

*A Canadian Institute Course*

# FUNDAMENTALS OF ENVIRONMENTAL LAW & REGULATION

Doing Business, Avoiding Liability

April 3 & 4, 2006

InterContinental Bloor Yorkville, Toronto

## Course Leaders:



*Marc McAree*  
Partner  
Willms & Shier  
Environmental Lawyers LLP



*Barry Spiegel*  
Director of Research  
and Professional  
Development  
Willms & Shier  
Environmental Lawyers LLP

## Guest Speakers:

*Jim Bishop BSc. (Chem), C.Chem*  
Senior Executive Consultant  
Stantec Consulting Limited

*Anthony Ciccone Ph.D., P.Eng.*  
Principal, Golder Associates Limited.

In this intensive, practical course, leading environmental lawyers and consultants will distill legislation, regulation, and caselaw into practical guidelines and strategies that you will use on the job every day to help you:

- Successfully navigate the maze of governmental organizations regulating environmental matters
- Ensure that you have the authorizations you need
- Understand recent legal developments and their practical effects on your operations
- Streamline the permitting process
- Learn where enforcement efforts are being directed and which penalties have become the toughest

## What Past Delegates Said About This Course:

“Good mix of speakers, lots of material, excellent use of case studies and stories from real life.”

*Terry Brown*, Environmental Officer, Bruce Power

“Excellent source of reference materials, along with knowledge and fundamental law expertise. A pleasure to be part of the program.”

*Ryan Waines*, Environmental Coordinator, Jungbunzlauer Canada



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## WHY IS THIS COURSE ESSENTIAL FOR DOING BUSINESS AND AVOIDING ENVIRONMENTAL LIABILITY?

The complicated network of environmental laws and regulations is constantly changing. New legislation, new policies and guidelines, new caselaw and new enforcement strategies mean that the rules as you know them are shifting. How often have you wished for someone to sit down and explain it all?

Failure to secure necessary approvals can lead to costly business delays. Environmental prosecutions bring higher penalties than ever as well as damage to your corporate reputation. You can't afford to be mistaken.

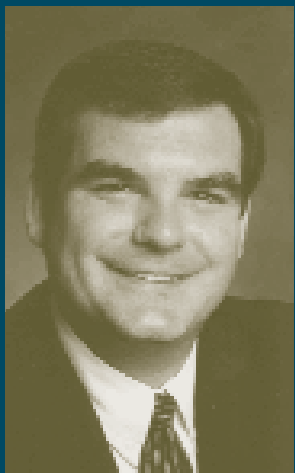
This intensive course is designed for industrial environmental specialists who work in a highly regulated environment, as well as in-house counsel for industry, environmental audit, control, and compliance officials, enforcement officers and environmental planners, consultants and engineers.

Leading environmental lawyers and consultants help you map out your step by step plan to:

- Understand the interaction between laws, regulations, standards, objectives, policies and guidelines
- Successfully meet your due diligence obligations, and understand how due diligence can protect you in the face of an environmental prosecution
- Know which activities require which permits, and which government departments to approach
- Stay up to date on new legal developments and how they affect you
- Protect yourself in the event of investigation or prosecution

Reserve your space today by calling 1-877-927-7936 or by faxing your registration form to 1-877-927-1563 or registering online at [www.CanadianInstitute.com](http://www.CanadianInstitute.com).

### COURSE LEADERS



**Marc McAree**  
Partner  
Willms & Shier Environmental  
Lawyers LLP

*Marc McAree is an Environmental Law Specialist, Certified by the Law Society of Upper Canada, and is a partner with Willms & Shier Environmental Lawyers LLP. He provides advice to industries, commercial clients and municipalities on all aspects of contaminated land, environmental compliance and approvals, and environmental risk management. Marc represents clients in civil litigation matters, defends them against environmental prosecutions and appears before administrative tribunals.*

**Barry Spiegel**  
Director of Research and  
Professional Development, Willms  
& Shier Environmental Lawyers LLP

*Barry Spiegel is Director of Research and Professional Development at Willms & Shier Environmental Lawyers LLP. His law practice focuses on compliance with federal and provincial environmental laws, regulations and policies. He publishes the quarterly Willms & Shier Corporate/Municipal Environmental Law Report, and writes extensively on environmental law and policy issues for professional journals and magazines. Barry also presents at professional conferences and conducts corporate training on environmental law issues.*



### GUEST SPEAKERS

**Jim Bishop BSc.(Chem), C.Chem**  
Senior Executive Consultant  
Stantec Consulting Limited

*Jim Bishop is the Senior Executive Consultant on the management of environmental chemistry, compliance and regulatory matters at Stantec. Mr. Bishop assists corporations, government and other entities meet today's environmental requirements, by assessing the data on both sides of an environmental issue and by separating perceived problems from the real, measurable ones. Specifically, Jim assesses chemistry and microbiological data, regulatory limits, and environmental conditions, then works with lawyers to develop effective science-based courses of action as part of the legal plan.*

**Anthony Ciccone Ph.D., P.Eng.**  
Principal, Golder Associates Limited.

*Dr. Anthony Ciccone is a mechanical engineer with more than 20 years experience consulting for private and government clients in Canada and internationally. His technical field of expertise is meteorology, air quality modelling and analysis on local and urban scale levels.*

### A Must Attend Event For

- Environmental Health & Safety Officers
- Regulatory Compliance Officers
- Environmental Engineers, Co-ordinators and Technologists
- Senior Directors and Vice-Presidents of Environmental Affairs
- In-house counsel and lawyers in private practice specializing in environmental law and regulation
- Counsel for Municipal, Provincial and Federal Governments
- Investigators and Enforcement Officers
- Environmental Policy and Regulatory Analysts
- Environmental Consultants, Planners, and Technicians

Register at 1-877-927-7936 or in Toronto 416-927-7936 or [www.CanadianInstitute.com](http://www.CanadianInstitute.com)

Monday, April 3, 2006

8:00 Registration Opens, Coffee Served 

9:00 Introduction

*Marc McAree & Barry Spiegel*

Willms & Shier Environmental Lawyers LLP

- Introduce course leaders
- Introduce Willms & Shier Environmental Lawyers LLP
- Introduce course objectives
- Identify participants' objectives

### Protecting Yourself through Effective Due Diligence: What You Need to Know About Environmental Law in Canada and Why

- Using due diligence to protect yourself and your organization, including:
  - PR and goodwill
  - share value
  - international trade
- Using due diligence to prevent personal liability of directors and officers - have Ontario's *Bill 133* and federal *Bill C-45* increased the risk?
- Using due diligence to defend against environmental prosecutions - *R. v. Imperial Oil* (B.C.)
- What must be established in order to succeed with a due diligence defence?
  - *R. v. Bata*
  - *R. v. Commander Business*
- Going beyond due diligence: other benefits of understanding environmental law



### Mastering the Framework of Environmental Law

- Navigating the jurisdictional maze: how the federal government, the provinces and municipalities share environmental enforcement and compliance responsibilities
- Managing regulated activities: requirements for permits, licenses and approvals
- Evaluating regulatory orders: government powers to require compliance
- What is law and what is not: the interaction between laws, regulations, standards, objectives, policies and guidelines
- Considering the important role of land use planning laws and regulators
- How civil law and environmental lawsuits fit into the framework
- Understanding pollution prohibitions and regulatory offences

### Who Does What? Key Organizations, Agencies and Enforcement Bodies

#### The Federal Government: Environmental Mandates

- Analyzing Environment Canada's responsibility for:
  - international matters
  - regulating manufacture, import and export of toxic substances
  - new substances
  - pollution prevention
- Considering the Department of Fisheries and Oceans (DFO) and the implementation of the *Fisheries Act*
- How Transport Canada regulates the movement of dangerous goods by water, air, rail and road
- Dealing with other federal agencies:
  - Health Canada
  - Agriculture Canada
  - Industry Canada
  - Canadian Coast Guard

### Provincial Government: The Primary Regulatory Influence on Day-to-Day Business Activities (Ontario as the Model):

- Understanding the structure of the Ontario Ministry of the Environment (MOE)
  - divisions
  - branches
  - regional and district offices
- The involvement of the Ontario Ministry of Natural Resources (MNR) with the forestry, fishing and aggregate industries
- The authority and impact of the Ontario Ministry of Agriculture, Food and Rural Affairs
- The Ontario Ministry of Municipal Affairs and Housing and its role in land use and environmental planning
- Considering the role of other provincial agencies, including:
  - Ministry of Northern Development and Mines
  - Ministry of Energy, Science and Technology
- Dealing with The Technical Standards and Safety Authority Inc. (TSSA) regarding fuels safety

### Municipalities

- From the Fire Chief to conservation authorities: municipal agencies with environmental responsibilities
- Considering new municipal powers and the lawsuits challenging them:
  - *Spraytech v. Hudson* (Quebec)
  - *Montreal (City) v. 2952-1366 Québec Inc.* (Quebec)
  - *Croplife Canada v. City of Toronto*



Networking Coffee Break



### Introduce Fact Situation

### Water Issues: Navigating the Regulatory Framework

- Overview of governing legislation and authorities

#### Learning from Prosecutions

- Rewarding citizen prosecutors under the *Fisheries Act*: *R. v. Kingston*
- Changing standards of proof: moving from *R. v. Inco* to Ontario's Bill 133 "deemed impairment" under the *Ontario Water Resources Act*

#### Achieving Compliance

- Managing direct and indirect discharge
- Understanding the regulations regarding surface water and groundwater
- When do you need a permit to take water?
- When is a Certificate of Approval required for treating water or discharging effluent?
- Drinking water: understanding the role of Medical Officers of Health
- Considering municipal sewer use by-laws: significant regulations affecting industrial and commercial discharges
- Obtaining the permits required by Ministry of Natural Resources
- Dealing with septic systems: responsibility downloaded to municipalities

#### Dealing with Planning, Source Protection and Conservation

- Analyzing the Provincial Policy Statement relating to water, sewers, wetlands and contaminated sites
- Land use planning and groundwater protection
- Working with Conservation Authorities regarding watercourse alteration, fill, flood control and watercourse quality
- Managing fish habitats: a federal-provincial challenge

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## Waste and Hazardous Materials: Who's Responsible for What?

- Overview of regulations governing transportation, storage and disposal of waste
- Navigating regulations in the federal jurisdiction:
  - *Canadian Environmental Protection Act* (CEPA)
    - Schedule 1 Toxic Substances
    - *Export and Import of Hazardous Waste and Hazardous Recyclable Materials* Regulation
  - Federal PCBs - regulations and impending phase-out
  - *Transportation of Dangerous Goods Act*
  - Labeling of hazardous materials: *Workplace Hazardous Materials Information System* (WHMIS) and TDGA transportation placarding
- Provincial regulation of waste storage, handling and disposal:
  - Ontario Reg. 347, generator registration and fees, waste characterization, new *Land Disposal Regulations* (LDR)
  - waste classification: hazardous, liquid industrial, special, municipal and recyclable
  - special substances: PCBs, asbestos, agricultural waste, petroleum and dangerous materials
  - testing, documentation, registration and reporting requirements
  - storage and handling of flammable and combustible liquids — storage tanks
  - recycling: the 3Rs and Waste Diversion Ontario

## 12:30 Networking Luncheon for Delegates and Course Leaders

## 1:30 Understanding the Air Emissions Framework: Local, National and International Regulation

- Analyzing the federal, provincial and municipal legal framework that governs air emissions
- Working with climate change regulations, Kyoto, Large Final Emitters and offsets
- Harmonization and conflicts among the regimes
- Implementation of federal initiatives, including Canada-Wide Standards
- Reporting requirements for air emissions:
  - under the federal National Pollution Release Inventory (NPRI)
  - Green House Gas (GHG) reporting
- Provincial air emissions reporting
- Considering the public right to information
  - NPRI
  - pollutionwatch.org
  - access to information legislation

## Obtaining Certificates of Approval: A to Z (C of A)

- What triggers requirements for Certificates of Approval for:
  - water and wastewater treatment and discharge
  - air emissions including odour, dust, noise and vibrations
  - waste management and waste disposal
- Applying for C of As: an overview of the application process
- Avoiding potential stumbling blocks with new noise rules
- Application fees
- When can the government reopen your approvals?
- Update Protocols

## Networking Coffee Break

## Streamlining Approvals, Site-Wide Approvals and Other Strategies

- Understanding the role of Emissions Inventory in the approvals process

- Best practices for site-wide certificates: consolidated or comprehensive?
- Keys to successful applications
- Case studies and examples



## Quiz #1

## Day 1 Wrap-Up

- Review participants' objectives
- Questions and answers

## 5:00 Course Adjourns

Tuesday, April 4, 2006

## 8:30 Coffee Served

## 9:00 Air Standards and Modeling: Where Law and Science Meet

*Dr. Anthony Ciccone Ph.D., P. Eng.*  
Principal, Golder Associates Limited

- Phasing-in United States Environmental Protection Agency dispersion models: how will they affect your compliance?
- Using alternative standards and upper risk thresholds
- Complying with the new effects-based air standards
- Emissions monitoring and potential pitfalls
- Understanding emission inventories:
  - are they mandatory?
  - when?
  - for whom?
- Dealing with the odour problem:
  - difficult to measure, monitor and regulate
  - complaint driven
  - nuisance based

## Environmental Assessments: When Are They Needed? What Has To Be Done?

### Federal Assessments

- When is a federal environmental assessment required?
- What is a "project" for the purposes of the *Canadian Environmental Assessment Act*?
- What is the "scope of a project"?
- Who is a "responsible authority"?
- Dealing with comprehensive study requirements and public hearings
- Understanding the relationship between federal and provincial assessment requirements
- What factors determine the costs of assessments?

### Provincial Assessments

- Considering impact assessment versus "planning process"
- When is an assessment required under Ontario's *Environmental Assessment Act*?
- Using class environmental assessments versus individual environmental assessments
- Terms of reference of an assessment
- Meeting the public consultation requirements

### First Nations Considerations

- Understanding and complying with your obligations to First Nations:
  - *Taku River Tlingit v. B.C.* (S.C.C.)
  - *Haida Nation v. B.C.* (S.C.C.)



## Networking Coffee Break



### Contaminated Land: Issues for Industry

- When can an owner be required to clean up contaminated land?
- Can an innocent owner be compelled to clean up?
- Analyzing the impact of contamination on refinancing, plant expansion, sale of business and balance sheet
- Environmental Site Assessments: what is involved in Phase I and Phase II assessments?
- Understanding the rules governing clean-up
- Complying with Ontario's mandatory Record of Site Condition requirements: no government sign-off!
- Risk Assessment: often the only reasonable clean-up option
- What to do if you discover contamination on your industrial site
- What to do if your neighbour claims your company contaminated its site
- Confronting the cost, complexity and uncertainty of civil lawsuits: *Tridan v. Shell*
- Best practices for contaminated land transactions
  - due diligence
  - managing risk



### Environmental Litigation: Who is Suing Whom, and Why?

- Analyzing the grounds for starting environmental litigation:
  - negligence, trespass, nuisance, strict liability
  - class actions — *Pearson v. Inco*
  - statutory causes of action
- Watch what you email: litigation and electronic discovery
- What have the courts done: damages, costs, declarations, injunctions
- Effective insurance coverage:
  - what can be covered?
  - how much is enough?
- Using limitation periods to your advantage
- Dealing with the increasing use of class actions



### Quiz #2

## 12:30 Networking Lunch for Course Leaders and Delegates



## 1:30 Pollution Offences and Penalties: Avoiding Charges and Successfully Defending

### Federal Offences

- Offences under the *Fisheries Act*
- Offences under the *Canadian Environmental Protection Act*
- Liability under *Bill C-45*

### Provincial Offences

- Offences relating to air, water, waste disposal and sewage
- Offences under the *Environmental Protection Act* and the *Ontario Water Resources Act*
- Offences relating to discharges, spills and deemed impairment
- Exceeding provincial standards
- Can you be convicted for a modeled exceedance?

### Municipal Offences

- Offences under municipal sewer use by-laws and how they can lead to provincial prosecutions

### Penalties

- Understanding the harsher maximum penalties for individuals and corporations as well as victim surcharges
- Considering the new “aggravating factors” affecting sentencing

### Defences

- Establishing a “due diligence” defence
- Using defences based on Charter rights

## Scientific and Technical Defences

*Jim Bishop*

Senior Executive Consultant  
Stantec Consulting Limited

- How to catch common scientific errors and problems, including:
  - sampling
  - chain of custody
  - analysis
  - assessment
- How scientific uncertainty translates into reasonable doubt

### Enforcing The Law: Inspectors, Investigators, Regulators, Tribunals and Courts

- Understanding the crucial differences between inspectors and investigators
  - inspectors: their roles and responsibilities
  - investigation and enforcement officers
- Collecting evidence
  - when does an inspection become an investigation?
  - when does an investigator need a warrant?
    - *R. v. Inco*
    - *R. v. Jarvis*
    - *R. v. Ling* (S.C.C.)
- Beyond the MOE: others with enforcement authority
  - federal officers
  - TSSA inspectors
  - fire officials
  - Medical Officer of Health
  - building officials
  - By-law enforcement officers
  - conservation authorities
- Administrative and regulatory tribunals
- Analyzing the structure and role of the criminal and civil courts



### Regulatory Orders: What You Need to Know

- Understanding personal liability: who is subject to orders?
- Minister, Director orders under the *Environmental Protection Act*
- Provincial officer orders
- Orders under other statutes: *Ontario Water Resources Act*, *Fisheries Act*, *TSSA*
- Work you can be ordered to do
- What to do when you get an order: reviews and appeals
- Appeal limitations
- Situations in which the government can do the work and order you to pay the costs

## Networking Coffee Break



### Quiz #3

### Using Internet Research and Resources

- On-line demonstration of essential environmental law websites

### Day 2 Wrap-Up

- Review participants' objectives
- Questions and answers

## 5:00 Course Adjourns

### SPONSORSHIP & EXHIBITION OPPORTUNITIES

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April 3 & 4, 2006  
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- Conference only \$1595 + \$111.65 (7%) GST = \$1706.65
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