

*A Canadian Institute Course*

# FUNDAMENTALS OF ENVIRONMENTAL LAW & REGULATION

Doing Business, Avoiding Liability

April 23 & 24, 2007  
The Sutton Place Hotel, 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:

*Colleen Fitzgerald-Hubble, M.Sc., P.Eng.*  
Air Quality Specialist and Project Director  
RWDI AIR Inc

*Robert Wood CEA, MNRM, HB Comm.*  
Area Manager, Central/Western Ontario,  
BSI Management Systems Inc.

In this intensive, practical course, leading experts will distill legislation, regulations and case law into practical guidelines that you can use on the job every day:

- Navigate the maze of legislation, regulations, policies and governmental organizations regulating environmental matters
- Understand key legal developments and what they mean for you: Water, air, spills, waste management and more!
- Tackle investigations, enforcement and the threat of penalties
- Master the permitting and approvals processes
- Get up to speed on who's suing whom and why

## What Past Delegates Said About This Course:

*"An excellent way to review and refresh my knowledge on environmental laws and regulations."*

*Lisa Sealock, Environmental Contaminants Officer, Environment Canada*

*"I liked the interactive nature and the practical case law."*

*Barry Friesen, Director, Waste Management Services, Region of Niagara*



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

Are you grappling with the **complex web of environmental laws and regulations**? Do you know that the rules as you know them are changing...**rapidly**? New legislation, new policies and guidelines, new case law and new enforcement strategies mean that you need to get up to speed **now!** **How often have you wished for someone to make sense of it all for you?**

You know that the failure to secure necessary approvals will likely result in **exorbitant costs, delays and irreparable damage to your corporate reputation**. You can't afford to make avoidable mistakes!

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

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

- Understand the interaction between laws, regulations, standards, objectives, policies and guidelines
- Stay up to date on new legal developments and how they affect you
- Meet your due diligence obligations, and 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
- Protect yourself in the event of an 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

**Colleen Fitzgerald-Hubble, M.Sc., P.Eng.**  
Air Quality Specialist and Project Director  
RWDI AIR Inc.

*Colleen Fitzgerald-Hubble specializes in environmental impact assessments and regulatory compliance projects for a variety of industrial sectors, including manufacturing, institutions (universities and hospitals), and waste management. Her experience with these projects includes numerical and physical modeling, and field measurement programs. Her technical expertise includes an intricate knowledge of Ontario's air quality permitting requirements.*

**Robert Wood**  
Client Manager/Instructor  
BSI Management Systems

*Robert has worked in the environmental field for over 15 years. Throughout North America, he has performed environmental site assessments, regulatory compliance audits, remediation consulting, and environmental management systems consulting and auditing. He is a Certified Environmental Auditor, Lead EMS Auditor, and Qualified RAB/QSA Auditor Trainer, and has been a Registrar for ISO 14001 systems for the past 7 years. Robert has registered hundreds of companies to a variety of management system standards and currently manages a team of auditors in Ontario.*

### A MUST ATTEND EVENT FOR

- Industrial, Municipal and Institutional 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 23, 2007

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 – flip chart exercise

### Minimizing Risk with Effective Due Diligence: What You Need to Know about Canadian Environmental Law and Why

- What is “due diligence”? Why is it the most important concept in environmental law?
- How due diligence protects you and your organization
  - PR and goodwill
  - share value
  - international trade
- Using due diligence to protect directors and officers from personal liability – post Ontario's Bill 133 and federal Bill C-45
- Using due diligence to defend against environmental prosecutions – *R. v. Imperial Oil* (B.C.)
- What must be established for a successful due diligence defence?
  - *R. v. Bata*
  - *R. v. Courtaulds Fibres Canada*
- Going beyond due diligence: Other benefits of understanding environmental law



### Mastering the Framework of Environmental Law

#### Understanding General Principles of Law

- *Stare decisis, obiter dicta* and other principles
- What is law and what is not: Clarifying the interaction between laws, regulations, standards, objectives, policies and guidelines

#### Mastering Key Environmental Law Principles

- Navigating the jurisdictional maze: How the federal government, the provinces and municipalities share environmental enforcement and compliance responsibilities
- Managing regulated activities: Requirements for permits, licences and approvals
- Evaluating regulatory orders: Government powers to require compliance
- Understanding pollution prohibitions and regulatory offences
- The important role of land use planning laws and regulators
- How civil law and environmental lawsuits fit into the framework

Networking Coffee Break ☐

### 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
- *Clean Air Act*: Proposed federal legislation for Smog and Greenhouse gas “Air Pollutants”
- Department of Fisheries and Oceans (DFO), and the implementation and enforcement of the *Fisheries Act*
- How Transport Canada regulates the movement of dangerous goods by water, air, rail and road
- Other federal agencies:
  - Health Canada
  - Agriculture Canada
  - Industry Canada
  - Canadian Coast Guard

### Provincial Government: The Primary Regulator of Day-to-Day Business and Municipal Activities

- Understanding the structure of the Ontario Ministry of the Environment (MOE)
  - divisions
  - branches
  - regional and district offices
- Ontario Ministry of Natural Resources (MNR): 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
- Roles of other provincial agencies, including:
  - Ministry of Northern Development and Mines
  - Ministry of Energy, Science and Technology
- Jurisdiction of the Technical Standards and Safety Authority Inc. (TSSA) regarding fuels safety and storage tank regulation

### Municipalities

- Municipal agencies with environmental responsibilities: Fire Chief to Conservation Authorities
- 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*
  - *Newmarket (Town) v. Halton Recycling Ltd.*



### Introduction to Case Study

#### Water: Navigating the Regulatory Framework

- Overview of governing legislation and authorities

#### Achieving Compliance

- Managing direct and indirect discharges
- 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?
- Considering municipal sewer use by-laws: Significant regulations affecting industrial and commercial discharges
- Drinking water: Understanding the role of Medical Officers of Health

### *Clean Water Act, 2005* – How Ontario's New Source Protection Laws Will Affect Industry and Municipalities

- Why it is important to be proactive?
- 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 water quality

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

## 1:30 Spills and Discharges Post-Bill 133: Coping With A Stricter Regime

- Understanding the nature and consequences of pollution offences
- Mastering stricter spill reporting thresholds and requirements
- Demystifying “due diligence” and the new *Spill Prevention and Contingency Plan Regulation*
- Environmental penalties: Understanding the consequences of non-compliance
- Spill Cost Recovery Orders (provincial & municipal)

### Environmental Management Systems: Maintaining Your EMS to be Current, Relevant and Vital

*Robert Wood CEA, MNRM, HB Comm.*  
Area Manager, Central/Western Ontario,  
*BSI Management Systems Inc.*

- Meeting the ongoing Continuous Improvement challenge: Vibrant environmental objectives, targets and programs for a mature EMS
- Integrating your EMS with other Business Management Systems
- Adapting to changes in the regulatory environment and anticipating future requirements
- Best practices for adapting to the most crucial revisions in ISO 14001: 2004
  - managing regulatory compliance
  - contractor management: how your EMS can protect you from liability for subcontractors

### Networking Coffee Break

### 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
  - new *Interprovincial Movement of Hazardous Waste and Hazardous Recyclable Materials* regulation
  - new *PCB Regulations* to phase-out use and storage of PCBs
  - *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, 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



## Case Study & Quiz #1

### Day 1 Wrap-Up

- Review participants' objectives
- Questions and answers

## 5:00 Course Adjourns

**Tuesday, April 24, 2007**

## 8:30 Coffee Served

## 9:00 Understanding the Air Emissions Framework: Local, National, International Regulation

- Analyzing the federal, provincial and municipal legal framework that governs air emissions
- Proposed federal *Clean Air Act*: Regulation of air pollutants
  - what does it contemplate?
  - what is the status of this legislation?
- 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
  - NPRI
  - [pollutionwatch.org](http://pollutionwatch.org)

### Achieving Air Compliance: Certificates of Approval, Air Standards and Modeling

*Colleen Fitzgerald-Hubble, M.Sc., P.Eng.*  
Air Quality Specialist and Project Director  
RWDI AIR Inc.

### Obtaining Air Certificates of Approval: A to Z

- What triggers requirements for Certificates of Approval for air emissions, including odour, dust, noise and vibrations?
- Applying for Certificates of Approval: An overview of the application process
- Site Wide Approvals: Consolidated versus comprehensive
- Avoiding potential stumbling blocks

### New Air Standards and Modeling: Phasing in New Compliance Standards

- 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
- Understanding emission inventories (ESDM)

### Networking Coffee Break

### 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 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

- Ontario’s Environmental Assessment Reform: Key concepts and developments
- 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
- EAA and Electricity

### First Nations

- 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.)
  - *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)* (S.C.C.)



### Case Study & Quiz #2

12:15 **Networking Luncheon for Course Leaders and Delegates** 

1:15 **Environmental Litigation: Who is Suing Whom, and Why?**

- Who is the Judge?: The court system
- Analyzing the grounds for starting environmental litigation:
  - negligence, trespass, nuisance and strict liability
  - class actions – *Pearson v. Inco*, *Watson v. CPR*
  - 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



### Contaminated Land: Key Industry Requirements and Concerns, and New Brownfields Laws & Regulations

- Environmental Site Assessments: What is involved in Phase One and Phase Two assessments?
- Understanding the rules governing clean-up
- Complying with Ontario’s mandatory Record of Site Condition requirements: No government sign-off!
- Due diligence and business impacts
- Analyzing the impact of contamination on refinancing, plant expansion, sale of business and balance sheet
- What to do if you discover contamination on your industrial site
- What to do if your neighbour claims your company contaminated its site
- Best practices for contaminated land transactions
  - due diligence
  - managing risk

### Avoiding and Managing Industrial Land Use Conflicts

- Thinking beyond your own industrial approvals
- What are your neighbours doing, and why should you care?
- Approaches to heading off future conflicts before they happen
- Now that neighbours are complaining – what can you do to minimize conflict and avoid regulatory and civil action?

### Networking Coffee Break

### Challenging and Negotiating Regulatory Orders and Decisions

- Understanding personal liability: Who is subject to orders?
- Minister, Director and Provincial Officer Orders under the *Environmental Protection Act*
- Orders under other statutes: *Ontario Water Resources Act*, *Fisheries Act*, Technical Standards and Safety Authority (TSSA)
- Work you can be ordered to do or not to do
- What to do when you get an order: Reviews and appeals
- Appeal Tribunals and Courts
- Situations in which the government can do the work and order you to pay the costs

### Enforcing The Law: Inspectors, Investigators, Prosecutions

- 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
- Courts hearing prosecutions and appeals



### Case Study & Quiz #3

### Using Online Resources for Efficient Research

- Online demonstration of essential environmental law websites

5:00 **Course Conclusion**

- Review participants’ objectives
- Questions and answers

### SPONSORSHIP & EXHIBITION OPPORTUNITIES

Maximize your organization’s visibility in front of key decision-makers in your target market. For more information, contact Director of Business Development **Dan Gellman** at **416-927-0718 ext. 389**, toll-free **1-877-927-0718 ext. 389** or by email at **d.gellman@canadianinstitute.com**

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April 23 & 24, 2007 — The Sutton Place Hotel, Toronto

## Top Reasons to Attend

- 1 Untangle the complex web of legislation and regulations
- 2 Get up to speed on key legal developments: Air, water, spills, waste management and more!
- 3 Prepare for investigations, and possible prosecutions and penalties
- 4 Master the permitting and approvals processes
- 5 Know who's suing whom and why

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### Fee Per Delegate

- Conference only \$1795 + \$107.70 (6%) GST = \$1902.70
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VENUE: The Sutton Place Hotel  
ADDRESS: 955 Bay Street, Toronto, ON  
TEL.: 416-924-9221

### Hotel Reservations

For information on hotel room availability and reservations, please contact the Sutton Place Hotel at 416-924-9221. When making your reservation, please ask for "The Canadian Institute's Corporate Rate".

### Program Materials

Conference participants will receive a comprehensive set of conference materials prepared by the speakers. These materials are intended to provide the participants with an excellent reference source after the conference. If you have paid and are unable to attend, the conference materials will be shipped to you upon request only. Request must be received within 30 days upon conclusion of the conference.

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STEP 2  
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