

## ALERTS

### Pipeline Practice Alert - Pipelines May Be Exposed To Extended Liability

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The Canadian Minister of Natural Resources recently announced that Canadian federally-regulated pipelines may soon be subject to strict liability for spills in an amount up to \$1 billion (Canadian), and in cases of negligence there would be no statutory maximum to damages. The newly announced measures have not yet been formally introduced to the Canadian Parliament, but if they are adopted, the law is expected to go into effect by 2017.

The Minister's announced changes regarding the liability guidelines closely track another bill recently considered by the Canadian House of Commons. That bill, known as the Energy Safety and Security Act, concerns offshore oil and gas operations and would require that companies responsible for federally regulated offshore operations have access to at least C\$1 billion (approximately \$922 million USD) for the cleanup of spills.

The Energy Safety and Security Act would amend three laws governing the oil and natural gas industry: the Canada Oil and Gas Operations Act, the Canada Petroleum Resources Act, and the Canada-Newfoundland Atlantic Accord Implementation Act. The bill delineates four limits on damages based on where the incident occurs:

1. For Arctic offshore areas, the statutory maximum limit would be C\$1 billion;
2. For areas within 200 meters of inland water inside the Northwest Territories and Nunavut, the statutory maximum limit would be C\$25 million;
3. For other areas within the Northwest Territories or Nunavut that are not included above, the statutory maximum limit would be C\$10 million;
4. For all other areas, the statutory maximum limit would be C\$1 billion.

The C\$1 billion limit represents a significant increase from current laws which limit damages to C\$30 million for Atlantic areas and C\$40 million for Arctic offshore areas. Importantly, in cases of fault or negligence by the owners and operators of an offshore oil or gas production, there would be no cap on potential liability.

According to the Minister of Natural Resources' recent statements, a parallel bill to the Energy Safety and Security Act may soon be introduced to Parliament that would establish similar liability limits on pipeline operations subject to federal jurisdiction. Minister Rickford announced four principal measures expected to affect the pipeline industry. First, in a move toward strict liability, pipeline owners and operators will be held

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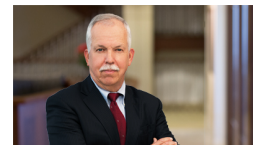
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responsible for up to C\$1 billion in the case of a spill without evidence of “fault or negligence.” If an investigation were to find fault on the behalf of the pipeline, owners and operators would find themselves facing “unlimited liability.”

Second, the potential legislation has also been reported to include a requirement that companies maintain a cleanup cash reserve of at least C\$100 million as proof that they have the financial resources to respond to incidents and remedy damage without delay, or are at least able to pay when the government seeks reimbursement. Requiring access to such a large sum of money could create a significant hurdle for smaller pipeline companies. However, in an effort to combat this result, the Energy Safety and Security Act bill allows smaller offshore oil and gas operators to provide proof of participation in a pooled fund that has the ability to cover the necessary costs. A similar provision may be made available for pipeline companies, too.

Third, the Minister also announced that the proposed bill would include several expanded powers for the Canadian regulatory agency that oversees oil and gas pipelines, the National Energy Board (“NEB”). For example, the NEB will be able to order and begin cleanup of spills on its own power and “demand reimbursement of any cleanup costs incurred by [the] government, communities or individuals.” The NEB will be able to commence a cleanup action when a pipeline company is unwilling or unable to do so itself. Additionally, the NEB will acquire the ability to provide guidance on best practices.

Fourth, the proposed bill is expected to include requirements regarding the development of a plan that will increase participation among Aboriginal peoples in the pipeline approval process.

It is not yet certain whether the Energy Safety and Security Act will be enacted. The bill has yet to reach the Senate for consideration and only recently had its second reading in the House of Commons in late March. Likewise, it is not yet clear how the newly proposed pipeline bill will be perceived. However, these bills demonstrate that increased liability related to pipeline ownership and operation may be a trend to watch internationally.

The full text of the Energy Safety and Security Act can be found on the Canadian Parliamentary website.

For more information, contact the Barnes & Thornburg attorney with whom you work, or Paul Drucker, leader of Barnes & Thornburg’s Pipeline Practice Team at [Paul.Drucker@btlaw.com](mailto:Paul.Drucker@btlaw.com) or 312-214-8806; or one of the following Pipeline Practice Team members: Michael Elam at [Michael.Elam@btlaw.com](mailto:Michael.Elam@btlaw.com) or 312-214-5630; or Jeff Peabody at [Jeffrey.Peabody@btlaw.com](mailto:Jeffrey.Peabody@btlaw.com) or 317-231-6465.

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