton: Alberta Environmental Protection, 1996) online: <http://www.ap.alberta.ca/documents/codes/LANDFILL.PDF> [Code of Practice for Landfills].

²⁴³ *Ibid*.

²⁴⁴ *Waste Control Regulation*, *supra* note 180, s 25.

²⁴⁵ *Waste Control Regulation*, *supra* note 180, s 26.

- (a) the burning is conducted in accordance with the *Substance Release Regulation*,²⁴⁶
- (b) the burning is done in an area that is
- i. constructed with a fire break consisting of barren mineral soil,
 - ii. located so that it is separated from disposal operations, storage compounds and buildings, and
 - iii. supervised at the time of building.

In addition, before burning occurs, the person responsible must give at least seven days' notice to local authorities, adjoining property owners, the Director, and local fire authorities of the proposed burning.²⁴⁷

Further, all compost facilities must be built so that²⁴⁸

- the generation of odours is minimized;
- run-on and run-off water is controlled so that surface water and groundwater are not contaminated; and
- animals and disease vectors are considered.

Currently, no laws regulate the importation or exportation of non-hazardous waste; however, this may change if the federal government institutes their promised ban on single use plastics.

²⁴⁶ *Substance Release Regulation*, Alta Reg 124/1993.

²⁴⁷ *Waste Control Regulation*, *supra* note 180, s 26(c).

²⁴⁸ *Ibid*, s 38.



Litter

Division 2, Part 9 of the *EPEA* is responsible for the management of litter in Alberta and 'waste' is given a different meaning for these provisions. Pursuant to this section of the Act, waste means:²⁴⁹

- (i) any solid or liquid material or product or combination of solid or liquid material or product, including, but not limited to,
 - (A) rubbish, refuse, garbage, paper, packaging, containers, bottles, cans, manure, human or animal excrement, sewage or the whole or a part of an animal carcass, or
 - (B) the whole or part of any article, raw or processed material, vehicle or other machinery that is disposed of; and
- (ii) any other thing that is designated as waste in the regulations.

Additionally, the *Waste Control Regulation* specifically provides that an unregistered and inoperative motor vehicle is considered waste.²⁵⁰

²⁴⁹ *EPEA*, *supra* note 5, s 168(k).

²⁵⁰ *Waste Control Regulation*, *supra* note 180, s 34.

It is also this division of the *EPEA* that contains a general prohibition against disposing of waste inappropriately. This section states:²⁵¹

No person shall dispose of waste except:

(a) at a waste management facility, or in a container the contents of which will be taken to a waste management facility, that is the subject of the appropriate approval, registration or notice required under this Act; or

(b) in accordance with the written authorization of the Director.

This includes specific provisions against disposing of waste on

- public land;²⁵²
- highways;²⁵³
- land owned by local authorities;²⁵⁴
- water or ice;²⁵⁵ and
- another person's land.²⁵⁶

In addition to the prohibition against disposing of waste on a highway, "transporting waste in a vehicle on a highway unless the waste is adequately contained, secured or covered to prevent it from falling off or being blown off the vehicle while being transported" is also prohibited.²⁵⁷ The *EPEA* also controls the cleanup of unsightly property when viewed from a highway. A highway for this provision is defined as being a highway under the *Highway Traffic Act*²⁵⁸ and to enforce this section, an inspector or investigator designated under the *EPEA* may issue an EPO to the owner

²⁵¹ *EPEA*, *supra* note 5, s 176.

²⁵² *Ibid*, s 178.

²⁵³ *Ibid*, s 179.

²⁵⁴ *Ibid*, s 180.

²⁵⁵ *Ibid*, s 181.

²⁵⁶ *Ibid*, s 182.

²⁵⁷ *Ibid*, s 179(2).

²⁵⁸ *Highway Traffic Act*, RSA 2000, c H-8.

or person in control of the unsightly property, requiring that it be cleaned up.²⁵⁹ In addition, the order can require that the person to whom it is directed:²⁶⁰

- (a) remedy the condition of the property in the manner and to the extent directed in the order;
- (b) demolish or remove any waste causing or contributing to the unsightliness of the property;
- (c) construct any thing to prevent the property from being visible from a highway; and
- (d) do any other thing to remedy the unsightliness of the property.

If an EPO against the owner of unsightly property is not complied with, the province can order the municipality to do the necessary work.²⁶¹ The municipality can then collect the cost from the occupant or the registered owner of the land. If payment is not made, the municipality can collect that amount as if it were property taxes.²⁶²

Municipal Bylaws

Often, local municipalities enforce these litter provisions and can enact bylaws further regulating waste management.²⁶³

Municipalities in Alberta are governed by the *Municipal Government Act* with only Indian Reserves and National Parks falling under federal jurisdiction – each with their own regulations that apply to solid waste disposal.

²⁵⁹ EPEA, *supra* note 5, s 183.

²⁶⁰ *Ibid*, s 183(3).

²⁶¹ *Ibid*, s 184.

²⁶² *Ibid*, s 185.

²⁶³ For example, City of Edmonton, consolidated bylaw 17555, *Waste Management Bylaw* (22 January 2019) and City of Calgary, bylaw 20M2001, *Waste and Recycling Bylaw* (1 January 2019).

Federal Regulations

Indian Reserve Waste Disposal Regulations

Waste management on reserves is governed by the federal *Indian Act*²⁶⁴ and the *Indian Reserve Waste Disposal Regulations*,²⁶⁵ authorized by that Act. Waste is defined in these Regulations to include “garbage, liquid and semi-liquid substances, landfill and scrap of all kinds and any combinations of any of the foregoing.”²⁶⁶

Under these Regulations, no one can operate a garbage dump or use reserve land for waste disposal without a permit²⁶⁷ nor can anyone who is authorized to use reserve land allow the land to be used for waste disposal without a permit.²⁶⁸ Similar to other waste management regulations, the *Indian Reserve Waste Disposal Regulations* also prohibit the burning of waste on reserve land, unless previously authorized.²⁶⁹

The permits for these activities may be authorized by the Minister.²⁷⁰ The Minister may, in writing, authorize the council of any band to issue permits under the Regulations for their reserve lands. This authorization must specify the manner in which the activity is to be exercised.²⁷¹

Permits may authorize:²⁷²

- the operation of a garbage dump;
- the use of reserve land for waste storage or disposal; and
- waste burning on reserve land.

²⁶⁴ *Indian Act*, *supra* note 173.

²⁶⁵ *Indian Reserve Waste Disposal Regulations*, *supra* note 174.

²⁶⁶ *Ibid*, s 2.

²⁶⁷ *Ibid*, s 3.

²⁶⁸ *Ibid*, s 4.

²⁶⁹ *Ibid*, s 10.

²⁷⁰ *Ibid*, s 5.

²⁷¹ *Ibid*, s 8.

²⁷² *Ibid*, s 5.

A permit must specify the authorized activity and the land on which the activity may proceed.²⁷³ Permits expire at the end of the calendar year and must be renewed annually.²⁷⁴ If a permit is not obtained, or is not properly followed, the Minister or the band council may cancel it and order the holder of the permit to close and clean up the dump or facility in a manner satisfactory to the Minister or the council.²⁷⁵

Every person who violates these Regulations is liable on summary conviction to a fine not exceeding \$100 or to imprisonment for a term not exceeding three months, or both.²⁷⁶

National Parks Garbage Regulations

The *National Parks Garbage Regulations*²⁷⁷ under the *Canada National Parks Act*²⁷⁸ govern solid waste disposal within the national parks in Alberta.

The Regulations define garbage as:²⁷⁹

- (a) animal and agricultural wastes, being manures, crop residues, animal offal such as carcass waste and entrails and other materials obtained from agricultural pursuits, stables, kennels, veterinary establishments and other such premises,
- (b) bulky wastes, being large items of refuse including appliances, furniture, vehicle parts under 35 kg, large containers and tree cuttings not exceeding 1 m in length or 10 cm in diameter, in bundles not exceeding 35 kg,
- (c) construction and demolition wastes, being waste building materials and rubble resulting from construction, repair, remodeling or demolition activities,

²⁷³ *Indian Reserve Waste Disposal Regulations*, *supra* note 174, s 6.

²⁷⁴ *Ibid*, s 7.

²⁷⁵ *Ibid*, ss 11 & 12.

²⁷⁶ *Ibid*, s 14.

²⁷⁷ *National Parks Garbage Regulations*, *supra* note 171.

²⁷⁸ *Canada National Parks Act*, *supra* note 170.

²⁷⁹ *National Parks Garbage Regulations*, *supra* note 171, s 2.

(d) liquid waste, being waste materials or substances that have sufficient moisture or other liquid contents to be free flowing but that are not suitable for disposal through a sewer system,

(e) rubbish, being

(i) combustibles, consisting of burnable materials such as paper, rags, cartons, boxes, wood excelsior, bedding, rubber, leather and plastics, and

(ii) non-combustibles, consisting of materials that are not burnable such as metal objects and containers, ceramics, metal foils and glass,

(f) solid wastes, being the useless, unwanted or discarded solid waste materials resulting from normal human activities including semi-liquid or wet wastes with insufficient liquid content to be free flowing,

(g) special wastes, being

(i) hazardous wastes, consisting of any waste that may present a hazard to persons, flora, fauna or public lands, including wastes of a pathological, an explosive, a highly flammable, a radioactive or a toxic nature,

(ii) sanitary wastes, consisting of any putrescible waste that is capable of producing conditions that may present a hazard to health,

(iii) natural waste, consisting of tree stumps, soil, sand and stone, and

(iv) other special wastes, consisting of materials so classified by the superintendent,

(h) trade waste, being petroleum products, scrap metal, machinery and vehicles and parts thereof, and

(i) yard rubbish, being prunings, grass clippings, weeds, leaves, and general garden wastes, other than solid wastes.

The Regulations give the park superintendent broad authority to “provide for the collection of garbage by a garbage collector in such portions of a park and at such times as he deems advisable.”²⁸⁰

This garbage collection is not to be used for:

- liquid wastes,
- trade wastes,
- special wastes,
- animal and agricultural wastes, and
- construction and demolition wastes.²⁸¹

Wastes that are not included in the above garbage collection regime are under the direct control of the superintendent.²⁸²

²⁸⁰ *National Parks Garbage Regulations*, *supra* note 171, s 3.

²⁸¹ *Ibid*, s 4.

²⁸² *Ibid*, s 8.

Hazardous Waste



Hazardous waste became a major public concern in the summer of 1978 when New York State officials ordered the emergency evacuation of hundreds of families living near the Love Canal on the American side of Niagara Falls.²⁸³ Toxic chemical waste dumped into an abandoned canal had created a danger for those living in the area and many residents were evacuated and relocated. Partly as a result of that, and similar incidents elsewhere, hazardous waste is now singled out for special treatment in both statute and regulation.

Division 3 of Part 9 of the *EPEA* and sections of the *Waste Control Regulation* primarily provide for control of hazardous waste in Alberta.

Additionally, hazardous waste that constitutes a fire hazard is regulated by the *Fire Code*²⁸⁴ which is a regulation under the *Safety Codes Act*. This Act authorizes safety

²⁸³ Michael H. Brown, "Love Canal and the Poisoning of America" (December 1979) *The Atlantic* online: <https://www.theatlantic.com/magazine/archive/1979/12/love-canal-and-the-poisoning-of-america/376297/>.

²⁸⁴ *Fire Code*, Alta Reg 21/2019.

code officers to investigate unsafe conditions, accidents, and fires.²⁸⁵ The *Forest and Prairie Protection Act* also applies to hazardous waste that constitutes a fire hazard.²⁸⁶

In particular, the transportation of hazardous waste is regulated by the *Dangerous Goods Transportation and Handling Act* and its regulations.²⁸⁷

If hazardous waste is allowed to escape, it poses a serious threat to public health and to the environment and in response, the law uses various means to minimize that threat. These include:

- defining and identifying hazardous waste;
- identifying and regulating those individuals that manage hazardous waste;
- monitoring the production, handling, and disposal of hazardous waste;
- specifying and providing acceptable methods of, and standards for, disposing of the waste;
- prohibiting certain activities related to the waste; and
- prohibiting the creation of certain types of waste.

This section will discuss the variety of regulatory mechanisms specific to hazardous waste including requirements for proper documentation, storage, tracking, and transport.

Definition of Hazardous Waste

Whether any particular waste is considered hazardous for scientific purposes depends on its chemical composition, concentration, and volume. Conversely, whether waste is considered hazardous for legislative and regulatory purposes depends on each statutory definition – and not necessarily the scientific characteristics of the waste.

For example, the *EPEA* defines hazardous waste as “hazardous waste within the meaning of the regulations”²⁸⁸ and allows the Lieutenant Governor in Council to make regulations “designating anything as hazardous waste for the purposes of this

²⁸⁵ *Safety Codes Act*, RSA 2000, c S-1, s 48(1) [*Safety Codes Act*].

²⁸⁶ *Forest and Prairie Protection Act*, RSA 2000, c F-19.

²⁸⁷ *Dangerous Goods Transportation and Handling Act*, *supra* note 130.

²⁸⁸ *EPEA*, *supra* note 5, s 1(bb).

Act, including designating classes of hazardous waste."²⁸⁹ Under this authority, the *Waste Control Regulation* defines hazardous waste as waste "that has one or more of the properties described in Schedule 1, but does not include those wastes listed in Schedule 2."²⁹⁰

Schedule 1 describes two types of hazardous waste. The first type is based upon the properties and scientific definition of the waste.²⁹¹ The next part of this Schedule lists substances that fall under the Regulation's second definition of hazardous waste. First on this list are "waste types listed in Table 3 of the Schedule to the *Alberta User Guide for Waste Managers* as amended from time to time" (the "User Guide").²⁹² Table 3 in the User Guide lists more than 100 different waste types that are to be considered as hazardous waste. The Schedule also refers to "commercial products or off-specification products" in Parts A and B of Table 4 of the Schedule to the *Alberta Users Guide for Waste Managers*.²⁹³ Paragraphs (c), (d), (f), and (g) of the Schedule state that any container which holds more than five litres of a product listed in Part A or Part B of Table 4 is considered to be hazardous waste as well.²⁹⁴

The difference between Part A and Part B products is that containers filled with Part A substances cease to be hazardous waste once they are empty, whereas empty containers of Part B substances continue to be hazardous waste until they are properly rinsed.²⁹⁵ The *Waste Control Regulation* defines an empty container as one "that contains less than 2.5 centimetres of the original contents or less than 3% of the original contents, whichever is the lesser amount."²⁹⁶ An unrinsed empty container is one that previously held a hazardous waste that has not been rinsed three times with

²⁸⁹ EPEA, *supra* note 5, s 193(b).

²⁹⁰ *Waste Control Regulation*, *supra* note 180, s 1(v).

²⁹¹ *Ibid*, Schedule 1, s 1.

²⁹² *Ibid*, Schedule 1, s 2(a).

²⁹³ *Ibid*, Schedule 1, ss 2(b) & (e).

²⁹⁴ *Ibid*, Schedule 1, ss 2(c), (d), (f) & (g).

²⁹⁵ Alberta Environmental Protection, *Alberta User Guide for Waste Managers* (Edmonton: Environmental Protection, 1996) at part 1A-28 online: <https://open.alberta.ca/dataset/03070d06-973f-4707-8ff3-6cef10fe93c4/resource/2ec1e4ef-ec17-420d-821f-c743028f38cd/download/albertauserguidewastemanagers-aug1996.pdf>.

²⁹⁶ *Waste Control Regulation*, *supra* note 180, s 1(a).

an appropriate amount and type of solvent or that has not been cleaned by another appropriate method.²⁹⁷

The Regulation also lists certain substances that are not to be considered hazardous waste - even if they are included in a definition elsewhere.²⁹⁸ This list includes:

- anything that you use in your home and throw into the garbage. This waste is not considered hazardous waste while in your possession or while unsegregated in a municipal waste management facility.²⁹⁹ A municipality, however, may regulate what you may or may not deposit through a municipal waste bylaw;³⁰⁰
- agricultural waste.³⁰¹ Agricultural waste is defined as “waste generated by a farmer”³⁰² and includes pesticides³⁰³ and their containers that may otherwise have been included in the definition of hazardous waste;
- anything that you and everyone else flush down the sanitary sewer system is not hazardous waste, at least once it finds its way into the sewage system, since the definition excludes domestic waste;³⁰⁴ and
- similarly, nuclear waste is not hazardous waste – its regulation is instead provided for by federal authorities.³⁰⁵

In addition to this list, most waste that would otherwise be considered hazardous waste is not if produced in small amounts.³⁰⁶ The threshold for this is “an amount less than 5 kilograms per month if a solid or 5 litres per month if a liquid and if the total

²⁹⁷ *Waste Control Regulation*, *supra* note 180, s 1(kk).

²⁹⁸ *Ibid*, Schedule 2.

²⁹⁹ *Ibid*, Schedule 2, s 1(a).

³⁰⁰ See the section on Non-Hazardous Waste.

³⁰¹ *Waste Control Regulation*, *supra* note 180, Schedule 2, s 1(b).

³⁰² *Ibid*, s 1(b).

³⁰³ Pesticides are primarily discussed in our section on agricultural waste; however, they can also be used in non-agricultural settings and in that case may be considered hazardous waste.

³⁰⁴ *Waste Control Regulation*, *supra* note 180, Schedule 2, s 1(c).

³⁰⁵ *Ibid*, Schedule 2, s 1(d).

³⁰⁶ i.e. waste that is listed in Table 4, Part B of the Schedule to the *Alberta User Guide for Waste Managers*, *supra* note 308.

quantity accumulated does not exceed 5 kilograms or 5 litres at one time."³⁰⁷ Thus, waste in these amounts does not need to be handled with the precautions that would otherwise apply to hazardous waste.

Other waste excluded from the definition of hazardous waste includes:

- waste resulting from emergency spill clean-ups, if the Director or an investigator has authorized the handling of the clean-up debris;³⁰⁸
- biomedical waste;³⁰⁹ and
- waste resulting from the treatment of hazardous waste where the treatment employs a method, technique or process that represents acceptable industry practice.³¹⁰

Documentation for Hazardous Waste

Personal Identification Numbers

The identification of those who handle hazardous waste is tracked using personal identification numbers which are issued by the Director to each handler. Unless a person, or the person's employer has a number, it is unlawful to:³¹¹

- generate hazardous waste;
- permit that hazardous waste to leave the premises where it was generated;
- collect hazardous waste from where it was generated;
- consign or transport hazardous waste;
- accept hazardous waste for transportation, treatment, or disposal; or
- store hazardous waste where the hazardous waste is generated by another person.

³⁰⁷ *Waste Control Regulation*, *supra* note 180, Schedule 2, s 1(g).

³⁰⁸ *Ibid*, Schedule 2, s 1(e).

³⁰⁹ *Ibid*, Schedule 2, s 1(f).

³¹⁰ *Ibid*, Schedule 2, s 1(h).

³¹¹ *EPEA*, *supra* note 5, s 188(1).

The Director sets out the application process for a personal identification number³¹² and can cancel a number at their discretion.³¹³

Tracking and Manifests

Waste manifests provide for the tracking of the movement of hazardous waste and according to the *EPEA*:³¹⁴

No person shall consign or transport or accept for transportation, storage, treatment or disposal any hazardous waste unless the waste is accompanied with a manifest that

(a) is completed in accordance with the regulations,

(b) accurately identifies the quantity, composition and points of origin and destination of the hazardous waste, and

(c) contains the personal identification number of each person consigning, transporting or accepting the waste.

Each consignor, carrier, and receiver of hazardous waste must complete the appropriate part of the manifest form³¹⁵ and the consignor must mail a copy to the Director within two business days of consigning the waste.³¹⁶ A carrier of the waste must then return signed copies of the form to the consignor and ensure that copies of the manifest accompany the waste during transportation.³¹⁷ Special provisions apply if more than one carrier hauls the waste.³¹⁸ At the end of transport, the receiver must then return signed copies to the carrier and mail a copy to the Director within two business days of receiving the waste.³¹⁹ When hazardous waste is consigned or

³¹² *EPEA*, *supra* note 5, s 188(2).

³¹³ *Ibid*, s 190.

³¹⁴ *Ibid*, s 191.

³¹⁵ *Waste Control Regulation*, *supra* note 180, s 7.

³¹⁶ *Ibid*, s 7(1)(b).

³¹⁷ *Ibid*, s 8.

³¹⁸ *Ibid*, s 10.

³¹⁹ *Ibid*, s 9.

transported it must be accompanied by the manifest.³²⁰ Exemptions to these provisions can be regulated by the Lieutenant Governor in Council.³²¹

Facilities for Hazardous Waste

The *EPEA* prohibits the disposal of hazardous waste except in accordance with an approval or registration, or as otherwise provided for under the Act.³²² The *Waste Control Regulation* also contains a prohibition against disposing hazardous waste in a landfill³²³ – setting out exceptions for Class I landfills.³²⁴

In order to be considered a Class I landfill, the landfill must have 2 liners, one of which is a synthetic liner, a leachate collection and removal system, a leak detection system between the 2 liners, and a groundwater monitoring system.³²⁵ The Regulation specifies the types of hazardous waste and the allowable concentrations of each that can be placed in Class I landfills.³²⁶ Wastes that are allowed to be disposed of in Class I landfills include:³²⁷

(a) solid hazardous waste containing one or more halogenated organic compounds in a combined concentration less than 1000 milligrams per kilogram, of which no more than 50 milligrams per kilogram is polychlorinated biphenyl;

(b) solid hazardous waste containing one or more of the following compounds in a combined concentration of less than 1000 milligrams per kilogram: (i) acetone; (ii) benzene; (iii) n-butyl alcohol; (iv) carbon disulphide; (v) cresol and cresylic acid; (vi) cyclohexanone; (vii) ethyl acetate; (viii) ethyl benzene; (ix)

³²⁰ *EPEA*, *supra* note 5, s 191.

³²¹ *Ibid*, s 193(a).

³²² *EPEA*, *supra* note 5, s 192. The incorrect disposal of hazardous waste can result in a criminal conviction or fine and is dealt with in numerous provincial and federal statutes. For example, the case of *R v 763966 Alberta Ltd.* 2017 ABPC 219 outlines the potential conviction that can result from the incorrect disposal of hazardous waste under the *National Parks Act*, SC 2000, c 32.

³²³ *Waste Control Regulation*, *supra* note 180, s 13(1).

³²⁴ *Ibid*, s 13(2).

³²⁵ *Ibid*, s 1(g).

³²⁶ *Ibid*, s 13(2).

³²⁷ *Ibid*, s 13(2).

ethyl ether; (x) isobutanol; (xi) methanol; (xii) methyl ethyl ketone; (xiii) nitrobenzene; (xiv) 2-nitropropane; (xv) pyridine; (xvi) toluene; (xvii) xylene;

(c) solid hazardous waste that ignites, reacts or corrodes according to a test method set out in the User Guide, that describes ignitable, reactive or corrosive hazardous waste, provided that those substances or mixtures of substances are not liable to ignite, propagate combustion, react or corrode under the conditions of disposal;

(d) solid hazardous waste producing a waste extract in which the concentration of each of the following substances, if present, is less than the following value: (i) arsenic: 500 mg/L; (ii) beryllium: 100 mg/L; (iii) cadmium: 100 mg/L; (iv) chromium (VI): 500 mg/L; (v) lead: 500 mg/L; (vi) mercury: 20 mg/L; (vii) nickel: 500 mg/L; (viii) selenium: 200 mg/L; (ix) silver: 100 mg/L; (x) thallium: 200 mg/L; and

(e) solid hazardous waste with a pH greater than 12.5.

It is unlawful to mix hazardous waste with any other substance, if the primary purpose of mixing is dilution³²⁸ or otherwise avoiding the requirements of the *Waste Control Regulation*.³²⁹

Storing Hazardous Waste

The *Waste Control Regulation* also regulates how hazardous waste must be stored, stating that it must be done in a manner so that:³³⁰

(a) it will not cause an adverse effect;

(b) any leakage is contained and prevented from entering into the remainder of the hazardous waste management facility and places beyond, including sewers and the ground underneath the site;

³²⁸ *Waste Control Regulation*, *supra* note 180, s 16(1).

³²⁹ *Ibid*, s 16(2).

³³⁰ *Ibid*, s 11(1).

(c) at least secondary containment is provided for liquid hazardous waste, and there are no openings in the secondary containment system that provide a direct connection to the area surrounding the system;

(d) the hazardous waste is adequately labelled, stating the identity of the hazardous waste that is being stored;

(e) incompatible hazardous wastes are stored in such a manner that there will be no contact between them, even in the event of a release; and

(f) routine inspections of the site can be performed.

It must also be stored in a place that:³³¹

(a) is secure from entry by unauthorized persons;

(b) is prominently identified as a hazardous waste management facility where hazardous waste is being stored;

(c) is equipped with suitable equipment to handle emergency situations,

(d) is provided with operators trained to respond to emergency situations specific to the hazardous waste stored; and

(e) is designed and maintained so that surface run-off water cannot enter the secondary containment system.

Further, specific rules apply to the storage of PCB wastes. PCB wastes contain more than 50 milligrams of PCB per kilogram of any chlorobiphenyl.³³² Anyone who stores more than 100 litres of PCB waste in liquid form, 100 kilograms of PCB waste in solid form, or either PCB liquid or solid waste that contains 1 kilogram or more of PCB must notify the Director in writing and keep detailed records about the waste.³³³ This notice must be given within 30 days of first storing the waste.³³⁴ It must disclose the name of

³³¹ *Waste Control Regulation*, *supra* note 180, s 11(2).

³³² *Ibid*, s 12(1)(a).

³³³ *Ibid*, s 1293).

³³⁴ *Ibid*, s 12(4)(a).

the person storing the waste, its location, and a description of the waste.³³⁵ Detailed records must also be provided to the Director every six months.

On the other hand, a hazardous waste management facility that is part of another operation does not need to be prominently identified as a hazardous waste management facility.³³⁶

Handling and Transport of Hazardous Waste

Import and Export of Hazardous Waste

The EPEA leaves most of the details of hazardous waste management to the regulations, including the import and export of hazardous waste. Specifically, the *Waste Control Regulation* requires that:³³⁷

- (1) No person shall knowingly import any hazardous waste into Alberta for the purpose of storage for a period exceeding 30 days without first obtaining written authorization from the Minister; and
- (2) No person shall knowingly import hazardous waste into Alberta for the purpose of disposal.

The majority of legislation dealing with the import and export of hazardous waste is found at the federal level.

Federal laws regarding Handling and Transport

Federal control of hazardous waste primarily involves the import and export of hazardous wastes. In particular, Division 8 of Part 7 of CEPA is titled “Control of Movement of Hazardous Waste and Hazardous Recyclable Material and of Prescribed Non-hazardous Waste for Final Disposal.”³³⁸

Before importing, exporting, or conveying a hazardous waste through Canada for final disposal elsewhere, a person must notify the Minister, pay the prescribed fee,

³³⁵ *Waste Control Regulation*, *supra* note 180, s 12(4)(b).

³³⁶ *Ibid*, s 11(3).

³³⁷ *Ibid*, s 15.

³³⁸ *CEPA*, 1999, *supra* note 7, Part 7, Div 8.

and receive the applicable permit.³³⁹ This notice must comply with the provisions of the *Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations*.³⁴⁰ Once complete, it is unlawful to abandon hazardous waste in the course of being imported or exported.³⁴¹

An export permit for hazardous waste must state that the authorities of the country of destination have authorized the final disposal.³⁴² The waste must then be handled in accordance with the permitting conditions³⁴³ and requirements of Parts 2 and 3 of the *Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations*.³⁴⁴ The federal Minister also has the right to refuse to allow the export of hazardous waste if they are of the opinion that the waste “will not be managed in a manner that will protect the environment and human health against the adverse effects that may result.”³⁴⁵ In doing so, the Minister must consult with the government of the jurisdiction of destination of the waste before refusing to allow its export.³⁴⁶

If the destination government lacks the authority to approve the waste but the Minister is of the opinion that the waste will be managed in a manner that will protect the environment and human health, the Minister may issue a permit even without prior authorization, so long as the destination government has indicated support.³⁴⁷

The Minister can also issue an import or export permit subject to the requirement that the permit holder develop and implement a plan to reduce or phase out the production of the particular hazardous waste.³⁴⁸ The Minister may choose to prohibit,

³³⁹ *CEPA, 1999, supra note 7, s 185(1)*.

³⁴⁰ *Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations, SOR/2005-149 [Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations]*.

³⁴¹ *CEPA, 1999, supra note 7, s 186(2)*.

³⁴² *Ibid, s 185(1)(b)(i)*.

³⁴³ *Ibid, s 185(1)(c)*.

³⁴⁴ *Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations, supra note 340*.

³⁴⁵ *CEPA, 1999, supra note 7, s 185(2)*.

³⁴⁶ *Ibid, s 185(3)*.

³⁴⁷ *Ibid, s 185(4)*.

³⁴⁸ *Ibid, s 188*.

completely or partially, the import or export of waste in accordance with international environmental agreements.³⁴⁹

CEPA requires that the name of the importer or exporter, together with the name and specification of the relevant waste is published.³⁵⁰ Further, the Regulations prescribe the insurance that importers and exporters must have before the movement of waste is allowable.³⁵¹

Specifically, the *Interprovincial Movement of Hazardous Waste Regulations* set out requirements for hazardous waste that is a solid in a quantity of 5kg or more; a liquid in a quantity of 5L or more; or a liquid or solid (or mixture) in a quantity of 500 g or more that contains PCBs.³⁵² For those wastes that apply, the Regulations then go on to specify manifest requirements³⁵³ for their transport, including requirements specific to the consignor, authorized carrier, and consignee.³⁵⁴

Along with CEPA, the federal *Transportation of Dangerous Goods Act, 1992* is designed to promote public safety while transporting dangerous goods.³⁵⁵ The Act prevents any person from importing, offering for transport, handling, or transporting a dangerous good unless safety, documentation, and containment standards are met.³⁵⁶ The Act specifies rules for the containment,³⁵⁷ inspection,³⁵⁸ monitoring and compliance,³⁵⁹ potential offences,³⁶⁰ and handling of dangerous goods.

³⁴⁹ CEPA, 1999, *supra* note 7, s 186(1).

³⁵⁰ *Ibid*, s 187.

³⁵¹ *Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations*, *supra* note 340, s 37.

³⁵² *Interprovincial Movement of Hazardous Waste Regulations*, SOR/2002-301.

³⁵³ *Ibid*, s 3.

³⁵⁴ *Ibid*, s 4.

³⁵⁵ *Transportation of Dangerous Goods Act, 1992*, *supra* note 131.

³⁵⁶ *Ibid*, s 5.

³⁵⁷ *Ibid*, ss 8 & 9.

³⁵⁸ *Ibid*, ss 10 – 13.

³⁵⁹ *Ibid*, ss 15 – 17.

³⁶⁰ *Ibid*, s 33.

The Act also provides the Governor in Council with broad powers to create and enforce regulations.³⁶¹ For example, the *Transportation of Dangerous Goods Regulations* which provide specific rules for a variety of dangerous goods.³⁶²

Agricultural Waste



The *Waste Control Regulation* defines agricultural waste as “waste generated by a farmer”³⁶³ and specifically excludes it from the definition of hazardous waste and the accompanying hazardous waste provisions in the *EPEA*.³⁶⁴ Similarly, prohibitions contained in the *Waste Control Regulation* against depositing waste any place other than in a waste management facility do not apply to the “disposal of agricultural waste by a farmer on his own land where the waste is produced on his farm.”³⁶⁵

Pesticides and empty pesticide containers constitute a significant portion of dangerous agricultural waste and are separately regulated. Notably, we chose to deal with pesticides in our section on agricultural waste, but this is not the only place where pesticides may be found or used.

³⁶¹ *Transportation of Dangerous Goods Act*, 1992, *supra* note 131, s 27.

³⁶² *Transportation of Dangerous Goods Regulations*, SOR/2019101 [*Transportation of Dangerous Goods Regulations*].

³⁶³ *Waste Control Regulation*, *supra* note 180, s 1(b).

³⁶⁴ *Ibid*, Schedule 2, s 1(b).

³⁶⁵ *Ibid*, s 23(2)(a).

Specifically, this section will discuss in more depth two areas of waste that often fall under the regulatory regime of agricultural waste: pesticides and dead animals.

Pesticides

Provincial (Alberta)

Part 8, Division 1 of the *EPEA* deals with pesticides and hazardous substances generally.

Where the handling or disposal of a hazardous substance or pesticide may cause an adverse effect, the Director is authorized to issue an EPO to the person responsible.³⁶⁶ However, where the handling or disposal was authorized under the *EPEA*, no such order may be issued unless the adverse effect was not reasonably foreseeable when the release was originally authorized.³⁶⁷ Despite this restriction, in an emergency, the Director, an investigator, or an inspector may issue an EPO, whether the use was authorized or not.³⁶⁸ The Director may use an EPO to control anything that, in the Director's opinion, may be contaminated by the substance or pesticide.³⁶⁹

It is also an offence to keep, store, or transport a hazardous substance or pesticide in a way that allows the substance to come into contact or contaminate any plants, animals, food, or drink.³⁷⁰ Fines of up to \$50,000 for an individual or \$500,000 for a corporation can be issued for failing to prevent contamination.³⁷¹

Pesticides and their containers can only be disposed of according to regulation³⁷² - specifically, the *Pesticide Sales, Handling, Use and Application Regulation (PSHUA)*.³⁷³ For example, non-refillable plastic or metal containers which contained more dangerous types of pesticides must be disposed of in specially designated container

³⁶⁶ *EPEA*, *supra* note 5, s 158(1).

³⁶⁷ *Ibid*, s 158(2).

³⁶⁸ *Ibid*, s 160.

³⁶⁹ *Ibid*, s 156.

³⁷⁰ *Ibid*, s 155.

³⁷¹ *Ibid*, s 228(2).

³⁷² *Ibid* 5, s 163(3).

³⁷³ *Pesticide Sales, Handling, Use and Application Regulation*, Alta Reg 24/1997 [*Pesticide Sales, Handling, Use and Application Regulation*].

collection sites³⁷⁴ and retail vendors must take back any re-fillable containers that previously held these pesticides.³⁷⁵

Containers which previously held less dangerous pesticides may be disposed of in a Class II landfill.³⁷⁶ Similarly, grain or seed that has been treated with pesticide may be disposed of in a Class II landfill so long as prior authorization is obtained from the landfill operator or the landfill is approved by the Director.³⁷⁷ Certain pesticides that are no longer approved for use must also be accepted back by the manufacturer or distributor for disposal, as recommended by the Director.³⁷⁸

Despite these requirements, the PSHUA does not require a licence to handle more dangerous pesticide wastes. Those handling or storing pesticides, must comply with the *Environmental Code of Practice for Pesticides*.³⁷⁹ A further limit is set on pesticide concentrate that falls within the definition of hazardous waste and which may only be disposed of in accordance with the *Waste Control Regulation*.³⁸⁰

Federal

Federally, the *Pest Control Products Act* governs pesticides and other pest control products.³⁸¹ A pest control product is defined as:³⁸²

(a) a product, an organism or a substance, including a product, an organism or a substance derived through biotechnology, that consists of its active ingredient, formulants and contaminants, and that is manufactured, represented, distributed or used as a means for directly or indirectly controlling,

³⁷⁴ *Pesticide Sales, Handling, Use and Application Regulation*, *supra* note 373, s 28.

³⁷⁵ *Ibid*, s 30.

³⁷⁶ *Ibid*, s 29(1).

³⁷⁷ *Ibid*, s 29(2).

³⁷⁸ *Ibid*, s 31.

³⁷⁹ *Ibid*, ss 10 & 32(1); *Environmental Code of Practice for Pesticides* (Edmonton: Alberta Environmental Protection, 2010) online: <http://www.gp.alberta.ca/documents/codes/PESTICIDE.PDF>.

³⁸⁰ *Pesticide Sales, Handling, Use and Application Regulation*, *supra* note 373, s 32(2).

³⁸¹ *Pest Control Products Act*, *supra* note 159.

³⁸² *Ibid*, s 2.

destroying, attracting or repelling a pest or for mitigating or preventing its injurious, noxious or troublesome effects;

(b) an active ingredient that is used to manufacture anything described in paragraph (a); or

(c) any other thing that is prescribed to be a pest control product.

In turn, the Act's 'primary objective' is, "to prevent unacceptable risks to individuals and the environment from the use of pest control products."³⁸³ The Act prohibits the manufacture, possession, handling, storing, transport, import, distribution, or use of a pest control product unless it is properly registered or authorized under the legislation.³⁸⁴ In particular, no person shall "manufacture, possess, handle, store, transport, distribute, use or dispose of a pest control product in a way that endangers human health or safety or the environment."³⁸⁵ Penalties are available for the contravention of these sections.³⁸⁶

The Minister also retains the discretion to amend or cancel the registration³⁸⁷ of a pest control product for a number of reasons including if it does not satisfy the precautionary principle. Specifically, the Act states that "[w]here there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent adverse health impacts or environmental degradation."³⁸⁸

Export and import jurisdiction generally falls to the federal government and pesticides are no exception. The *Pest Control Products Act* also sets out export controls³⁸⁹ for

³⁸³ *Pest Control Products Act*, *supra* note 159, s 4(1).

³⁸⁴ *Ibid*, s 6(1).

³⁸⁵ *Ibid*, s 6(8).

³⁸⁶ *Ibid*, s 6(9).

³⁸⁷ *Ibid*, s 21(2).

³⁸⁸ *Ibid*, s 20(2).

³⁸⁹ *Ibid*, ss 33 & 34.

these products, including an export control list and prohibitions for the export of products included on the above list.³⁹⁰

In conjunction, the *Pest Control Products Regulations* prescribe the following as pest control products:³⁹¹

(a) a device that is manufactured, represented, distributed or used to directly or indirectly control, destroy, attract or repel a pest or to mitigate or prevent the injurious, noxious or troublesome effects of a pest; and

(b) a compound or substance that is not an ingredient of a pest control product described in paragraph (a) of that definition but is added to or used with such a product to enhance or modify its physical or chemical characteristics or to modify an effect on host organisms in connection with which the product is intended to be used.

The Regulation also sets out those pest control products that are exempt from registration and from the above definition.³⁹²

Pest control products are divided by product class³⁹³ from:

- 'domestic' which are those products to be distributed primarily to the general public for home use (and which would not fall under the definition of agricultural waste); to
- 'manufacturing' which are those products to be used in the manufacture of a pest control product or product under the *Feeds Act*³⁹⁴ or *Fertilizers Act*.³⁹⁵

From there, the regulation provides more specifics for registration and other definitions for classifying and controlling pest control products.

³⁹⁰ *Pest Control Products Act*, *supra* note 159, ss 33(1) & (2).

³⁹¹ *Pest Control Products Regulations*, SOR/2006-124, s 2.

³⁹² *Ibid*, ss 3 & 4.

³⁹³ *Ibid*, s 5.

³⁹⁴ *Feeds Act*, RSC 1985, c F-9.

³⁹⁵ *Fertilizers Act*, RSC 1985, c F-10.

Other regulations under the Act include:

- *List of Pest Control Product Formulants and Contaminants of Health or Environmental Concern*;³⁹⁶
- *Pest Control Product Fees and Charges Regulations*;³⁹⁷
- *Pest Control Products Incident Reporting Regulations*;³⁹⁸
- *Pest Control Products Sales Information Reporting Regulations*;³⁹⁹ and
- *Review Panel Regulations*.⁴⁰⁰

Dead Animals

The disposal of dead animals must comply with the provisions of the *Animal Health Act*⁴⁰¹ and the *Disposal of Dead Animals Regulation*.⁴⁰²

The owner of a dead animal must dispose of the animal within seven days of its death.⁴⁰³ Additionally, if the animal is known or suspected to have had a disease, the owner of the dead animal shall dispose of it in accordance with directions from an inspector appointed under either the provincial Act or the federal *Health of Animals Act*.⁴⁰⁴ If the animal was euthanized with drugs or chemical substances, the owner must also keep it from scavengers until its final disposal.⁴⁰⁵

However, animals that are not suspected of dying of infectious diseases and were not euthanized with drugs or chemical substances may be disposed of in several ways, including:

³⁹⁶ *List of Pest Control Product Formulants and Contaminants of Health or Environmental Concern*, SI/2005-114.

³⁹⁷ *Pest Control Product Fees and Charges Regulations*, SOR/2017-9.

³⁹⁸ *Pest Control Products Incident Reporting Regulations*, SOR/2006-260.

³⁹⁹ *Pest Control Products Sales Information Reporting Regulations*, SOR 2006-261.

⁴⁰⁰ *Review Panel Regulations*, SOR/2008-22.

⁴⁰¹ *Animal Health Act*, SA 2007, c A-40.2.

⁴⁰² *Disposal of Dead Animals Regulation*, Alta Reg 132/2014 [*Disposal of Dead Animals Regulation*].

⁴⁰³ *Ibid*, s 3(3).

⁴⁰⁴ *Health of Animals Act*, SC 1990, c 21.

⁴⁰⁵ *Disposal of Dead Animals Regulation*, *supra* note 402, s 3(5).

- in a farm burial pit, so long as the pit complies with the Regulations;⁴⁰⁶
- in a Class I or Class II landfill as defined by the *Waste Control Regulation*;⁴⁰⁷
- through incineration in accordance with the *EPEA* and associated regulations;⁴⁰⁸
- in a Class I compost facility as defined by the *Waste Control Regulation*;⁴⁰⁹
- in a farm open compost pile that complies with the Regulations;⁴¹⁰
- by providing the animal as food for other animals;⁴¹¹
- at a rendering plant operated under a permit issued under the federal *Health of Animals Act*;⁴¹² and
- through natural disposal which is a method of disposal allowing for scavenging.⁴¹³

⁴⁰⁶ *Disposal of Dead Animals Regulation*, *supra* note 402, s 8.

⁴⁰⁷ *Ibid*, s 7.

⁴⁰⁸ *Ibid*, s 9.

⁴⁰⁹ *Ibid*, s 10.

⁴¹⁰ *Ibid*, s 11.

⁴¹¹ *Ibid*, s 12.

⁴¹² *Ibid*, s 13.

⁴¹³ *Ibid*, s 14.

Biomedical Waste



Biomedical waste is specifically defined as:⁴¹⁴

[w]aste that is generated by

- (i) human health care facilities;
- (ii) medical research and teaching establishments;
- (iii) clinical testing or research laboratories; and
- (iv) facilities involved in the production or testing of vaccines

and contains or may contain pathogenic agents that may cause disease in humans exposed to the waste.

The *Public Health Act* authorizes the creation of regulations to deal with the handling and disposal of biomedical waste.⁴¹⁵ However, to date, there are no such regulations. In the meantime, the general nuisance sections of the *Public Health Act* can be used

⁴¹⁴ *Waste Control Regulation*, *supra* note 180, s 1(c).

⁴¹⁵ *Public Health Act*, *supra* note 121.

to control biomedical waste.⁴¹⁶ Additionally, and to the extent that biomedical waste could be a vector in transmitting a communicable disease, it is regulated by the *Communicable Diseases Regulation*⁴¹⁷- also under the *Public Health Act*.

Biomedical waste is not mentioned in the *EPEA* and is specifically excluded from the definition of hazardous waste in the *Waste Control Regulation*.⁴¹⁸

Facilities for Biomedical Waste

The *Code of Practice for Landfills*, incorporated by the *Waste Control Regulation*,⁴¹⁹ states:⁴²⁰

[w]here a landfill accepts any of the following wastes, the person responsible shall include in the operations plan procedures for their special handling, as follows:

- (a) biomedical waste shall be managed in compliance with the latest edition of Guidelines for the Management of Biomedical Wastes in Canada, published by the Canadian Council of Ministers of the Environment.

The Guidelines⁴²¹ published by the Canadian Council of Ministers of the Environment (CCME) only have legal effect if incorporated by reference into legislation or regulations – such as, in this case, the *Code of Practice for Landfills*.

⁴¹⁶ *Public Health Act*, *supra* note 121, s 62.

⁴¹⁷ *Communicable Diseases Regulation*, Alta Reg 238/1985.

⁴¹⁸ *Waste Control Regulation*, *supra* note 180, Schedule 2, s 1(f).

⁴¹⁹ *Ibid*, s 24(1)(b).

⁴²⁰ *Code of Practice for Landfills*, *supra* note 242, s 7(5).

⁴²¹ Canadian Council of Ministers of the Environment, *Guidelines for the Management of Biomedical Waste in Canada* (February 1992) online: https://www.ccme.ca/files/Resources/waste/hazardous/pn_1060_e.pdf.

Oilfield Waste



The regulation of oilfield waste differs because the Alberta Energy Regulator (AER) is responsible for a significant amount of oilfield product management. There are also specific requirements for oilfield waste tracking, import and export, and facilities, all of which will be identified in the following section.

The Alberta Energy Regulator

The AER, created by the *Responsible Energy Development Act (REDA)*,⁴²² regulates the oil, natural gas, and coal industry. The *REDA* mandates the AER:⁴²³

- (a) to provide for the efficient, safe, orderly and environmentally responsible development of energy resources in Alberta through the Regulator's regulatory activities; and

⁴²² *Responsible Energy Development Act*, SA 2012, c R-17.3 [*Responsible Energy Development Act*].

⁴²³ *Ibid*, s 2(1).

(b) in respect of energy resource activities, to regulate

(i) the disposition and management of public lands,

(ii) the protection of the environment, and

(iii) the conservation and management of water, including the wise allocation and use of water,

in accordance with energy resource enactments and, pursuant to this Act and the regulations, in accordance with specified enactments.

According to this mandate, the AER must, when considering energy projects and whether they are in the public interest, consider the effects on the environment, ensuring “environmentally responsible development” and ensuring protection of the environment with respect to energy resource activities.

Under *REDA*, the AER is also responsible for administering both the *EPEA* and the *Water Act* in relation to energy resource activities, including waste provisions.⁴²⁴

The AER is also governed by the *Oil and Gas Conservation Act*⁴²⁵ and the *Oil and Gas Conservation Rules*⁴²⁶ promulgated under it, along with Directives, Bulletins, Specified Enactment Directions, Subsurface Orders, Informational Letters, and Manuals created, managed, and enforced by the AER. These documents describe new regulatory requirements, practices, and expectations and provide details for conduction and reporting on certain kinds of operations.⁴²⁷ These are also enabled by the *REDA* which specifically authorizes the AER to take any action and make any order or direction to fulfill their mandate under the Act.⁴²⁸

The AER will often issue requirements and specifics in the form of Directives. Some of the Directives that are particularly relevant are listed below.

⁴²⁴ *Specified Enactments (Jurisdiction) Regulation*, Alta Reg 201/2013.

⁴²⁵ *Oil and Gas Conservation Act*, RSA 2000, c O-6 [*Oil and Gas Conservation Act*].

⁴²⁶ *Oil and Gas Conservation Rules*, Alta Reg 151/1971 [*Oil and Gas Conservation Rules*].

⁴²⁷ AER - Regulating Development, *supra* note 30.

⁴²⁸ *Responsible Energy Development Act*, *supra* note 422, s 14.

Directive 058, the *Oilfield Waste Management Requirements for the Upstream Petroleum Industry*, sets out the appropriate management of oilfield waste and is a detailed direction on waste management. The introduction states:⁴²⁹

“[t]his document addresses a wide range of waste management issues that apply to oilfield wastes. It represents a consolidation of information on all oilfield waste management matters that come under the jurisdiction of the Alberta Energy and Utilities Board [now the AER] and other issues which indirectly affect the management of wastes that are produced by the upstream oil and gas industry in Alberta.”

Directive 047 sets out the reporting requirements for oilfield waste management facilities and is designed to work in conjunction with Directive 058. The Directives provides an example stating, “an approval holder that transfers and processes waste must follow the reporting requirements in *Directive 058* for the waste transfer, and it must follow the reporting requirements in this directive for the waste processing.”⁴³⁰ This reporting process helps AER track oilfield and non-oilfield waste through their receipt, processing and disposal.

Directive 050 deals specifically with the management of drilling waste. This Directive sets out the requirements for the treatment and disposal of drilling waste in Alberta and defines drilling waste as the “mud and cuttings generated while drilling a well (including oil sands exploration wells), and directional drilling for pipeline construction.”⁴³¹

The Directive is designed to:⁴³²

⁴²⁹ Alberta Energy Regulator, *Directive 058: Oilfield Waste Management Requirements for the Upstream Petroleum Industry* (1 February 2006) at 1.0 online: <https://www.aer.ca/documents/directives/Directive058.pdf> [Directive 058].

⁴³⁰ Alberta Energy Regulator, *Directive 047: Waste Reporting Requirements for Oilfield Waste Management Facilities* (2 April 2013) at 3 online: <https://www.aer.ca/documents/directives/Directive047.pdf>.

⁴³¹ Alberta Energy Regulator, *Directive 050: Drilling Waste Management* (1 August 2019) at s 1 online: <https://www.aer.ca/documents/directives/Directive050.pdf>.

⁴³² *Ibid* at s 1.1.

- provide the licensee of a well or pipeline with methods to manage drilling waste that are protecting of the environment and harmonized with other waste management practices;
- enable sites used to manage drilling waste to be restored to equivalent land capability; and
- ensure drilling waste management practices meet AER requirements and environmental outcomes through monitoring and reporting.

One area of waste that is not specifically dealt with through these AER directives is waste known as naturally occurring radioactive material (“NORM”). This is material found in the environment that contains radioactive elements of natural origin – primarily uranium, thorium, and potassium. The release of these materials can often occur as oil and gas production residue.⁴³³

The challenge is that although concentrations of NORM usually begin quite low, higher concentrations can result when the material is processed – this is referred to a technologically enhanced NORM or TENORM.⁴³⁴

In Alberta, NORM is dealt with primarily under the federal guidelines found in the Canadian Guidelines for the Management of Naturally Occurring Radioactive Materials.⁴³⁵ Beyond this, the 1995 document “Guidelines for the Handling of Naturally Occurring Radioactive Materials (NORM) in Western Canada” is designed as an Occupational, Health and Safety Document which sets out a technical reference manual and operational guidelines for NORM management.⁴³⁶ Specifically, this manual includes a section on managing NORM in the upstream oil and gas industry and sets out some waste disposal

⁴³³ Canadian Nuclear Safety Commission, “Naturally occurring radioactive material (NORM)” (October 2016) online: <http://nuclearsafety.gc.ca/eng/resources/fact-sheets/naturally-occurring-radioactive-material.cfm>.

⁴³⁴ Health Canada, “Canadian Guidelines for the Management of Naturally Occurring Radioactive Materials (NORM)” (2011) online: https://www.canada.ca/content/dam/hc-sc/migration/hc-sc/ewh-semt/alt_formats/pdf/pubs/contaminants/norm-mrn/norm-mrn-eng.pdf.

⁴³⁵ *Ibid.*

⁴³⁶ Western Canadian NORM Committee, “Guidelines for the Handling of Naturally Occurring Radioactive Materials (NORM) in Western Canada” (August 1995) online: <https://open.alberta.ca/dataset/ccebaef1-8131-4bf0-abb7-c8b6e6e3c6e9/resource/367a2e6c-5e8d-4296-bdb1-270f262ba49b/download/norm-guidelines.pdf> [Guidelines for the Handling of Naturally Occurring Radioactive Materials (NORM) in Western Canada].

options of NORM in this sector.⁴³⁷ Despite this manual providing some guidance for operators who may come in contact with NORM, the document is highly outdated and is not mandatory, thereby limiting its use.

This lack of regulatory framework for NORMs is clearly a gap in our regulation of oilfield wastes and should be addressed with specific Alberta based regulations focused on the prevention of harm.

Definitions

Oilfield waste is not specifically defined in the *EPEA*, however, the Act does authorize the Lieutenant Governor in Council to make regulations “designating anything as waste and exempting anything from the definition of waste.”⁴³⁸

Oilfield waste is, however, specifically defined as “an unwanted substance or mixture of substances that results from the construction, operation, abandonment, or reclamation of a facility, well site, or pipeline within the meaning of the *Oil and Gas Conservation Act* and the regulations under that Act but does not include an unwanted substance or mixture of substances from such a source that is received for storage, treatment, disposal or recycling at a facility authorized for that activity pursuant to the *EPEA*.”⁴³⁹

An oil production site is defined as “the field production facilities for recovering oil or oil sands by drilling or other in-situ recovery methods, including any injection or pumping facilities, and any associated infrastructure, where the site is located within the area illustrated in the *Guide for Oil Production Sites* published by the Department”⁴⁴⁰ and an oilfield waste related facility is defined as a “facility that is approved under the *Oil and Gas Conservation Act* and the regulations under that Act to process, treat, dispose of, store, or recycle oilfield waste.”⁴⁴¹

⁴³⁷ Guidelines for the Handling of Naturally Occurring Radioactive Materials (NORM) in Western Canada, *supra* note 436 at 152 – 162.

⁴³⁸ *EPEA*, *supra* note 5, s 187(a).

⁴³⁹ *Waste Control Regulation*, *supra* note 180, s 1(cc).

⁴⁴⁰ *Ibid*, s 1(bb).

⁴⁴¹ *Ibid*, s 1(dd).

Thus, oilfield waste is not included under the definitions of waste or hazardous waste under the *Waste Control Regulation* nor the *EPEA*. Further, despite being two of the Acts predominantly responsible for its management, neither the *Oil and Gas Conservation Act* nor the *REDA* define oilfield waste – this is left up to the *Oil and Gas Conservation Rules*.⁴⁴²

Characterizing Oilfield Waste

The person who generates oilfield waste is also responsible for properly characterizing the waste. Waste characterization involves assessing the physical, chemical, and toxicological properties of waste,⁴⁴³ resulting in the waste being classified into one of two categories: dangerous oilfield waste or non-dangerous oilfield waste.⁴⁴⁴ This waste characterization is then used when determining the appropriate handling, treatment, and disposal procedures.⁴⁴⁵

Oilfield waste is classified as dangerous based upon the properties of flammability, spontaneous combustion potential, water incompatibility, oxidizing potential, toxicity, corrosivity, PCB content, and leachate toxicity.⁴⁴⁶ The following are characterized as dangerous oilfield wastes:⁴⁴⁷

- i. waste types listed in Table 3 of the Schedule to the *Alberta User Guide for Waste Managers*, published by AEP;
- ii. commercial products or off-specification products listed in Part A of Table 4 of the Schedule to the *Alberta User Guide for Waste Managers*;
- iii. commercial products or off-specification products listed in Part B of table 4 of the Schedule to the *Alberta User Guide for Waste Managers*;
- iv. wastes with any of the properties as per Table 4.1a, *Properties of Dangerous Oilfield Wastes*; or
- v. containers as identified in Section 5.3, *Dangerous Oilfield Waste Containers*.

⁴⁴² *Oil and Gas Conservation Rules*, *supra* note 426, s 12.1.

⁴⁴³ *Directive 058*, *supra* note 429, s 4.1.

⁴⁴⁴ *Ibid*, s 4.1.

⁴⁴⁵ *Ibid*, s 8.150(2).

⁴⁴⁶ *Ibid*, Table 4.1a.

⁴⁴⁷ *Ibid*, Table 4.1b.

AER Directive 058 provides procedures for waste generators to use when classifying waste and thereby determining whether it is dangerous, including any testing. To do so, Directive 058 refers waste generators to AEP's User Guide for further information on how to test and classify waste.⁴⁴⁸

Except for the most toxic wastes, such as those listed in Part B of Table 4 of the Schedule to the User Guide, oilfield wastes are not considered dangerous if they are produced at any single site in an amount less than five kilograms per month if a solid or five litres per month if a liquid, and if the total quantity accumulated does not exceed five kilograms or five litres, at any time.⁴⁴⁹ To enforce this, oilfield waste cannot be mixed with any solid or liquid if the mixing is done for the primary purpose of dilution or to otherwise avoid any Alberta regulations.⁴⁵⁰

Oilfield waste containers must also be classified. Any empty container or collection of containers with an aggregate internal volume greater than 5 litres that, at one point, contained dangerous oilfield waste must be handled and disposed of as dangerous oilfield waste.⁴⁵¹

For safety, environmental, corrosion, operational, and economic reasons, certain oilfield wastes are further banned from direct injection into any pipeline system.⁴⁵²

Tracking and Manifests

Part C of Directive 058 governs waste manifesting and tracking. Waste manifests are the documents mandated to ensure that wastes are safely transported and received at their intended point of treatment or disposal.⁴⁵³ Waste tracking is a system by which the handling, movement, treatment, and disposal of wastes are monitored by

⁴⁴⁸ *Directive 058, supra note 429, s 5.1.*

⁴⁴⁹ *Ibid, s 5.4*

⁴⁵⁰ *Ibid, s 5.5.*

⁴⁵¹ *Ibid, s 5.3.*

⁴⁵² *Ibid, s 6.0.*

⁴⁵³ *Ibid, s 7.0.*

the generator of the waste. Both are designed to ensure that waste is properly handled and disposed of.⁴⁵⁴

Manifest documents contain specific information about dangerous oilfield waste and must accompany the waste as it is transported within Alberta.

Manifests do not apply to oilfield waste that is:⁴⁵⁵

- not characterized as dangerous;
- transported in quantities that do not exceed five kilograms or five litres;
- transported under a Permit for Equivalent Level of Safety;
- treated or disposed of on the site where it was generated; or
- transported from the site of origin to another site controlled by the same licensee or approval holder, provided that required placards are used and specified shipping documents accompany the waste.

Shipments of mixed wastes must be manifested according to the requirements for the most dangerous waste in the shipment or must be individually manifested.⁴⁵⁶ Oilfield wastes are identified using the system for the transportation of dangerous goods and must include a product identification number.⁴⁵⁷

Dangerous oilfield waste generators, transporters, and receivers each have specific responsibilities about the completion, review, and retention of manifests and users at each step in the process are responsible for identifying and advising the AER about any discrepancies between the manifest and the waste.⁴⁵⁸

In addition to waste manifesting, waste generators must track any dangerous oilfield waste to its final disposal. This is referred to as cradle to grave tracking.⁴⁵⁹ Tracking is a requirement, however, the specifics of how to manage this tracking are left to the

⁴⁵⁴ *Directive 058, supra note 429, s 7.0.*

⁴⁵⁵ *Ibid, s 8.1.*

⁴⁵⁶ *Ibid, s 8.5.*

⁴⁵⁷ *Ibid, s 8.6.*

⁴⁵⁸ *Ibid, s 8.8.*

⁴⁵⁹ *Ibid, s 9.1.*

generators.⁴⁶⁰ For example, the type of tracking system used is the choice of the generator but it must be “effective and capable of displaying due diligence.”⁴⁶¹

The system chosen must also be capable of providing a report called an “Oilfield Waste Disposition Report” which must be submitted to the AER upon request.⁴⁶²

Tracking system data is then to be maintained for a minimum of two years. The AER can audit waste generators during this time to ensure that the system of tracking being used is adequate and that it is being followed.⁴⁶³

Overall, the oilfield waste generator is responsible for ensuring that:⁴⁶⁴

- manifesting and tracking requirements are followed;
- waste minimization is considered when appropriate;
- oilfield wastes are properly characterized;
- appropriate treatment and disposal practices are utilized;
- the capabilities and limitations of any waste treatment and disposal method are known;
- accurate and complete waste documentation and manifesting are maintained;
- waste carriers and receivers have been informed of the oilfield waste’s properties; and
- the required approvals and operational requirements are in place for any on-site handling, treatment, and disposal method.

The oilfield waste receiver is responsible for ensuring that:⁴⁶⁵

- the required approvals and operational requirements are in place for any on-site waste handling, treatment, and disposal method;

⁴⁶⁰ Directive 058, *supra* note 429, s 9.2.

⁴⁶¹ *Ibid*, s 9.2.

⁴⁶² *Ibid*, s 9.2.

⁴⁶³ *Ibid*, s 9.2.

⁴⁶⁴ *Ibid*, s 2.1(1).

⁴⁶⁵ *Ibid*, s 2.1(2).

- the capabilities and limitations of its treatment and disposal facilities are known and waste generators are informed of the limitations;
- it has only received waste for which its facility is approved;
- accurate and complete waste documentation and manifesting is maintained;
- operations are in compliance with licences and approvals; and
- equipment and operating practices are upgraded as necessary to comply with changes in regulatory requirements.

Manifest copies and supporting documentation must also be retained by all parties (generator, transporter, and receiver) for a minimum of two years from the date of shipment and all documentation is subject to AER audit.⁴⁶⁶

Importation and Exportation of Oilfield Waste

Oilfield wastes generated outside of Alberta that could be classified as:

- dangerous waste under the *Dangerous Goods Transportation and Handling Act*;⁴⁶⁷
- hazardous waste under the *EPEA*; or
- dangerous oilfield waste under Directive 058,

must not be imported into Alberta for direct disposal or for treatment and disposal at an AER approved facility⁴⁶⁸ unless directed into the Alberta Special Waste Management System under the jurisdiction of AEP.⁴⁶⁹ Further, these wastes are not to be stored in Alberta for a period that exceeds 30 days.⁴⁷⁰

However, if oilfield waste is generated outside of the province of Alberta and does not exhibit the properties of a dangerous, hazardous, or waste, it may be imported into Alberta for treatment or disposal.⁴⁷¹

⁴⁶⁶ *Directive 058, supra note 429, s 8.9.*

⁴⁶⁷ *Dangerous Goods and Transportation and Handling Act, supra note 136.*

⁴⁶⁸ *Directive 058, supra note 429, s 3.0(1).*

⁴⁶⁹ *Ibid, s 3.0(1)(c).*

⁴⁷⁰ *Ibid, s 3.0(1)(d).*

⁴⁷¹ *Ibid, s 3.0(2).*

Operators of existing AER approved facilities that want to receive imported waste must apply to the AER to amend their current facility approval or licence to allow the receipt of imported wastes.⁴⁷² Similarly, new facilities that want to import oilfield waste must indicate the intention to receive imported waste streams and identify the waste source during their application.⁴⁷³

Oilfield Waste Facilities

The *Oil and Gas Conservation Act* defines a “facility” as:⁴⁷⁴

any building, structure, installation, equipment or appurtenance over which the Regulator has jurisdiction and that is connected to or associated with the recovery, development, production, handling, processing, treatment or disposal of hydrocarbon-based resources, including synthetic coal gas and synthetic coal liquid, or any associated substances or wastes...

The definition includes “without limitation” a number of specific facilities including “an oilfield waste management facility” and “a produced water disposal plant.”

The AER is charged with approving these oilfield-related waste management facilities and the *Oil and Gas Conservation Act* prohibits certain oilfield-related activities including: the processing or underground storage of gas; gathering, storage, and disposal of water produced in conjunction with oil or gas; storage or disposal of any fluid or other substance to an underground formation through a well; and storage, treatment, processing, or disposal of oil field waste.⁴⁷⁵ The AER is also given discretion to impose terms and conditions to approvals granted to these facilities.⁴⁷⁶

The approval of oilfield waste management facilities is covered by the *Oil and Gas Conservation Rules*. The Rules define an “oilfield waste management facility” broadly and include facilities such as storage, processing, and transfer facilities; oilfield

⁴⁷² *Directive 058, supra note 429, s 3.0(3).*

⁴⁷³ *Ibid, s 3.0(3).*

⁴⁷⁴ *Oil and Gas Conservation Act, supra note 425, s 1(1)(w).*

⁴⁷⁵ *Ibid, s 39(1).*

⁴⁷⁶ *Ibid, s 39(1).*

landfills; and thermal treatment facilities.⁴⁷⁷ The Rules also state that the location and construction of an oilfield waste management facility must be approved before construction commences⁴⁷⁸ and conditions may be included in an approval.⁴⁷⁹

The *Oil and Gas Conservation Rules* for oilfield waste facilities include:

- signage requirements for the posting of signs identifying a facility;⁴⁸⁰
- a prohibition on burning oilfield waste;⁴⁸¹
- a requirement to control any oil or salt water that is spilled from a wellhead or other facility or while being transported, and to ensure that upon cleanup it is disposed of in an approved waste processing and disposal facility;⁴⁸² and
- a requirement to use appropriate waste storage, treatment, and disposal practices.⁴⁸³

To speed the approval process along, oilfield waste management facility applications must include any information required under Directive 058, as well as any other information required by the AER.⁴⁸⁴ Specifically, part E of Directive 058 sets out the application procedure for oilfield waste management facilities. A range of information must be provided in an application, including the following:⁴⁸⁵

- introductory information about the applicant and the proposed facility;
- site information, including details about the site's topography, soil, geology, and hydrogeology;
- development information about public consultation carried out by the applicant and development authorization from the local authority; and

⁴⁷⁷ *Oil and Gas Conservation Rules*, *supra* note 426, s 12.2.

⁴⁷⁸ *Ibid*, s 7.001.

⁴⁷⁹ *Ibid*, s 7.003.

⁴⁸⁰ *Ibid*, s 6.020.

⁴⁸¹ *Ibid*, s 7.040.

⁴⁸² *Ibid*, ss 8.050 & 8.051.

⁴⁸³ *Ibid*, s 8.150.

⁴⁸⁴ *Ibid*, s 15.212.

⁴⁸⁵ *Directive 058*, *supra* note 429, s 18.0.

- closure information, including details of the facility's lifespan, closure plans, and financial assurance programs.

In addition to general application requirements for all oilfield waste management facilities,⁴⁸⁶ Directive 058 also sets out specific application information for certain types of facilities.⁴⁸⁷

Along with the detailed application process, approval holders must provide financial security for any approved oilfield waste management facilities⁴⁸⁸ unless the facility is part of a larger oilfield production system and only deals with waste from within that interconnected production system.⁴⁸⁹ Generally, security amounts are based on the estimated costs to suspend the facility and the specific amount of security is determined in accordance with the Rules.⁴⁹⁰

The Rules also set out standard provisions governing the security paid on a waste management facility and set out the terms under which this security shall be returned to the proponent, or forfeited.⁴⁹¹ If the AER directs the forfeiture of security, it must give the approval holder written notice of that decision.⁴⁹² Forfeited security can be used by the AER for suspension, abandonment, decontamination, and surface reclamation of an oilfield waste management facility.⁴⁹³ If the amount of security forfeited is insufficient to pay these costs, the approval holder and any other working interest participants will be liable for the outstanding costs.⁴⁹⁴

⁴⁸⁶ *Directive 058*, *supra* note 429, s 21.1.

⁴⁸⁷ *Ibid*, ss 22.0-28.0.

⁴⁸⁸ *Oil and Gas Conservation Rules*, *supra* note 426, s 16.640.

⁴⁸⁹ *Ibid*, s 16.641.

⁴⁹⁰ *Ibid*, s 16.643.

⁴⁹¹ *Ibid*, ss 16.647 & 16.648.

⁴⁹² *Ibid*, s 16.648(3).

⁴⁹³ *Ibid*, s 16.648(2).

⁴⁹⁴ *Ibid*, s 16.648(5).

Part D of Directive 058 also deals with the management and regulation of oilfield waste management facilities. It provides that an oilfield waste management facility may consist of one or more of the following components:⁴⁹⁵

- a waste storage area/facility;
- a waste transfer station;
- a waste processing facility;
- any surface facilities associated with waste disposal wells;
- any waste disposal wells (Class 1a or 1b);
- a cavern;
- a landfill;
- a biodegradation facility;
- a thermal treatment facility; and
- any other oilfield waste management technology or facility.

The requirements for a waste management facility apply both to a separate component and to a facility that is integrated into an AER approved oil and gas or oil sands facility.⁴⁹⁶

The Directive then lists the site-related factors that must be considered when considering a possible site for an oilfield waste management facility. These include:⁴⁹⁷

- minimizing the risk of environmental damage including any impact to the quality of surface water and groundwater;
- preserving the health of humans, animals, and plants during construction, operation, and closure of the facility;
- avoiding drainage ways and areas subject to seasonal flooding;
- avoiding being located within 100 metres of the normal high-water mark of a body of water, permanent stream, or water well used for domestic purposes; and
- avoiding environmentally sensitive areas or areas where the public is directly impacted.

⁴⁹⁵ Directive 058, *supra* note 429, s 11.1.

⁴⁹⁶ *Ibid*, s 11.1.

⁴⁹⁷ *Ibid*, s 11.2.

The following Acts and associated Regulations also apply to oilfield waste management facilities:

- *Occupational Health and Safety Act*⁴⁹⁸ (and the Workplace Hazardous Material Information System);
- *Safety Codes Act*⁴⁹⁹ (Alberta Fire Code);
- *EPEA*;⁵⁰⁰and
- *AER Noise Control Directive*.⁵⁰¹

Nuclear Waste



Nuclear energy remains under federal jurisdiction – falling under the auspices of the *Nuclear Safety and Control Act (NSCA)*⁵⁰² which is the legislation that controls the use of nuclear energy and radioactive materials in Canada. The purpose of the NSCA includes providing for:⁵⁰³

⁴⁹⁸ *Occupational Health and Safety Act*, *supra* note 112.

⁴⁹⁹ *Safety Codes Act*, *supra* note 285.

⁵⁰⁰ *EPEA*, *supra* note 5.

⁵⁰¹ Alberta Energy Regulator, *Directive 038: Noise Control* (26 February 2007) online: <https://www.aer.ca/documents/directives/Directive038.pdf>.

⁵⁰² *Nuclear Safety and Control Act*, *supra* note 172.

⁵⁰³ *Ibid*, s 3(a).

“the limitation, to a reasonable level and in a manner that is consistent with Canada’s international obligations, of the risks to national security, the health and safety of persons and the environment that are associated with the development, production and use of nuclear energy and the production, possession and use of nuclear substances, prescribed equipment and prescribed information.”

Canadian Nuclear Safety Commission

The NSCA also sets up the Canadian Nuclear Safety Commission (the “Commission”) and charges it with the responsibility:⁵⁰⁴

(a) to regulate the development, production and use of nuclear energy and the production, possession and use of nuclear substances, prescribed equipment and prescribed information in order to

(i) prevent unreasonable risk, to the environment and to the health and safety of persons, associated with that development, production, possession or use,

(ii) prevent unreasonable risk to national security associated with that development, production, possession or use, and

(iii) achieve conformity with measures of control and international obligations to which Canada has agreed; and

(b) to disseminate objective scientific, technical and regulatory information to the public concerning the activities of the Commission and the effects, on the environment and on the health and safety of persons, of the development, production, possession and use referred to in paragraph (a).

In addition to nuclear power plants and nuclear research facilities, the commission also regulates other uses of nuclear material. Some examples include radioisotopes used in the treatment of cancer, the operation of uranium mines and refineries, and the use of radioactive sources for oil exploration and in instruments such as precipitation measurement devices.

⁵⁰⁴ *Nuclear Safety and Control Act*, supra note 172, s 9.

A nuclear substance is defined to include nuclear waste when it includes:⁵⁰⁵

- a radioactive by-product of the development, production or use of nuclear energy; or
- a radioactive substance or radioactive thing that was used for the development or production, or in connection with the use, of nuclear energy.

A licence is also required under the Act before disposing of a nuclear substance.⁵⁰⁶ No licence may be issued unless the Commission is satisfied that the applicant is qualified to carry on the authorized activity and will make adequate provisions for the protection of the environment, health, and safety of persons and the maintenance of national security and Canada's international obligations.⁵⁰⁷

The definition of a nuclear facility includes nuclear substance disposal facilities and the land upon which these facilities are located and specifically includes "any system for the management, storage or disposal of a nuclear substance."⁵⁰⁸ There was one nuclear waste management facility licensed by the commission in Alberta. This facility was located at the University of Alberta and called the SLOWPOKE-2. However, it was decommissioned in 2018 and is no longer under the control or licensing of the Commission.⁵⁰⁹

The Commission is also authorized by the Act to make regulations about the control of nuclear energy, with the approval of the Governor in Council.⁵¹⁰ Specifically, the Commission can make regulations:

- respecting the disposal and abandonment of a nuclear substance;⁵¹¹

⁵⁰⁵ *Nuclear Safety and Control Act*, *supra* note 172, s 2.

⁵⁰⁶ *Ibid*, s 26(b).

⁵⁰⁷ *Ibid*, s 24(4).

⁵⁰⁸ *Ibid*, s 2.

⁵⁰⁹ Canadian Nuclear Safety Commission, "University of Alberta SLOWPOKE-2 Research Reactor" (2018) Government of Canada online: <https://nuclearsafety.gc.ca/eng/reactors/research-reactors/nuclear-facilities/university-of-alberta/index.cfm?pedisable=true>.

⁵¹⁰ *Nuclear Safety and Control Act*, *supra* note 172, s 44.

⁵¹¹ *Nuclear Safety and Control Act*, *supra* note 172, s 44(1)(b).

- respecting inspection during decommission, abandonment, and disposal of nuclear equipment;⁵¹²
- respecting the decommissioning, abandonment, and disposal of a nuclear facility or part of a nuclear facility;⁵¹³and
- respecting the protection of the environment and the health and safety of persons from risks associated with these activities.⁵¹⁴

Under the authority of the NSCA, the following regulations that deal with the care, storage, and disposal of nuclear waste have been promulgated:

- *Class I Nuclear Facilities Regulations*, SOR/2000-204;
- *Class II Nuclear Facilities and Prescribed Equipment Regulations*, SOR/2000-205;
- *General Nuclear Safety and Control Regulations*, SOR/2000-202;
- *Nuclear Non-Proliferation Import and Export Control Regulations*, SOR/2000-210;
- *Nuclear Security Regulations*, SOR/2000-209;
- *Nuclear Substances and Radiation Device Regulations*, SOR/2000-207;
- *Packaging and Transport of Nuclear Substances Regulations*, SOR/2015-145;
and
- *Uranium Mines and Mills Regulation*, SOR/2000-206.

⁵¹² *Ibid*, s 44(1)(c).

⁵¹³ *Ibid*, s 44(1)(e).

⁵¹⁴ *Ibid*, s 44(1)(f).

Part Four: Recycling



The definition of non-hazardous waste clearly differentiates waste from recycling – a distinction which has also been upheld in case law. This difference may not appear critical and is clearly not always successful as many materials that could be defined as recyclable still end up in landfills. Despite this, it is important as material considered to be recyclable is regulated differently than waste. The following section will discuss how we regulate recyclables in Alberta and will identify some of the specific recyclable regimes currently in place.

To begin, the *Waste Control Regulation* defines a recyclable as “a substance or mixture of substances that is intended to be recycled.”⁵¹⁵

Environmental Protection and Enhancement Act

Part 9, Division 1 of the *EPEA* deals with the recycling of hazardous and non-hazardous materials.⁵¹⁶ To do so, this section of the Act provides that recyclable materials may, by regulation, be characterized as “designated materials” which

⁵¹⁵ *Waste Control Regulation*, *supra* note 180, s 1(gg).

⁵¹⁶ *EPEA*, *supra* note 5, Part 9, Div 1.

subjects them to mandated recycling fund programs.⁵¹⁷ Under these programs, manufacturers and distributors of so-called designated materials provide for collection and recovery systems and collect and deposit surcharges⁵¹⁸ for these materials according to the regulations⁵¹⁹ and the EPEA.

It is also under this section that the EPEA establishes the Recycling Fund.⁵²⁰ The Recycling Fund's purposes include establishing, administering, and supporting waste minimization and recycling programs and activities.⁵²¹ However, despite being included in the Act, no general Recycling Fund has been created. Rather, specific industries each run their own recycling funds. Each of these funds is established by regulation and fulfill the same purpose as a general Recycling Fund.⁵²²

Specifically, the *Designated Material Recycling and Management Regulation* states that the Alberta Recycling Management Authority shall establish a separate industry operated recycling fund for each designated material – each of which will be responsible for the management of these materials.⁵²³ Further, all surcharges collected from the sale of these materials in Alberta must be deposited into the appropriate industry-operated fund.⁵²⁴

To date, there are five specific materials with designated material status and accompanying recycling funds. These include beverage containers, lubricating oil, tires, paint, and electronics – each of these will be explained in more detail below.

⁵¹⁷ EPEA, *supra* note 5, ss 1(q); 175(b).

⁵¹⁸ *Ibid*, s 170.

⁵¹⁹ *Ibid*, s 173.

⁵²⁰ *Ibid*, s 171.

⁵²¹ *Ibid*, s 171.

⁵²² *Ibid*, s 172.

⁵²³ *Designated Material Recycling and Management Regulation*, Alta Reg 93/2004, s 6 [*Designated Material Recycling and Management Regulation*].

⁵²⁴ EPEA, *supra* note 5, s 165(2).

Beverage Containers

The *Beverage Container Recycling Regulation*⁵²⁵ designates beverage containers as a “designated material,”⁵²⁶ establishes the Beverage Container Management Board,⁵²⁷ and provides that the Board shall set up and administer a beverage container recycling program.⁵²⁸ The Regulation also imposes labelling restrictions,⁵²⁹ requires that manufacturers register containers,⁵³⁰ and prohibits the sale of any beverage in an unregistered container.⁵³¹

To manage this system, depot operators provide refunds for containers submitted to their depots.⁵³² The manufacturer of the beverage, or the collection system agent, must then collect the containers from the depots and reimburse the depot operators.⁵³³ Containers are finally either recycled or re-used.⁵³⁴ Contravention of the Regulation and any of these provisions constitutes an offence.⁵³⁵

The Beverage Container Management Board⁵³⁶ is a Delegated Administrative Organization, a not-for-profit society incorporated under the *Societies Act*.⁵³⁷ The Board provides permits for bottle depots⁵³⁸ and reports to the Minister.

⁵²⁵ *Beverage Container Recycling Regulation*, Alta Reg 101/1997 [*Beverage Container Recycling Regulation*].

⁵²⁶ *Ibid*, s 2.

⁵²⁷ *Ibid*, s 4.

⁵²⁸ *Ibid*, s 18.

⁵²⁹ *Ibid*, s 6(1).

⁵³⁰ *Ibid*, s 7.

⁵³¹ *Ibid*, s 6(3).

⁵³² *Ibid*, s 10.

⁵³³ *Ibid*, s 13.

⁵³⁴ *Ibid*, s 16.

⁵³⁵ *Ibid*, s 19.

⁵³⁶ Beverage Container Management Board online: <https://www.bcmb.ab.ca/>.

⁵³⁷ *Societies Act*, RSA 2000, c S-14.

⁵³⁸ *Beverage Container Recycling Regulation*, *supra* note 525, s 14.

Lubricating Oil

The *Lubricating Oil Material Designation Regulation* defines lubricating oil material as a “designated material”⁵³⁹ and sets out maximum surcharges that may be prescribed by bylaw for lubricating oil material recycling.⁵⁴⁰ The *Lubricating Oil Material Recycling and Management Bylaw* then establishes the Lubricating Oil Material Recycling and Management Fund, another industry operated recycling fund.⁵⁴¹ This bylaw imposes an environmental handling charge on suppliers of lubricating oil material and those importing oil material into Alberta for their own use must pay an environmental handling charge.⁵⁴²

Additionally, the *Lubricating Oil Material Environmental Handling Charge Bylaw* sets specific environmental handling charges for persons importing oil material into the province for their own business use.⁵⁴³

Tires

The *Tire Designation Regulation* also defines tires as a “designated material” under the Act.⁵⁴⁴ This regulation and the *Designated Material Recycling and Management Regulation* establish the tire management board⁵⁴⁵ and an associated industry operated recycling fund.⁵⁴⁶ It is also the *Designated Material Recycling and Management Regulation* which provides that the tire recycling fund shall establish and administer waste minimization and recycling programs and administer the funds.⁵⁴⁷

⁵³⁹ *Lubricating Oil Material Designation Regulation*, Alta Reg 100/2018, s 2.

⁵⁴⁰ *Ibid*, s 3.

⁵⁴¹ *Lubricating Oil Material Recycling and Management Bylaw*, Alta Reg 227/2002, s 2.

⁵⁴² *Ibid*, s 5.

⁵⁴³ *Lubricating Oil Material Environmental Handling Charge Bylaw*, Alta Reg 228/2002, s 2.

⁵⁴⁴ *Tire Designation Regulation*, Alta Reg 95/2004, s 2 [*Tire Designation Regulation*].

⁵⁴⁵ *Designated Material Recycling and Management Regulation*, *supra* note 523, s 2.

⁵⁴⁶ *Ibid*, s 6.

⁵⁴⁷ *Ibid*, s 6.

Finally, the *Tire Designation Regulation* also sets out maximum surcharges.⁵⁴⁸ The Schedule of the Regulation sets out the Maximum Advance Disposal Surcharge for Tires, dependent on type.⁵⁴⁹

Paint

Similar to other products, the *Paint and Paint Container Designation Regulation* designates any paint supplied in unpressurized containers with a capacity between 99 millilitres and 24 litres; paint supplied in pressurized aerosol containers; and paint containers, as designated materials.⁵⁵⁰ This Regulation also sets out the maximum surcharge that may be prescribed by bylaw for each of these materials – setting out different maximums for unpressurized paint containers and aerosol paint containers.⁵⁵¹

Electronics

The *Electronics Designated Regulation* defines electronics as a designated material⁵⁵² and specifically includes:⁵⁵³

- i. televisions;
- ii. computers, laptops and notebooks, including CPUs, keyboards, mouse, cables and other components in the computer;
- iii. computer monitors;
- iv. computer printers, including printers that have scanning or fax capabilities, or both;
- v. scanners;
- vi. audio and video playback and recording systems;
- vii. telephones and fax machines;
- viii. cell phones and other wireless devices; and
- ix. electronic game equipment;

⁵⁴⁸ *Tire Designation Regulation*, *supra* note 544, s 3.

⁵⁴⁹ *Ibid*, Schedule.

⁵⁵⁰ *Paint and Paint Container Regulation*, Alta Reg 200/2007, s 2.

⁵⁵¹ *Ibid*, s 3.

⁵⁵² *Electronics Designation Regulation*, Alta Reg 94/2004, s 2 [*Electronics Designation Regulation*].

⁵⁵³ *Ibid*, s 1 (d).

while omitting electronics contained within and affixed to a motor vehicle.

The maximum surcharges for these products are also set out by regulation and differ by type.⁵⁵⁴

Hazardous Recyclables

A hazardous recyclable is a recyclable with one or more of the properties described in Schedule 1 of the Regulation such as if it:⁵⁵⁵

- has a flash point of less than 61 degrees Celsius;
- ignites and propagates combustion in a test sample;
- contributes oxygen for combustion at a given rate;
- has oral, dermal, or inhalation toxicity of a stated degree;
- has a pH value less than 2.0 or greater than 12.5;
- contains polychlorinated biphenyls at or above a given concentration; or
- is a toxic leachate in a dispersible form based upon a leachate test set out in the regulation.

The *EPEA* prohibits the shipping of hazardous recyclables unless it is to an approved or registered facility⁵⁵⁶ and is accompanied by a recycle docket completed to the specifications of the *Waste Control Regulation*.⁵⁵⁷ Small amounts of hazardous recyclables are exempt.⁵⁵⁸

The recycle docket⁵⁵⁹ must contain the shipping document described in the *Transportation of Dangerous Goods Regulations*.⁵⁶⁰ The docket must also contain the name of the person consigning the material for shipment, the place of origin of the

⁵⁵⁴ *Electronics Designation Regulation*, *supra* note 552, s 3.

⁵⁵⁵ *Ibid*, s 1(t); Schedule 1.

⁵⁵⁶ *EPEA*, *supra* note 5, s 169.

⁵⁵⁷ *Waste Control Regulation*, *supra* note 180, s 19.

⁵⁵⁸ *Ibid*, s 17.

⁵⁵⁹ *EPEA*, *supra* note 5, s 169; *Waste Control Regulation*, *supra* note 180, s 19.

⁵⁶⁰ *Transportation of Dangerous Goods Regulations*, *supra* note 362.

shipment, the amount of hazardous recyclables from each consignor, and the signature of an authorized representative of each consignor.⁵⁶¹

Facilities

The *Waste Control Regulation* defines a “hazardous recyclable facility” as a facility “for storing or processing of hazardous recyclables.”⁵⁶² Facility operators must comply with the *EPEA* and the Regulation, as well as any appropriate guidelines, Codes of Practice, and approvals. Similarly, a person who stores hazardous recyclables must do so in a manner that will not cause an adverse effect, and must be in compliance with the labeling, structural, physical, and safety requirements.⁵⁶³

The operator of a hazardous recyclable facility is required to maintain operating records including docket for hazardous recyclables received, a record of releases of substances at the facility and the results of all physical inventories.⁵⁶⁴

Approvals for hazardous recyclable facilities, including both storage and processing facilities, are provided for in the *EPEA*⁵⁶⁵ and the Regulation.⁵⁶⁶ The Regulation governs the storage of hazardous recyclables and record keeping and provides that no person may import hazardous recyclables without prior authorization from the Minister.⁵⁶⁷ In turn, the Director demands that the operator of a hazardous recyclable facility or off-site waste management facility subject to approval or registration, provide financial security for future costs.⁵⁶⁸ The basis for determining the amount of this security and the conditions for its forfeiture are also set out in the Regulation.⁵⁶⁹

⁵⁶¹ *Waste Control Regulation*, *supra* note 180, s 19(b).

⁵⁶² *Ibid*, s 1(u).

⁵⁶³ *Ibid*, s 18.

⁵⁶⁴ *Ibid*, s 20.

⁵⁶⁵ *EPEA*, *supra* note 5, part 2.

⁵⁶⁶ *Waste Control Regulation*, *supra* note 180, Schedule 1.

⁵⁶⁷ *Ibid*, ss 18-21.

⁵⁶⁸ *Ibid*, s 27.

⁵⁶⁹ *Ibid*, ss 28-33.

Part Five: Import and Export of Waste

The import and export of waste is primarily controlled by the federal government; however, there are certain aspects that also fall under provincial regulation. This final section will outline regulations at both the provincial and federal level that must be followed during the import and export process. Generally, import and export regulations are concerned primarily with hazardous waste.

Provincial Regulation

The *EPEA* address the import of hazardous waste by empowering the Lieutenant Governor in Council to make regulations “respecting the importation, storage, collection, transportation, treatment and disposal of hazardous waste.”⁵⁷⁰ The *Waste Control Regulation*⁵⁷¹ then goes on to more specifically address the import of hazardous waste, regulating that:⁵⁷²

- (1) no person shall knowingly import any hazardous waste into Alberta for the purpose of storage for a period exceeding 30 days without first obtaining written authorization from the Minister;
- (2) no person shall knowingly import hazardous waste into Alberta for the purpose of disposal; and
- (3) subsection (2) does not apply to the disposal of residues resulting from the treatment of imported hazardous waste.

There is no prohibition against the import of hazardous waste for treatment.

Distinctions between the disposal and treatment processes can be found in the definitions below.

“Treat” is defined in the *EPEA* to mean:⁵⁷³

⁵⁷⁰ *EPEA*, *supra* note 5, s 193(d).

⁵⁷¹ *Waste Control Regulation*, *supra* note 180.

⁵⁷² *Ibid*, s 15.

⁵⁷³ *EPEA*, *supra* note 5, s 1(rrr).

to apply any method, technique or process, including, without limitation, neutralization and stabilization, that is designed to change the physical, chemical or biological character or composition of a substance.

This can be compared with the definition of “dispose” found in the *Waste Control Regulation* which states:⁵⁷⁴

when used with respect to a waste at a landfill, [dispose] means the intentional placement of waste on or in land as its final resting place.

It is also the *Waste Control Regulation* which provides that:

7(2) The consignor of hazardous waste that is shipped out of Alberta shall ensure that a copy of the manifest completed by the out-of-province receiver is given to the Director, the carrier, the consignor and, if the waste is shipped out of Canada to the Department of Environment (Canada); and

9(2) The receiver of hazardous waste generated outside of Alberta shall ensure that the Director and, if the waste is generated outside of Canada, the Department of Environment (Canada), receive a copy of the manifest.

Notably, there is no provincial legislation designed to regulate non-hazardous waste.

Federal Regulation

On March 22, 1989, Canada signed the *Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* at Basel, Switzerland, known more colloquially as the Basel Convention.⁵⁷⁵ The main objectives of this Convention included:

- ensuring that hazardous waste generation is reduced to a minimum;
- ensuring that the disposal of hazardous waste is done in the generating country as much as possible;
- establishing enhanced controls on hazardous waste exports and imports;

⁵⁷⁴ *Waste Control Regulation*, *supra* note 180, s 1(p).

⁵⁷⁵ *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*, 22 March 1989, 1673 UNTS 57 (entered into force 5 May 1992).

- banning imports or exports to countries lacking the capacity to manage hazardous wastes in an environmentally sound manner; and
- cooperating in the exchange of information, technology transfer, and in harmonizing standards, guidelines, and codes.

The most recent decision made under the auspices of the Basel Convention came during the 2019 COP when convention members agreed to amend the annexes of the Basel Convention to also include plastic waste.⁵⁷⁶ This change was designed to prohibit countries from dumping their plastic waste in developing nations to avoid having to dispose of it themselves.

Beyond these international commitments, the federal government is primarily concerned with the import and export of hazardous waste and recyclables.⁵⁷⁷ There is, however, no equivalent federal regulation for non-hazardous waste.

One additional option for increased federal control of certain kinds of waste can be found in the CEPA section on Toxic Substances. This section of the Act states that a substance is toxic if:⁵⁷⁸

it is entering or may enter the environment in a quantity or concentration or under conditions that

(a) have or may have an immediate or long-term harmful effect on the environment or its biological diversity;

(b) constitute or may constitute a danger to the environment on which life depends; or

(c) constitute or may constitute a danger in Canada to human life or health.

⁵⁷⁶ Basel Convention, "Fourteenth Meeting of the Conference of the Parties to the Basel Convention" (2019) online: <http://www.basel.int/TheConvention/ConferenceoftheParties/Meetings/COP14/tabid/7520/Default.aspx>.

⁵⁷⁷ *Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations*, *supra* note 340.

⁵⁷⁸ *CEPA, 1999*, *supra* note 7, s 64.

If a waste substance is found to be toxic it can be added to a List of Toxic Substances and can be banned or otherwise controlled.⁵⁷⁹ An example of this being used on the waste front is the *Microbeads in Toiletries Regulations* which banned the manufacture or import of any toiletries containing microbeads.⁵⁸⁰ One of the main purposes behind this regulation was to prevent microbeads from entering our waterways as waste and it may be used as an example of future federal regulations prohibiting the import or export of otherwise non-hazardous waste.

Final Thoughts



Despite increases in population and significant technological advances, much of Alberta's waste management law has not evolved significantly in the past 20 years. Notably, the waste management system still remains primarily focused on risk management with only certain specific areas looking at recycling and waste minimization.

There is; however, some new and significant momentum to regulate certain waste streams such as plastics. For example, new bans on single use plastic are becoming more and more common. The federal government banned the use, sale, and

⁵⁷⁹ *CEPA, 1999, supra note 7, s 90.*

⁵⁸⁰ *Microbeads in Toiletries Regulations, supra note 139, s 3.*

disposal of plastic microbeads with the *Microbeads in Toiletries Regulations*⁵⁸¹ and has since promised to institute a federal ban on some single use plastic items as early as 2021.⁵⁸² Multiple municipalities have also been working towards their own bans on single use plastics – each of which will change the waste management regime significantly.

Finally, there has been increased pressure worldwide to institute a system of extended producer responsibility (EPR) as a tool to manage our non-hazardous waste problem. EPR is defined as “an environmental policy approach in which a producer’s responsibility for a product is extended to the post-consumer stage of a product’s life cycle”⁵⁸³ and has been touted as a way to deal with our waste problems. Check out an accompanying report in our series on waste which tackles the idea of implementing an extended producer responsibility program in Alberta.

Taking into account the current waste management system, the ELC’s future work will envision a future for waste management in the province, particularly with the aim of reducing the amount of waste we produce and moving towards an economy where one person’s waste becomes another person’s resource. This has become an ever-increasing need as changes to the global trade in waste evolves and as pollution and waste management become ever increasing subjects of interest and concern.

⁵⁸¹ *Microbeads in Toiletries Regulations*, *supra* note 139.

⁵⁸² CBC News, “Ottawa announces plans to ban single-use plastics starting in 2012 at the earliest” (10 June 2019) CBC News online: <https://www.cbc.ca/news/politics/plastics-ban-trudeau-mckenna-1.5168828>.

⁵⁸³ Canadian Council of Ministers of the Environment, “Extended Producer Responsibility” online: https://www.ccme.ca/en/current_priorities/waste/epr.html.