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COVID-19 and the Suspension of Routine Environmental Reporting in Alberta

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Orders Commented On: Ministerial Orders [15/2020](#), [16/2020](#), [17/2020](#) (Environment and Parks)

Section 52.1 of the *Public Health Act*, [RSA 2000, c P-37](#) provides a minister with power to suspend or modify the application of legislation which they are responsible for under the *Government Organization Act*, [RSA 2000, c G-10](#). This post looks at 3 ministerial orders made by the Minister of Environment and Parks this week under section 52.1 which suspend certain reporting requirements under the *Environmental Protection and Enhancement Act*, [RSA 2000 c E-12](#), the *Water Act*, [RSA 2000 c W-3](#), the *Public Lands Act*, [RSA 2000, c P-40](#), the *Technology Innovation and Emissions Reduction Regulation*, [Alta Reg 133/2019](#), and the *Renewable Fuels Standard Regulation*, [Alta Reg 29/2010](#), on the basis that these reporting obligations are not in the public interest during the COVID-19 public health emergency. These orders, together with other public health orders issued by Alberta during this crisis, are published [here](#).

In Orders 15/2020 and 16/2020, the Minister states that emergency measures being implemented to contain COVID-19 may create challenges for regulated entities to submit compliance reports and emission reduction plan reports under the *Technology Innovation and Emissions Reduction Regulation* and the *Renewable Fuels Standard Regulation*. Accordingly, these Orders defer submission deadlines for 2019 reports under these regulations for 3 months from March 31 to June 30, 2020.

Order 17/2020 is distinct in that the Minister suspends, rather than defers, reporting requirements. The Minister has declared that there is hardship in complying with routine reporting requirements set out in approvals, registrations, licenses and dispositions issued under environmental legislation during the COVID-19 emergency. Specifically, the Order suspends the reporting requirements contained in terms and conditions for: approvals or registrations issued under the *Environmental Protection and Enhancement Act*; licenses or approvals issued under the *Water Act*; and dispositions under the *Public Lands Act*. This suspension is in force until at least August 14, 2020, unless the Order is terminated earlier by the Minister or the Lieutenant Governor in Council. The Order does not suspend reporting requirements applicable to drinking water treatment facilities, and moreover, all other requirements (such as a requirement to monitor and collect data which would normally be reported) set out in these approvals remain enforceable. It is also important to note that other environmental reporting requirements, such as those set out in section 110 of the *Environmental Protection and Enhancement Act* with respect to the release of harmful substances, are not affected by this Order. In other words, this Order applies to reporting requirements in the normal course.

Nonetheless, the impact of Ministerial Order 17/2020 on the integrity of Alberta’s environmental regulatory system is potentially severe. In order to appreciate the significance, one needs to recognize the extent to which Alberta’s regulatory compliance and enforcement regime relies on industry to self-report on activities. These reporting requirements are standard fare in approvals issued under Alberta’s resources and environmental legislation, often connected to threshold requirements.

Take, for example, the recent [licence](#) issued to Fortress Mountain to divert water for the purpose of selling bottled water. One condition in that licence (see sections 10.0 to 10.3 in the licence) is that Fortress must monitor and report on the volume of water diverted from the source stream, and Fortress is prohibited from diverting water when the flow rate in the stream is below a prescribed threshold. This condition was imposed, in part, because Alberta Environment was unsure about the long-term impacts of all-year, rather than seasonal, withdraws from this stream – particularly in the dry summer months. While it is likely that an approval holder will continue to comply with regulatory requirements such as this one, despite the fact it need not report on that compliance, the whole point of these mandatory requirements is because voluntary compliance cannot be relied upon to ensure environmental health and integrity is maintained, and reporting is a key mechanism in this enforcement machinery. To make matters worse, under the terms of Order 17/2020 it is not clear whether these reports will ever be submitted to regulatory authorities. The Order states that information collected in relation to reporting requirements during the suspension period must be made available to regulatory authorities upon request.

Ministerial Order 17/2020 is similar to a [policy](#) issued by the United States Environmental Protection Agency (EPA) on March 26 with respect to environmental reporting requirements. However, two notable differences are: (1) the EPA requires there to be a causal connection between the inability to report and COVID-19, and an approval holder may be asked to substantiate this hardship with evidence; and (2) the EPA expects ‘catch-up’ reporting in some instances. Both of these conditions would be welcome additions to Ministerial Order 17/2020.

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