

This Act is current to March 12, 2024

See the [Tables of Legislative Changes](#) for this Act's legislative history, including any changes not in force.

# ENVIRONMENTAL MANAGEMENT ACT

[SBC 2003] CHAPTER 53

*Assented to October 23, 2003*

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## **Part 1 — Introductory Provisions**

### **Definitions**

**1** (1)In this Act:

**"air"** means the atmosphere but does not include the atmosphere inside

- (a)a human made enclosure that is not open to the weather,
- (b)an underground mine, or
- (c)a place designated by order of the Lieutenant Governor in Council;

**"air contaminant"** means a substance that is introduced into the air and that

- (a) injures or is capable of injuring the health or safety of a person,
- (b) injures or is capable of injuring property or any life form,
- (c) interferes with or is capable of interfering with visibility,
- (d) interferes with or is capable of interfering with the normal conduct of business,
- (e) causes or is capable of causing material physical discomfort to a person, or
- (f) damages or is capable of damaging the environment;

**"appeal board"** means the Environmental Appeal Board continued under section 93 [*environmental appeal board*];

**"approval"** means an approval under section 15 [*approvals*] or under a regulation;

**"auxiliary conservation officer"** means a person designated as an auxiliary conservation officer under section 106 (3) [*conservation officer service*];

**"biomedical waste"** has the prescribed meaning;

**"chief conservation officer"** means the person appointed as chief conservation officer under section 106 (2) [*conservation officer service*];

**"code of practice"**, except in Part 3 [*Municipal Waste Management*], means a code of practice established by the minister under section 22 [*minister's regulations — codes of practice*];

**"conservation officer"** means a person described in section 106 (2) (a) or (b) [*conservation officer service*] and includes, in relation to a specific power or duty, an auxiliary conservation officer and a special conservation officer who has been authorized under section 106 (3) (b) (iv) to exercise the power or perform the duty;

**"Conservation Officer Service"** means the Conservation Officer Service established under section 106 [*conservation officer service*];

**"director"** means a person employed by the government and designated in writing by the minister as a director of waste management or as an acting, deputy or assistant director of waste management;

**"district director"** means,

- (a) except in sections 32 [*disposal of municipal solid waste in Greater Vancouver*] and 33 [*disposal of municipal solid waste in other*

*regional districts*], a person appointed under section 31 *[control of air contaminants in Greater Vancouver]* as district director by the board of the Metro Vancouver Regional District,

(b)for the purpose of section 32 *[disposal of municipal solid waste in Greater Vancouver]*, a person appointed under section 32 (3) as district director by the Administration Board of the Greater Vancouver Sewerage and Drainage District, and

(c)for the purpose of section 33 *[disposal of municipal solid waste in other regional districts]*, a person appointed under section 33 as district director by a regional district;

**"effluent"** means a substance that is introduced into water or onto land and that

(a)injures or is capable of injuring the health or safety of a person,

(b)injures or is capable of injuring property or any life form,

(c)interferes with or is capable of interfering with visibility,

(d)interferes with or is capable of interfering with the normal conduct of business,

(e)causes or is capable of causing material physical discomfort to a person, or

(f)damages or is capable of damaging the environment;

**"environment"** means air, land, water and all other external conditions or influences under which humans, animals and plants live or are developed;

**"facility"** includes any land or building, and any machinery, equipment, device, tank, system or other works;

**"greenhouse gas"** has the same meaning as in the [\*Climate Change Accountability Act\*](#);

**"hazardous waste"** has the prescribed meaning;

**"introduce into the environment"**, in relation to waste, includes discharge, emit, dump, abandon, spill, release and allow to escape into the environment;

**"land"** means the solid part of the earth's surface including the foreshore and land covered by water;

**"manager"** means a person appointed under the [\*Public Service Act\*](#) as a manager in the ministry and designated in writing by the minister as a regional manager or as an acting, assistant or deputy regional manager;

**"municipality"**, except in Part 4 *[Contaminated Site Remediation]*, includes,

- (a) a regional district,
- (b) an improvement district that has as an object
  - (i) the disposal of sewage or refuse, or
  - (ii) the provision of a system for the disposal of sewage or refuse or both, and
- (c) the Greater Vancouver Sewerage and Drainage District;

**"officer"** means

- (a) a person or class of persons employed by the government, a government corporation or a municipality and designated in writing by a director as an officer, or
- (b) a conservation officer;

**"operational certificate"** means a certificate issued under section 28 [*operational certificates*] for the design, operation, maintenance, performance and closure of sites or facilities used for the storage, treatment or disposal of waste or recyclable material;

**"order"** means an order made or given under this Act;

**"packaging"** means a material, substance or object that is

- (a) used to protect, contain or transport a commodity or product, including a material, substance or object that is sold or distributed separately from the commodity or product that it will protect, contain or transport, or
- (b) attached to a commodity or product or its container for the purpose of marketing or communicating information about the commodity or product;

**"permit"** means a permit issued under section 14 [*permits*] or under the regulations;

**"pollution"** means the presence in the environment of substances or contaminants that substantially alter or impair the usefulness of the environment;

**"recyclable material"** means a product or substance that has been diverted from disposal, and satisfies at least one of the following criteria:

- (a) is organic material from residential, commercial or institutional sources and is capable of being composted, or is being composted, at a site;
- (b) is managed as a marketable commodity with an established market by the owner or operator of a site;

(c) is being used in the manufacture of a new product that has an established market or is being processed as an intermediate stage of an existing manufacturing process;

(d) has been identified as a recyclable material in a waste management plan;

(e) is any other material prescribed by the Lieutenant Governor in Council, or the minister under section 22 [*minister's regulations — codes of practice*];

**"refuse"** means discarded or abandoned materials, substances or objects;

**"regional district"**, except in the definition of "municipality" and in sections 25, 26 and 30, includes the Northern Rockies Regional Municipality;

**"registered mail"** includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available;

**"remediation"** means action to eliminate, limit, correct, counteract, mitigate or remove any contaminant or the adverse effects on the environment or human health of any contaminant, and includes, but is not limited to, the following:

- (a) preliminary site investigations, detailed site investigations, analysis and interpretation, including tests, sampling, surveys, data evaluation, risk assessment and environmental impact assessment;
- (b) evaluation of alternative methods of remediation;
- (c) preparation of a remediation plan, including a plan for any consequential or associated removal of soil or soil relocation from the site;
- (d) implementation of a remediation plan;
- (e) monitoring, verification and confirmation of whether the remediation complies with the remediation plan, applicable standards and requirements imposed by a director;
- (f) other activities prescribed by the minister;

**"single-use product"** means a product that is ordinarily disposed of after a single use or short-term use, whether or not the product could be reused;

**"special conservation officer"** means a person designated as a special conservation officer under section 106 (3) [*conservation officer service*];

**"waste"** includes

- (a) air contaminants,

- (b)litter,
- (c)effluent,
- (d)refuse,
- (e)biomedical waste,
- (f)hazardous waste, and
- (g)any other substance prescribed by the Lieutenant Governor in Council, or the minister under section 22 [*minister's regulations — codes of practice*], or, if either of them prescribes circumstances in which a substance is a waste, a substance that is present in those circumstances,

whether or not the type of waste referred to in paragraphs (a) to (f) or prescribed under paragraph (g) has any commercial value or is capable of being used for a useful purpose;

**"waste management facility"** means a facility for the treatment, recycling, storage, disposal or destruction of a waste, or recovery of reusable resources, including energy potential from waste;

**"waste management plan"** means a plan that contains provisions or requirements for the management of recyclable material or other waste or a class of waste within all or a part of one or more municipalities;

**"water"** includes groundwater, as defined in section 1 (1) of the [Water Sustainability Act](#), and ice;

**"works"** includes

- (a)a drain, ditch and sewer,
- (b)a waste disposal system including a sewage treatment plant, pumping station and outfall,
- (c)a device, equipment, land and a structure that is used to
  - (i)measure, handle, transport, store, treat or destroy waste or a substance that is capable of causing pollution, or
  - (ii)introduce into the environment waste or a substance that is capable of causing pollution,
- (d)an installation, plant, machinery, equipment, land or a process that causes or may cause pollution or is designed or used to measure or control the introduction of waste into the environment or to measure or control a substance that is capable of causing pollution, or

(e)an installation, plant, machinery, equipment, land or a process that is used to monitor or clean up pollution or waste.

(2)For the purposes of this Act, a detrimental environmental impact occurs when a change in the quality of air, land or water substantially reduces the usefulness of the environment or its capacity to support life.

(3)For the purposes of the definition of "air contaminant" and "effluent", it is not necessary to prove

(a)that the air contaminant or effluent, if diluted at or subsequent to the point of introduction, continues to be capable of harming, injuring or damaging a person, life form, property or the environment, or

(b)the actual presence of a person who, or a life form that, is capable of being harmed or injured by the introduction of the air contaminant or effluent.

(4)If a regulation under this Act authorizes the minister or a director to substitute a different requirement for any requirement in the regulations, a reference to the regulations includes a reference to the substituted requirement.

### **Powers conferred on included officials**

2 A provision of this Act or the regulations that confers powers on an officer also confers them on a director and a manager.

### **Director includes delegate**

3 (1)Subject to the limitations in section 57 [*delegation of responsibilities to municipalities or other ministries*], a director may delegate any of the director's powers, duties or functions under this Act, except the power to establish protocols, to any person, subject to the terms and conditions the director considers necessary or advisable.

(2)In this Act a reference to the director includes a reference to a delegate of the director.

### **Conflicts with other enactments**

4 If there is a conflict between this Act or its regulations or an approval, a licence, an order, a permit or an approved waste management plan under this Act and

(a)the *Geothermal Resources Act* or the regulations under that Act, or a permit, a licence, a lease, an authorization, an order or an agreement under that Act, or

(b)the *Transport of Dangerous Goods Act* or the regulations under that Act,

this Act, its regulations and an approval, a licence, an order, a permit or an approved waste management plan subsisting under this Act prevail.

### **Minister's authority**

5 The duties, powers and functions of the minister extend to any matter relating to the management, protection and enhancement of the environment including, but not limited to, the following matters:

- (a)planning, research and investigation in relation to the environment;
- (b)development of policies for the management, protection and use of the environment;
- (c)planning, design, construction, operation and maintenance of works and undertakings for the management, protection or enhancement of the environment;
- (d)providing information to the public about the quality and use of the environment;
- (e)preparing and publishing policies, strategies, objectives, guidelines and standards for the protection and management of the environment;
- (f)preparing and publishing environmental management plans for specific areas of British Columbia which may include, but need not be limited to, measures with respect to the following:
  - (i)flood control, flood hazard management and development of land that is subject to flooding;
  - (ii)drainage;
  - (iii)soil conservation;
  - (iv)water resource management;
  - (v)fisheries and aquatic life management;
  - (vi)wildlife management;
  - (vii)waste management;
  - (viii)air management.

## **Part 2 — Prohibitions and Authorizations**

### **Waste disposal**

6 (1) For the purposes of this section, "**the conduct of a prescribed industry, trade or business**" includes the operation by any person of facilities or vehicles for the collection, storage, treatment, handling, transportation, discharge, destruction or other disposal of waste in relation to the prescribed industry, trade or business.

(2) Subject to subsection (5), a person must not introduce or cause or allow waste to be introduced into the environment in the course of conducting a prescribed industry, trade or business.

(3) Subject to subsection (5), a person must not introduce or cause or allow to be introduced into the environment, waste produced by a prescribed activity or operation.

(4) Subject to subsection (5), a person must not introduce waste into the environment in such a manner or quantity as to cause pollution.

(5) Nothing in this section or in a regulation made under subsection (2) or (3) prohibits any of the following:

(a) the disposition of waste in compliance with this Act and with all of the following that are required or apply in respect of the disposition:

(i) a valid and subsisting permit;

(ii) a valid and subsisting approval;

(iii) a valid and subsisting order;

(iv) a regulation;

(v) a waste management plan approved by the minister;

(b) the discharge into the air of an air contaminant from an incinerator operated under an authority, licence or permit of a municipality;

(c) the disposition of human remains in crematoria in compliance with the *Cremation, Interment and Funeral Services Act*;

(d) the discharge of air contaminants authorized by a bylaw made under section 31 (3) (d) [*control of air contaminants in Greater Vancouver*];

(e) the burning of leaves, foliage, weeds, crops or stubble for domestic or agricultural purposes or in compliance with the *Weed Control Act*;

(f) the use of pesticides or biocides for agricultural, domestic or forestry purposes in compliance with the *Integrated Pest Management Act*, the *Pest Control Products Act* (Canada) and any other Act and regulation governing their use;

- (g) fires set or controlled by a person
  - (i) acting under an order of a local assistant, as defined in the *Fire Services Act*, if the local assistant orders the fires for training purposes,
  - (ii) carrying out fire control under section 9 of the *Wildfire Act*, or
  - (iii) if the fires are resource management open fires under the *Wildfire Act* and are lit, fuelled or used in accordance with that Act and the regulations under that Act;
- (h) emissions from steam powered or internal combustion engines in compliance, if applicable, with the *Motor Vehicle Act* and regulations;
- (i) emission into the air of soil particles or grit in the course of agriculture or horticulture;
- (j) the disposal of waste by a person other than a municipality
  - (i) by means of a system of waste disposal lawfully operated by a municipality or other public authority, and
  - (ii) in compliance with the rules and regulations that apply to that system;
- (k) emission of an air contaminant from combustion of wood or fossil fuels used solely for the purpose of comfort heating of domestic, institutional or commercial buildings;
- (l) emission of an air contaminant from food preparation in
  - (i) residential premises, or
  - (ii) retail food outlets;
- (m) an owner, agent or manager, as those terms are defined in the *Mines Act*, from carrying out an activity related to mineral and coal exploration if that activity is exempted under section 10 (2.1) of that Act.

(6) Nothing in subsection (5) (b) or (k) authorizes the use of an incinerator or domestic, institutional or commercial heating equipment for the purpose of destroying hazardous waste by means of combustion.

(7) In subsection (5) (l):

**"residential premises"** includes hospitals, clinics, logging camps, factory and office canteens and other similar premises;

**"retail food outlets"** means

- (a) restaurants, hotels, motels and similar premises, and

(b)premises in which food is prepared and sold by retail sale, such as

(i)exclusively retail bakeries, and

(ii)premises selling take out food.

### **Hazardous waste — confinement**

7 (1)A person who produces, stores, transports, handles, treats, recycles, deals with, processes or owns a hazardous waste must keep the hazardous waste confined in accordance with the regulations.

(2)Except to the extent expressly authorized by a permit, an approval, an order, a waste management plan or the regulations, a person must not release a hazardous waste from the confinement required by subsection (1).

### **Hazardous waste management facility**

8 A person must not construct, establish, alter, enlarge, extend, use or operate a facility for the treatment, recycling, storage, disposal or destruction of a hazardous waste except in accordance with the regulations.

### **Hazardous waste storage and disposal**

9 (1)A person must not store more than a prescribed amount of a hazardous waste except in accordance with any of the following that apply:

(a)the regulations in relation to storing hazardous waste;

(b)an order that requires the person to store that kind of hazardous waste;

(c)an approved waste management plan that provides for storage of hazardous waste.

(2)A person who is storing a quantity of a substance at the time that the substance is prescribed to be a hazardous waste does not contravene subsection (1) by continuing to store the same or a different quantity of that substance if the person notifies a director, in accordance with the regulations, of the location, quantity and type of substance that the person is storing.

(3)Despite subsection (2), a director may serve a person referred to in that subsection with a written order to comply with the regulations or the approved waste management plan, and, if a director does so, subject to subsection (4), the person must comply with the order within the period the director specifies in that order.

(4)If a person who is served with an order under subsection (3) does not comply with the regulations in the period specified by the director, the person must dispose of the hazardous waste as directed by a director.

## Transportation of hazardous waste

### 10 (1) A person who produces or stores a hazardous waste

(a) must not cause or allow more than a prescribed quantity of the hazardous waste to be transported from the property where the person produces or stores the hazardous waste unless the person first

(i) completes, in the form and manner prescribed, the part of a manifest that applies to the person, and

(ii) files the manifest in the manner prescribed,

(b) must ensure that the person transporting more than the prescribed quantity of the hazardous waste from the place where it is produced or stored has a licence for that purpose, if a licence is required by the regulations, and

(c) must not cause or allow more than the prescribed quantity of the hazardous waste to be transported to a place unless

(i) an order, waste management plan or regulation authorizes or requires it to be stored at that place,

(ii) a permit, approval, order, waste management plan or regulation authorizes or requires it to be introduced into the environment or treated at that place, or

(iii) storage of the hazardous waste at that place is otherwise not prohibited under section 9 [*hazardous waste storage and disposal*].

(2) A person must not transport more than a prescribed quantity of a hazardous waste unless the person

(a) carries with the person

(i) a manifest completed as required by subsection (1) and this subsection, and

(ii) if required by the regulations, a licence, and

(b) has completed, in accordance with the regulations, that part of the manifest that applies to the person.

(3) A person must not accept delivery of more than a prescribed quantity of a hazardous waste unless the person

(a) receives from the transporter a manifest that has been completed as required by subsections (1) and (2),

(b) completes the part of the manifest that applies to the person and files the manifest in the form and manner prescribed, and

(c)has a permit or an approval authorizing the person to introduce into the environment that kind and quantity of hazardous waste, is authorized under the regulations to treat or recycle that kind and quantity of hazardous waste or is not prohibited under section 9 (1) [*hazardous waste storage and disposal*] from storing that kind and quantity of hazardous waste.

(4)In a prosecution for a contravention of this section, the burden of proving compliance with subsection (1) (a) or (c) or with subsection (2) or (3) is on the defendant.

### **Packaging, product containers and single-use products**

**11** A person must not use, distribute, offer for sale or sell packaging, product containers or single-use products, or any material used in packaging, product containers or single-use products, contrary to this Act or the regulations.

### **Littering**

**12** (1)In this section, "**public place**" means

- (a)a place that is open to the air, including a covered place that is open to the air on at least one side, and to which the public is entitled or permitted to have access without payment, and
- (b)a park or public campground.

(2)A person must not throw down, drop or otherwise deposit, and leave litter in a public place.

(3)The prohibition in subsection (2) does not apply if the depositing and leaving was authorized by law, or was done with the consent of the owner, occupier or other person or authority having the control of the public place.

(4)In a prosecution, the burden of establishing that subsection (3) applies is on the defendant.

### **Discharge of waste from recreational vehicles**

**13** A person must not discharge domestic sewage or waste from a trailer, camper, transportable housing unit, boat or house boat onto land, into any reservoir or into any lake, pond, stream or other natural body of water, except

- (a)in compliance with a permit, an approval, an order, a waste management plan or a regulation, or
- (b)if disposal facilities are provided, in accordance with proper and accepted methods of disposal using those facilities, and in accordance with the *Public Health Act* and regulations.

## Permits

**14** (1)A director may issue a permit authorizing the introduction of waste into the environment subject to requirements for the protection of the environment that the director considers advisable and, without limiting that power, may do one or more of the following in the permit:

- (a)require the permittee to repair, alter, remove, improve or add to works or to construct new works and to submit plans and specifications for works specified in the permit;
- (b)require the permittee to give security in the amount and form and subject to conditions the director specifies;
- (c)require the permittee to monitor, in the manner specified by the director, the waste, the method of handling, treating, transporting, discharging and storing the waste and the places and things that the director considers will be affected by the discharge of the waste or the handling, treatment, transportation or storage of the waste;
- (d)require the permittee to conduct studies and to report information specified by the director in the manner specified by the director;
- (e)specify procedures for monitoring and analysis, and procedures or requirements respecting the handling, treatment, transportation, discharge or storage of waste that the permittee must fulfill;
- (f)require the permittee to recycle certain wastes, and to recover certain reusable resources, including energy potential from wastes.

(2)A permit does not authorize the introduction of hazardous waste into the environment unless it specifies the characteristics and quantity of hazardous waste that may be introduced.

(3)Despite subsection (1), a director may not issue or, subject to subsection (4), amend, a permit authorizing the introduction of waste into the environment if the introduction is governed by

- (a)a code of practice that is established in the regulations in relation to the industry, trade or business that applies for the permit or amendment,
- (b)a code of practice that is established in the regulations in relation to the activity or operation in respect of which the permit or amendment is applied for, or
- (c)a regulation, unless the regulation requires that a permit be obtained in relation to the discharge of the industry, trade, or business, activity or operation.

(4)A director, on receipt of an application or on the director's own initiative, may amend a permit authorizing an introduction of waste described in subsection (3) (a), (b) or (c), if

(a)in the opinion of the director, the amendment is necessary for the protection of the environment, or

(b)the amendment is for one or more of the following purposes:

(i)a change of ownership or name;

(ii)a change of address;

(iii)a decrease in the authorized quantity of the discharge, emission or stored material;

(iv)an increase of not more than 10% in the authorized quantity of the discharge, emission or stored material;

(v)a change in the authorized quality of the discharge, emission or stored material such that, in the opinion of the director, the change has resulted in or will result in an equal or lesser impact on the environment;

(vi)a change in a monitoring program;

(vii)a change to the works, method of treatment or any other condition of a permit or an approval such that, in the opinion of the director, the change has resulted in or will result in an equal or lesser impact on the environment.

## **Approvals**

**15** (1)A director may approve the introduction of waste into the environment for a period of up to 15 months without issuing a permit.

(2)A director may issue the director's approval subject to requirements for the protection of the environment that the director considers advisable and, without restricting that power, may include as a requirement anything referred to in section 14 (1) *[permits]*.

## **Amendment of permits and approvals**

**16** (1)A director may, subject to section 14 (3) *[permits]*, this section and the regulations, for the protection of the environment,

(a)on the director's own initiative if the director considers it necessary, or

(b)on application by a holder of a permit or an approval,

amend the requirements of the permit or approval.

(2)A director may, after consultation with the minister, amend

(a) a permit ordered by the minister under section 90.1 (1) [*permits under area based management plan*], or

(b) a permit or approval issued by the Lieutenant Governor in Council.

(3) If a permit or an approval is subject to conditions imposed pursuant to a decision made in an appeal to the appeal board under Division 2 [*Appeals under this Act*] of Part 8, those conditions must not be amended except

(a) by the appeal board, and

(b) after the appeal board has given the parties an opportunity to be heard on the question of whether the conditions should be amended.

(4) A director's power to amend a permit or an approval includes all of the following:

(a) authorizing or requiring the construction of new works in addition to or instead of works previously authorized or required;

(b) authorizing or requiring the repair of, alteration to, improvement of, removal of or addition to existing works;

(c) requiring security, altering the security required or changing the type of security required or the conditions of giving security;

(d) extending or reducing the term of or renewing the permit or approval;

(e) authorizing or requiring a change in the characteristics or components of waste discharged, treated, handled or transported;

(f) authorizing or requiring a change in the quantity of waste discharged, treated, handled or transported;

(g) authorizing or requiring a change in the location of the discharge, treatment, handling or transportation of the waste;

(h) altering the time specified for the construction of works or the time in which to meet other requirements imposed on the holder of the permit or approval;

(i) authorizing or requiring a change in the method of discharging, treating, handling or transporting the waste;

(j) changing or imposing any procedure or requirement that was imposed or could have been imposed under section 14 [*permits*] or 15 [*approvals*].

(5) A director may renew an approval before or after the end of the term of the approval.

(6) A director may not renew an approval if the term of the approval and the term of renewal, when taken together, would exceed 15 months.

(7) If a director amends a permit or approval, the director

(a) may require that the holder of the permit or approval supply the director with plans, specifications and other information the director requests, and

(b) must give the holder of the permit or approval notice in writing of the amendment and publish notice of the amendment in the prescribed manner.

(8) Despite subsection (7) (b), the director may give the notice by electronic means to an address provided by the holder of the permit or approval.

### **Transfers of permits, approvals, etc.**

**17** (1) A transfer of a permit or approval is without effect unless a director has consented in writing to the transfer.

(2) Despite subsection (1), the director may consent to a transfer by electronic means to an address provided by the holder of the permit or approval.

(3) A licence referred to in section 10 [*transportation of hazardous waste*] is not transferable.

### **Suspension or cancellation of permits and approvals**

**18** (1) Subject to this section, the minister or a director, by notice served on the holder of a permit or approval, may

(a) suspend the permit or approval for any period, or

(b) cancel the permit or approval.

(2) A notice served under subsection (1) must state the time at which the suspension or cancellation takes effect.

(3) The minister may exercise the authority under subsection (1) in any of the following circumstances:

(a) a holder of a permit

(i) fails to complete construction of works specified in the permit within the time specified in the permit or, if no time is specified in the permit, within 3 years after issuance of the permit, or

(ii) does not exercise any rights under the permit for a period of 3 years;

(b) a holder of a permit or an approval fails to pay money owing to the government under the permit or approval;

- (c) a holder of a permit or an approval fails to comply with the terms of the permit or approval;
- (d) a holder of a permit or an approval fails to comply with an order issued under this Act and related to the subject matter of the permit or approval;
- (e) a holder of a permit or an approval or the holder's agent has made or makes a material misstatement or misrepresentation in the application for the permit or approval or in the information required under this Act with respect to the permit or approval;
- (f) a holder of a permit or an approval fails to comply with any other requirements of this Act or the regulations;
- (g) a permit or an approval conflicts with or is replaced by a waste management plan approved by the minister;
- (h) a permit or an approval is replaced by a regulation;
- (i) a permit or an approval is not, in the opinion of the minister, in the public interest.

(4) The authority conferred by subsection (1) may be exercised by a director in any of the circumstances referred to in subsection (3) (a), (b), (g) and (h).

(5) In addition to the authority conferred by subsection (1), a director may, without notice to the holder,

- (a) suspend a permit or approval for the length of time requested if the holder requests that the permit or approval be suspended, or

- (b) cancel a permit or approval if the holder of the permit or approval

- (i) dies,

- (ii) is a corporation that is liquidated, dissolved or otherwise wound up or is an extraprovincial company within the meaning of the *Business Corporations Act* that has had its registration cancelled under Part 11 or 12 of that Act,

- (iii) is a partnership that is dissolved,

- (iv) requests that the permit or approval be cancelled, or

- (v) has given notice of abandonment under section 20 [abandonment].

(6) For certainty, a permit or an approval that is suspended or cancelled is not a valid and subsisting permit or approval.

## Variance orders

- 19** (1) If the minister considers that a person should have temporary relief from a requirement of an order, a permit, an approval, a licence or a waste management plan, the minister may issue a variance order with respect to a requirement of the order, permit, approval, licence or waste management plan.
- (1.1) If the minister considers that a person should have temporary relief from a requirement of a code of practice, the minister may issue a variance order relieving the person in relation to the requirement of the code of practice.
- (2) If the minister issues a variance order, the minister must
- (a) specify the requirements in respect of which the minister grants the relief,
  - (b) specify the period during which the variance order will remain in effect, and
  - (c) cause notice of the variance order to be published in Part 1 of the Gazette.
- (3) Despite subsection (2), the minister may
- (a) cancel a variance order, or
  - (b) renew or extend a variance order.

## **Abandonment**

- 20** (1) A person to whom a permit or an approval has been issued, but who has not exercised any right under it to discharge waste, may abandon the permit or approval by sending or delivering to a director notice that the person elects to abandon the permit or approval.
- (2) A person who elects under subsection (1) to abandon a permit or an approval does not commit an offence merely because the person has not complied with a requirement of the permit or approval.
- (3) Subject to subsection (4), a person to whom a permit or an approval has been issued and who has exercised a right under it to discharge waste may abandon the permit or approval by sending or delivering to a director notice that the person elects to abandon the permit or approval.
- (4) A notice under subsection (3) is not effective until it is received by a director.
- (5) A person who elects under subsection (3) to abandon a permit or an approval
- (a) does not commit an offence merely because after the abandonment became effective the person has not complied with the requirements of the permit or approval, and

(b) despite the abandonment, is bound by those additional requirements that the director imposes respecting restoration of the environment or the control and monitoring of the waste discharged or the waste that continues to be discharged after abandonment.

## **Regulations for the purposes of Part 2**

**21** (1) Without limiting section 138 (1) [*general authority to make regulations*], the Lieutenant Governor in Council may make regulations as follows:

- (a) prescribing the meaning of biomedical waste;
- (b) prescribing the meaning of hazardous waste;
- (c) prescribing the duties of hospitals, laboratories, clinics and other persons or agencies to manage, control, treat and dispose of biomedical waste or to establish biomedical waste management facilities;
- (d) prescribing the form and content of manifests and the procedures for completing and filing manifests;
- (e) requiring the licensing of persons who transport hazardous waste, biomedical waste or another specified class of waste and prohibiting the unlicensed transportation of hazardous waste, biomedical waste or another specified class of waste;
- (f) authorizing the issue, suspension, cancellation and amendment of licences for the transportation of hazardous waste, biomedical waste or another specified class of waste;
- (g) regulating and restricting any activity, operation or industry that creates or produces a hazardous waste, a biomedical waste or another specified class of waste and requiring persons who operate any industry or process that creates or produces hazardous waste to register with the ministry;
- (h) prescribing for the purpose of section 6 (2) [*waste disposal*], industries, trades and businesses;
- (i) prescribing for the purposes of section 6 (3) [*waste disposal*], activities, operations and classes of persons;
- (j) regulating litter including the sale, return and reuse of beverage containers and packaging materials or classes of beverage containers and packaging materials which may
  - (i) require classes of persons to pay refunds in the amounts established for beverage containers,

- (ii) require persons to accept empty beverage containers or classes of beverage containers and handle, store and transport beverage containers or classes of beverage containers received by them in the manner required, and
- (iii) regulate the size, shape, features and composition of beverage containers and their packaging, labelling and use;
- (k) requiring, on request of the minister, that a person or a class of persons involved in the manufacture, distribution, sale, transportation or importation of empty or filled beverage containers of a prescribed type, or another person or association on behalf of the person or class of persons, supply information respecting the use, reuse and wastage of a prescribed type of beverage container;
- (l) respecting the minimum content of material derived from recyclable material that must be contained in types or classes of packaging and products sold in British Columbia;
- (m) prescribing packaging, product containers or products or classes of products for which a charge, including a deposit, handling fee, levy or core charge, must be paid or for which a refund must be given, and prescribing the amount of the charge or refund and the circumstances in which the charge or refund applies;
- (n) requiring the use of standardized definitions, terms, logos, symbols and other representations on packaging, and prescribing those definitions, terms, logos, symbols and other representations;
- (o) prohibiting or restricting the use, distribution, offer for sale or sale of packaging, product containers or single-use products or any material used in packaging, product containers or single-use products;
- (p) prescribing for the purposes of section 11 [*packaging, product containers and single-use products*] the material, content, shape, nature, weight and volume of packaging, including the weight and volume of packaging used per unit of product;
- (q) requiring prescribed industrial, commercial and institutional operations or classes of operations to develop and implement a waste reduction and prevention plan for packaging, product containers, single-use products or any other material or substance, and prescribing the contents of the plan;

(r)requiring prescribed industrial, commercial and institutional operations or classes of operations to develop and maintain an infrastructure for the reuse or recycling of packaging, product containers, single-use products or any other material or substance;

(s)requiring prescribed industrial, commercial and institutional operations or classes of operations to conduct periodic packaging or other waste audits, and prescribing the terms and conditions of the audits, including to whom reports should be made and other reporting requirements;

(t)requiring prescribed manufacturers, distributors or users of packaging, product containers, single-use products or any other materials or substances to conduct environmental life cycle profiles using a model approved by a director;

(u)requiring a person who manages hazardous waste or introduces waste into the environment, other than in accordance with a permit under section 14, to give security in the amount and form and subject to the conditions the Lieutenant Governor in Council may specify, or authorizing a director to require a person who manages hazardous waste or introduces waste into the environment, other than in accordance with a permit under section 14, to give security in the amount and form and subject to the conditions the director may specify.

(2)Section 139 [*regulations — general rules*] applies for the purpose of making regulations under this section.

### **Minister's regulations — codes of practice**

**22** (1)The minister may make regulations establishing codes of practice for industries, trades, businesses, activities or operations, or classes of industries, trades, businesses, activities or operations, for the purposes of section 138 (2) (s) [*general authority to make regulations — exemptions*].

(2)For the purposes of establishing codes of practice under subsection (1), the minister may make regulations as follows:

(a)prescribing the form and content of a notice;

(b)prescribing the duties of hospitals, laboratories, clinics and other persons or agencies to manage, control, treat and dispose of biomedical waste or establish biomedical waste management facilities;

(c) establishing procedures for making applications under a code of practice, and establishing the information that must be submitted in those applications;

(d) regulating and imposing requirements and prohibitions respecting the transportation, labelling, handling, treatment, recycling, storage, disposal and destruction of recyclable materials or wastes or a class of wastes, and, subject to section 132 [*ownership of waste*], the selling, giving or otherwise transferring the ownership or possession of recyclable materials or wastes or a class of wastes;

(e) regulating and imposing requirements and prohibitions respecting the siting, planning, construction and operation of facilities for the treatment, recycling, storage, disposal and destruction of recyclable materials or wastes;

(f) requiring that the owner or operator of a waste management facility make adequate arrangements to maintain the facility after it has been closed and, if required by the government, to transfer to the government ownership of the waste management facility after its closure;

(f.1) requiring the owner or operator of a waste management facility to give security to the minister in the amount and form and subject to the conditions specified, or authorizing a director to require the owner or operator of a waste management facility to give security in the amount and form and subject to the conditions the director may specify;

(f.2) requiring the owner or operator of a waste management facility to provide evidence that a covenant under section 219 of the [Land Title Act](#) has been entered into in favour of the Crown, and respecting the provisions that are to be included in the covenant, or authorizing a director to require evidence of such a covenant and specify the provisions that are to be included in the covenant;

(g) prescribing a substance as a waste and prescribing circumstances in which a substance is a waste;

(g.1) prescribing a substance as recyclable material, and for this purpose may establish conditions and circumstances under which a prescribed material is a recyclable material;

(g.2) requiring the owner or operator of a waste management facility to recycle certain wastes or classes of wastes, and to recover

certain reusable resources, including energy potential from wastes or classes of wastes;

(h) regulating and imposing requirements and restrictions respecting the use, supply, storage, transportation, handling, treatment or disposal of any substance specified in the regulations, whether natural or artificial and whether in solid, liquid or other form, if the minister considers it appropriate to do so for the purpose of preventing the substance from causing damage to persons, animals or plants or pollution of air, water or land;

(i) prescribing conditions that must be met and controls that must be provided for the burning of materials derived from land clearing, land grading or tilling;

(j) requiring the keeping of records and authorizing the inspection of records;

(k) regulating and imposing requirements and prohibitions for the design, siting and operating of any works, activities or operations that produce waste;

(l) regulating and imposing requirements and prohibitions for the installation of septic tanks, the siting and performance standards to be met if sewage disposal systems using septic tanks are installed, and respecting the use and operation of systems using septic tanks;

(m) regulating and imposing requirements and prohibitions for the registration, siting, installation, testing, use and removal of tanks used to store petroleum products, or used to store any other prescribed substance, and prescribing performance and operating standards for those tanks;

(n) requiring and imposing requirements for the certification or licensing of a person who installs tanks described in paragraph (m);

(o) respecting the minimum content of material derived from recyclable material that must be contained in types or classes of packaging and products sold in British Columbia;

(p) requiring the use of standardized definitions, terms, logos, symbols and other representations on packaging, and prescribing those definitions, terms, logos, symbols and other representations;

(q) prohibiting or restricting the use, distribution, offer for sale or sale of packaging, product containers or single-use products or any material used in packaging, product containers or single-use products;

- (r)prescribing for the purposes of section 11 [*packaging, product containers and single-use products*] the material, content, shape, nature, weight and volume of packaging, including the weight and volume of packaging used per unit of product;
- (s)requiring prescribed industrial, commercial and institutional operations or classes of operations to develop and implement a waste reduction and prevention plan for packaging, product containers, single-use products or any other material or substance, and prescribing the contents of the plan;
- (t)requiring prescribed industrial, commercial and institutional operations or classes of operations to develop and maintain an infrastructure for the reuse or recycling of packaging, product containers, single-use products or any other material or substance;
- (u)requiring prescribed industrial, commercial and institutional operations or classes of operations to conduct periodic packaging or other waste audits, and prescribing the terms and conditions of the audits, including prescribing to whom reports should be made and other reporting requirements;
- (v)requiring prescribed manufacturers, distributors or users of packaging, product containers, single-use products or any other materials or substances to conduct environmental life cycle profiles using a model approved by a director;
- (w)requiring a person to comply with a regulation made under this Act;
- (x)imposing monitoring and reporting requirements, including requirements for publication of information, in relation to
  - (i)waste,
  - (ii)handling, treating, transporting, discharging or storing waste, and
  - (iii)places and things that the minister considers may be affected by the handling, treatment, transportation, discharge or storage of waste;
- (y)prescribing sampling, analytical, quality control and reporting procedures that must be followed by a person required to monitor or report under a code of practice.

(3)Section 139 [*regulations — general rules*] applies for the purpose of making regulations under this section.

## Part 3 — Municipal Waste Management

### Definitions

23 In this Part:

**"code of practice"** means a code of practice attached to and forming part of a bylaw made under section 25 [*authority to manage municipal solid waste and recyclable material in regional districts*];

**"hauler"** means a person who picks up, delivers, hauls or transports municipal solid waste or recyclable material on a commercial basis;

**"manage"** or **"management"** includes the collection, transportation, handling, processing, storage, treatment, utilization and disposal of any substance;

**"municipal liquid waste"** means

- (a)effluent that originates from any source and is discharged into a municipal sewer system,
- (b)effluent from residential sources that is discharged to the ground, or
- (c)effluent specified by a director to be included in a waste management plan;

**"municipal solid waste"** means

- (a)refuse that originates from residential, commercial, institutional, demolition, land clearing or construction sources, or
- (b)refuse specified by a director to be included in a waste management plan;

**"sewage facility"** means works operated by a municipality to gather, treat, transport, store, utilize or discharge sewage.

### Waste management plans

24 (1)A municipality, alone or with one or more other municipalities, may submit for approval by the minister a waste management plan, that complies with the regulations respecting the management of municipal liquid waste.  
(2)On the written request of the minister, a regional district must submit for approval by the minister a waste management plan that

- (a)is for the benefit of the whole area of the regional district,
- (b)complies with the regulations, and
- (c)is in respect of biomedical waste.

(3) Despite any other requirement of this Act, the minister, by notice in writing, may

(a) direct a municipality to prepare a waste management plan that complies with the regulations or revise a waste management plan and submit it to the minister for approval on or before a date specified by the minister, or

(b) specify a date by which a municipality must provide proof, in a form satisfactory to the minister, of the progress that the municipality is making to comply with this section.

(4) If the minister considers it to be in the public interest and is satisfied that a municipality is making efforts in good faith to complete a waste management plan in accordance with this Act and the regulations, the minister may, on conditions specified by the minister, grant an extension of a date specified under this section.

(5) Subject to section 27 (2) [*public consultation process*], the minister may, at any time, with or without conditions, approve all or part of a waste management plan or an amendment to a waste management plan.

(6) The minister may, by order, amend or cancel a waste management plan and, if cancelled, the waste management plan ceases to have force or effect.

(7) Despite anything in the *Community Charter* or the *Local Government Act*, if a waste management plan

(a) is required under subsection (2) or (3) (a), or

(b) has been approved by the minister under subsection (5),

a bylaw adopted by a municipality for the purpose of preparing the waste management plan referred to in paragraph (a), or implementing the waste management plan referred to in paragraph (b), does not require a petition, the assent of the electors or the approval of the electors.

(8) Nothing in a waste management plan prevents the exercise of rights conferred by a permit or approval subsisting on the date the waste management plan is approved unless the permit or approval is suspended or cancelled by the minister under section 18 (1) [*suspension or cancellation of permits and approvals*].

(9) Despite subsection (8), if a provision of a permit or approval conflicts with a requirement of an approved waste management plan, that provision has no force or effect after the waste management plan is approved.

(10) Despite subsection (8), if an operational certificate is issued under section 28 (1) [*operational certificates*] in respect of a site or facility for which a permit

or approval authorizing the discharge of waste was previously issued, the permit or approval is cancelled.

**Authority to manage municipal solid waste and recyclable material in regional districts**

25 (1) In this section and sections 26 [*municipal solid waste disposal fees*], 31 [*control of air contaminants in Greater Vancouver*] and 32 [*disposal of municipal solid waste in Greater Vancouver*]:

**"hauler licence"** means a licence issued by a regional district to a hauler, under the authority of a bylaw made under subsection (3) (h) (i);

**"recycler licence"** means a licence issued by a regional district, under the authority of a bylaw made under subsection (3) (h) (i), to the owner or operator of a site that accepts and manages recyclable material;

**"regional district"** means

- (a) a regional district as defined in the [Local Government Act](#), (a.1) except in section 26, the Northern Rockies Regional Municipality, or
- (b) the Greater Vancouver Sewerage and Drainage District constituted under the [Greater Vancouver Sewerage and Drainage District Act](#);

**"site"** means any site or facility, including those identified specifically or by class in an approved waste management plan for the management of municipal solid waste or recyclable material;

**"waste stream management licence"** means a licence issued by a regional district, under the authority of a bylaw made under subsection (3) (h) (i), to the owner or operator of a site that accepts and manages municipal solid waste.

(2) Despite any other Act, a person must manage municipal solid waste and recyclable material at a site in accordance with

- (a) any applicable approved waste management plan for the site,
- (b) any requirements or conditions that a director includes in an operational certificate or permit issued for the site, and
- (c) any applicable bylaw made under subsection (3) of this section or section 31 [*control of air contaminants in Greater Vancouver*] or 32 [*disposal of municipal solid waste in Greater Vancouver*].

(3) For the purpose of implementing an approved waste management plan, a regional district may make bylaws to regulate the management of municipal

solid waste or recyclable material including, without limitation, bylaws regulating, prohibiting or respecting one or more of the following:

- (a) the types, quality or quantities of municipal solid waste or recyclable material that may be brought onto or removed from a site;

- (b) the discarding or abandonment of municipal solid waste or recyclable material;

- (c) the burning of any class or quantity of municipal solid waste or recyclable material;

- (d) the delivery, deposit, storage or abandonment of municipal solid waste or recyclable material at authorized or unauthorized sites;

- (e) the transport of municipal solid waste or recyclable material within or through the area covered by the waste management plan;

- (f) the operation, closure or post-closure of sites, including requirements for

- (i) the recording and submission of information,

- (ii) audited statements respecting the municipal solid waste or recyclable material received at and shipped from a site, and

- (iii) the installation and maintenance of works;

- (g) respecting fees, including

- (i) setting fees and charges that may vary according to

- (A) the quantity, volume, composition or type of municipal solid waste or recyclable material, or

- (B) the class of persons, sites, operations, activities, municipal solid wastes or recyclable materials, and

- (ii) specifying the manner and timing of the payment of those fees and charges;

- (h) requiring the owner or operator of a site or a hauler to

- (i) hold a recycler licence, a waste stream management licence or a hauler licence, or

- (ii) comply with a code of practice;

- (i) setting the terms and conditions for issuing, suspending, amending or cancelling a licence referred to in paragraph (h);

- (j) requiring an owner or operator of a site or a licence holder to obtain insurance or provide security satisfactory to the regional district to ensure

- (i) compliance with the bylaws, and

- (ii) that sufficient funding is available for site operations, remediation, closure and post-closure monitoring;
- (k) requiring the owner or operator of a site to contain municipal solid waste or recyclable material within specified height and area limits, and specify requirements and terms for confirming compliance with those limits;
- (l) prohibiting unauthorized persons from handling or removing municipal solid waste or recyclable material that is deposited at a site or set out for collection;
- (m) establishing different prohibitions, conditions, requirements and exemptions for different classes of persons, sites, operations, activities, municipal solid wastes or recyclable materials;
- (n) requiring an owner of municipal solid waste or recyclable material, the deposit of which has been prohibited by bylaw, to pay the cost of its disposal in a manner specified in the bylaw;
- (o) authorizing designated persons to enter a site or inspect the contents of a vehicle for the purpose of enforcing a bylaw made under this subsection and, for this purpose, sections 109 [*entry on property*] and 111 (2) [*inspection of vehicles*] apply to a designated person as if the designated person is an officer referred to in those sections, but only in respect of municipal solid waste and recyclable material;
- (p) providing that
  - (i) a contravention of a provision of the bylaws is an offence punishable by a fine not exceeding \$200 000, and
  - (ii) if a corporation commits an offence under the bylaws, an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the offence commits the offence even though the corporation is convicted.

- (4) Before exercising the authority under this section, a regional district must
  - (a) indicate in its waste management plan its intention to undertake consultations with affected stakeholders in accordance with section 27 (1) [*public consultation process*], and
  - (b) undertake the consultations.

(5) This section does not apply to the management of municipal solid waste or recyclable material at the site at which it originates.

- (6) A regional district, including its employees and elected officials, is not liable
  - (a) to any person for environmental conditions at a site, or

(b)to remediate a site included in a waste management plan, solely because it holds security as required under a bylaw made under this Part.

### **Municipal solid waste disposal fees**

**26** (1)In this section, "**waste hauler**" means

- (a)a municipality that picks up, delivers, hauls or transports municipal solid waste, or
- (b)a person who, on a commercial basis, picks up, delivers, hauls or transports municipal solid waste.

(2)In addition to its other powers, a regional district may, by bylaw, exercise one or more of the following powers in relation to the collection and disposal of municipal solid waste generated within its area or within a municipality that has contracted with the regional district for the disposal of municipal solid waste from the municipality:

- (a)setting fees payable by persons who use the services of a waste hauler or by generators of municipal solid waste;
- (b)setting levels of fees based on
  - (i)the quantity, volume, type or composition of municipal solid waste generated,
  - (ii)the fees charged by the applicable waste hauler for its services, or
  - (iii)any other criteria prescribed by regulation;
- (c)varying fees by class of persons, operations, activities, industries, trades, businesses, works, sites or municipal solid wastes;
- (d)requiring waste haulers to
  - (i)act as agents of the regional district when collecting fees under this section,
  - (ii)remit fees to the regional district in accordance with the bylaw,
  - (iii)maintain records in accordance with the bylaw, and
  - (iv)permit an employee or agent of the regional district to inspect and make copies of these records during the waste hauler's normal business hours;
- (e)setting conditions respecting the collection and remittance of fees by waste haulers and setting compensation payable to the waste haulers for this service;

(f) establishing fines for failure to comply with a bylaw made under this section.

### **Public consultation process**

**27** (1) A municipality must provide for a process for comprehensive review and consultation with the public respecting all aspects of the development, amendment and final content of a waste management plan that applies to that municipality.

(2) The minister may not approve a waste management plan unless the minister is satisfied that there has been adequate public review and consultation with respect to the development, amendment and final content of the waste management plan.

### **Operational certificates**

**28** (1) If a waste management plan is approved by the minister, a director may, in accordance with the regulations, issue an operational certificate, with or without conditions, to the municipality or to any person who is the owner of a site or facility covered by the waste management plan.

(2) An operational certificate issued under subsection (1) forms part of and must not conflict with the approved waste management plan.

(3) A director may exercise a power or authority in relation to an operational certificate in the same manner and to the same extent as provided by this Act with respect to a permit.

(4) At least 14 days before issuing an operational certificate, a director must give notice of the director's intention to issue the operational certificate

- (a) in writing to the person named in the operational certificate, and
- (b) to the public in accordance with the regulations.

(5) A director who gives notice under subsection (4) must allow any person who has been given notice under that subsection to

- (a) inspect the proposed operational certificate, and
- (b) provide comments to the director respecting the requirements or conditions of the proposed operational certificate.

### **Sewage control areas**

**29** (1) The Lieutenant Governor in Council may designate all or a specified part of a municipality as a sewage control area, and on the designation the council, board or other governing body of the municipality

- (a) must appoint one or more persons as sewage control managers, and

(b) may appoint one or more persons as municipal sewage control officers

who have and may exercise, in relation to the sewage control area, the powers of an officer set out in section 109 *[entry on property]*.

(2) A sewage control manager may, subject to any applicable waste management plan, by order, prohibit or regulate the discharge of any type of waste other than domestic sewage into a sewage facility.

(3) Without limiting subsection (2), a sewage control manager may

(a) in an order made under subsection (2), specify

(i) the conditions under which the waste may be discharged into a sewage facility, and

(ii) that the person who discharges, or the council, board or other governing body that permits the waste to be discharged into the sewage facility in the municipality, or both of them, monitor the waste discharged in the manner and at the times specified, or

(b) amend or revoke an order made by the sewage control manager under subsection (2).

(4) A sewage control manager may order a person who discharges waste other than domestic sewage into a sewage facility, or who possesses waste other than domestic sewage that may ultimately be discharged into a sewage facility, to keep records and provide information in the form and manner required by the sewage control manager respecting the waste discharged, handled, stored, treated or transported.

(5) A person affected by an order of a sewage control manager under this section may appeal the order under Division 2 *[Appeals from Decisions under this Act]* of Part 8 in the same manner as if the order were a decision of the director, and Part 8 applies.

(6) The Lieutenant Governor in Council may reduce or extend the boundaries of a sewage control area, and may disestablish a sewage control area.

### **Sewage in regional districts**

**30** (1) The board of the Greater Vancouver Sewerage and Drainage District or, if a regional district exercises a power to provide a service related to the disposal or treatment of sewage, the board of the district, may make bylaws respecting the direct or indirect discharge of wastes into any sewer or drain connected to a sewerage facility operated by the district.

(2)A bylaw made under this section may provide that its contravention is an offence punishable by a fine not exceeding \$10 000.

(3)Without limiting subsection (1), a bylaw under this section may do one or more of the following:

(a)require the keeping of records and the provision of information respecting waste produced on property other than residential property;

(b)impose conditions respecting the discharge into sewers of waste produced on property other than residential property;

(c)provide that its prohibitions, restrictions and requirements apply only to specified persons or classes of persons.

### **Control of air contaminants in Greater Vancouver**

**31** (1)Despite anything in its letters patent, the Metro Vancouver Regional District may provide the service of air pollution control and air quality management and, for that purpose, the board of the regional district may, by bylaw, prohibit, regulate and otherwise control and prevent the discharge of air contaminants.

(2)The board of the Metro Vancouver Regional District must appoint

(a)officers who may, with respect to the discharge of air contaminants in the Metro Vancouver Regional District, exercise all the powers of an officer under section 109 [*entry on property*] and the regulations, and

(b)a district director and one or more assistant district directors who may, with respect to the discharge of air contaminants in the Metro Vancouver Regional District, exercise all the powers of a director under this Act.

(3)Without limiting subsection (1), a bylaw under this section may do one or more of the following:

(a)provide that contravention of a provision of the bylaw that is intended to limit the quantity of air contaminants or that specifies the characteristics of air contaminants that may be discharged into the air is an offence punishable by a fine not exceeding \$1 000 000;

(b)provide that a contravention of a provision of the bylaw, other than a provision referred to in paragraph (a), is an offence punishable by a fine not exceeding \$200 000;

(c)require the keeping of records and the provision of information respecting air contaminants and their discharge;

(d) exempt from the application of section 6 (2) and (3) [*waste disposal*], in relation to the discharge of air contaminants, any operation, activity, industry, trade, business, air contaminant or works that complies with the bylaw, if it also complies with any further restrictions or conditions imposed under this Act;

(e) establish different prohibitions, regulations, rates or levels of fees, conditions, requirements and exemptions

(i) for different persons, operations, activities, industries, trades, businesses, air contaminants or works, and

(ii) for different classes of persons, operations, activities, industries, trades, businesses, air contaminants or works.

(4) A district director may, by order, impose on a person further restrictions or conditions in relation to an operation, activity, industry, trade, business, air contaminant or works covered by a bylaw under subsection (3) (d) in order that the person may qualify for an exemption under that subsection, including a condition that the person obtain a permit.

(5) The minister may require the Metro Vancouver Regional District to amend, suspend or cancel any bylaw or part of a bylaw made under this section if the minister considers it necessary in the public interest.

## **Disposal of municipal solid waste in Greater Vancouver**

**32** (1) In addition to anything in the *Greater Vancouver Sewerage and Drainage District Act*, the Administration Board of the Greater Vancouver Sewerage and Drainage District may make bylaws to prohibit, regulate or otherwise control the introduction into the environment of municipal solid waste.

(2) Without limiting subsection (1), a bylaw under this section may do one or more of the following:

(a) provide that contravention of a provision of the bylaw that is intended to limit the quantity of municipal solid waste, or that specifies the characteristics of municipal solid waste that may be discharged into the environment, is an offence punishable by a fine not exceeding \$1 000 000;

(b) provide that a contravention of a provision of the bylaw, other than a provision referred to in paragraph (a), is an offence punishable by a fine not exceeding \$200 000;

(c) require the keeping of records and the provision of information respecting municipal solid waste and its discharge;

(d) exempt from the application of section 6 (2) and (3) [*waste disposal*], in relation to the discharge of municipal solid waste, any operation, activity, industry, trade, business, works, site, facility or municipal solid waste that complies with the bylaw, if it also complies with any further restrictions or conditions imposed under this Act;

(e) establish different prohibitions, regulations, rates or levels of fees, conditions, requirements and exemptions for different classes of persons, operations, activities, industries, trades, businesses, works, sites or municipal solid wastes.

(3) The Administration Board of the Greater Vancouver Sewerage and Drainage District, before exercising a power under subsection (1) or (2), must

(a) appoint a district director and one or more assistant district directors who may, with respect to the management of municipal solid waste and recyclable material at sites within the area of the Metro Vancouver Regional District, exercise all the powers of a director under this Act, and

(b) appoint officers who may, with respect to the management of municipal solid waste and recyclable material at sites within the area of the Metro Vancouver Regional District, exercise all the powers of an officer under sections 109 [*entry on property*] and 111 [*inspection of vehicles*] of this Act and under the regulations.

(4) If the minister considers it necessary in the public interest with respect to the exercise of the powers granted under subsections (1) and (2), the minister may

(a) require a person designated by the minister to carry out a review of the manner in which the powers have been exercised by the Greater Vancouver Sewerage and Drainage District, or

(b) take any action to ensure proper administration of the powers granted, including authorizing the designated person to carry out the duties associated with those powers.

(5) After the minister receives a report and recommendation from the officers referred to in subsection (4) (a), and after any consultation the minister considers necessary, the minister may revoke any or all of the powers granted under subsection (1) or (2).

(6) No action lies, and no proceedings may be brought, against the Greater Vancouver Sewerage and Drainage District or an officer, employee or elected or appointed official of the Metro Vancouver Regional District because of anything

arising out of the administration of the powers, duties and functions under this section unless a person establishes that the Greater Vancouver Sewerage and Drainage District or an officer, employee or elected or appointed official of the Metro Vancouver Regional District has acted in bad faith.

(7) Division 2 *[Appeals from Decisions under this Act]* of Part 8 and section 133 *[service]* apply to a decision of the Administration Board of the Greater Vancouver Sewerage and Drainage District, or a decision of an officer, employee or elected or appointed official of the Metro Vancouver Regional District, made under the authority of a bylaw made under subsection (1) or (2).

(8) This section does not apply to a site owned or operated by the Greater Vancouver Sewerage and Drainage District or one of its member municipalities.

### **Disposal of municipal solid waste in other regional districts**

**33** (1) The Lieutenant Governor in Council, on receipt of a written request from a regional district, other than a regional district that is within the area of the Greater Vancouver Sewerage and Drainage District, and after appropriate consultation with the regional district and affected stakeholders, may make regulations

- (a) giving the regional district the authority to make bylaws to prohibit, regulate or otherwise control the introduction into the environment of municipal solid waste within the area covered by the regional district's approved solid waste management plan, and
- (b) specifying the terms and conditions, including terms and conditions respecting the collection of fees, to which the authority under paragraph (a) is subject.

(2) Section 32 (2) to (8) *[disposal of municipal solid waste in Greater Vancouver]* applies in relation to a regional district in respect of which the Lieutenant Governor in Council has made regulations under subsection (1).

### **Bylaw approval or amendment**

**34** (1) A bylaw made by a regional district under the authority of section 25 *[authority to manage municipal solid waste and recyclable material in regional districts]*, 26 *[municipal solid waste disposal fees]* or 33 *[disposal of municipal solid waste in other regional districts]* or made by the Administration Board of the Greater Vancouver Sewerage and Drainage District under the authority of section 25, 26 or 32 *[disposal of municipal solid waste in Greater Vancouver]*, may not be adopted without the prior written approval of the minister.

(2) If the minister considers it necessary in the public interest, the minister may require a regional district or the Greater Vancouver Sewerage and Drainage District to amend, suspend or cancel a bylaw or part of a bylaw, or any authorization given under a bylaw made under section 25 *[authority to manage municipal solid waste and recyclable material in regional districts]*, 26 *[municipal solid waste disposal fees]*, 32 *[disposal of municipal solid waste in Greater Vancouver]* or 33 *[disposal of municipal solid waste in other regional districts]*.

### **Delegation of powers**

**35** (1) For the purposes of sections 25 *[authority to manage municipal solid waste and recyclable material in regional districts]*, 26 *[municipal solid waste disposal fees]*, 32 *[disposal of municipal solid waste in Greater Vancouver]* and 33 *[disposal of municipal solid waste in other regional districts]*, a regional district may, by bylaw, delegate to an officer or employee of the regional district the power to perform the functions and duties of the regional district in bylaws made under those sections.

(2) For the purpose of sections 25 *[authority to manage municipal solid waste and recyclable material in regional district]*, 26 *[municipal solid waste disposal fees]* and 32 *[disposal of municipal solid waste in Greater Vancouver]*, the Administration Board of the Greater Vancouver Sewerage and Drainage District may, by bylaw, delegate to an officer or employee of the Metro Vancouver Regional District the power to perform the functions and duties of the Greater Vancouver Sewerage and Drainage District in bylaws made under those sections.

(3) A bylaw referred to in subsection (1) or (2) must include an appeal mechanism from a decision of the officer or employee.

### **Municipal administration of storage tanks**

**36** (1) A municipality may, on giving notice to a director, administer regulations made under this Act respecting tanks used to store petroleum products or other substances.

(2) No action or other proceeding for damages lies or may be instituted against a municipality or a member of its council or an officer or employee of the municipality for anything done or omitted to be done in the exercise or intended exercise of any authority conferred on it by subsection (1) unless the person acted negligently or in bad faith.

### **Conflicts between this Act and bylaws, permits, etc. issued by a municipality**

37 (1) Despite the *Community Charter*, the *Local Government Act*, the *Vancouver Charter* or the *Greater Vancouver Sewerage and Drainage District Act*,

(a) a bylaw of a municipality, other than a bylaw under section 30 [*sewage in regional districts*], 31 [*control of air contaminants in Greater Vancouver*], 32 [*disposal of municipal solid waste in Greater Vancouver*] or 33 [*disposal of municipal solid waste in other regional districts*], or

(b) a permit, licence, approval or other document issued under the authority of a municipal bylaw

that conflicts with this Act, the regulations, an approved waste management plan or a permit, approval or order under this Act is without effect to the extent of the conflict.

(2) A bylaw under section 30 [*sewage in regional districts*], 31 [*control of air contaminants in Greater Vancouver*], 32 [*disposal of municipal solid waste in Greater Vancouver*] or 33 [*disposal of municipal solid waste in other regional districts*] that conflicts with this Act, the regulations, an approved waste management plan or a permit, approval or order, other than one issued by a district director, is without effect to the extent of the conflict.

(3) A permit, approval or order issued by a district director that conflicts with this Act, the regulations, an approved waste management plan or a bylaw under section 30 [*sewage in regional districts*], 31 [*control of air contaminants in Greater Vancouver*], 32 [*disposal of municipal solid waste in Greater Vancouver*] or 33 [*disposal of municipal solid waste in other regional districts*], is without effect to the extent of the conflict.

(4) A bylaw of a municipality that conflicts with a bylaw under section 30 [*sewage in regional districts*], 31 [*control of air contaminants in Greater Vancouver*], 32 [*disposal of municipal solid waste in Greater Vancouver*] or 33 [*disposal of municipal solid waste in other regional districts*], is without effect to the extent of the conflict.

(5) For the purposes of subsections (1) to (4), a conflict does not exist solely because further restrictions or conditions are imposed by the bylaw, permit, licence, approval, order or other document, unless the minister by order declares that a conflict exists.

(6) Despite the *Local Government Act* and the *Vancouver Charter*, if

(a) a bylaw of a municipality purports to zone land for a use, or

(b) a land use contract under the *Local Government Act* purports to restrict the use of land to a use

that would not allow the land to be used for the purpose allowed under a permit, approval or order issued in respect of the land or an approved waste management plan respecting the land, the Lieutenant Governor in Council may, by order, suspend the operation of the bylaw or contract to the extent the Lieutenant Governor in Council considers necessary to enable the rights given by the permit approval or order to be exercised.

### **Regulations for purposes of Part 3**

**38** (1) Without limiting section 138 (1) [*general authority to make regulations*], the Lieutenant Governor in Council may make regulations as follows:

- (a) respecting the development, content, amendment, approval and review of waste management plans and operational certificates;
- (b) establishing municipal solid waste reduction targets for the purpose of assessing waste management plans;
- (c) prescribing the criteria for setting fees for the purposes of section 26 (2) (b) (iii) [*municipal solid waste disposal fees*].

(2) Section 139 [*regulations — general rules*] applies for the purpose of making regulations under this section.

## **Part 4 — Contaminated Site Remediation**

### **Division 1 — Interpretation**

#### **Definitions and interpretation**

**39** (1) In this Part and Part 5 [*Remediation of Mineral Exploration Sites and Mines*]:

**"allocation panel"** means an allocation panel appointed under section 49

(2) [*allocation panel*];

**"approval in principle"** means an approval in principle under section 53 [*approvals in principle and certificates of compliance*];

**"approved professional"** means a person who is named on a roster established under section 42 (2) [*approved professionals*];

**"approving officer"** means an approving officer as defined in the [Land Title Act](#);

**"certificate of compliance"** means a certificate of compliance under section 53 [*approvals in principle and certificates of compliance*];

**"contaminated site"** means an area of the land in which the soil or any groundwater lying beneath it, or the water or the underlying sediment, contains a prescribed substance in quantities or concentrations exceeding prescribed risk based or numerical

- (a) criteria,
- (b) standards, or
- (c) conditions;

**"contamination"** means the presence in soil, sediment, water or groundwater of a substance prescribed for the purposes of the definition of "contaminated site" in quantities or concentrations exceeding the risk based or numerical

- (a) criteria,
- (b) standards, or
- (c) conditions

also prescribed for the purposes of the definition of "contaminated site";

**"detailed site investigation"** means a detailed site investigation and report under section 41 [*site investigations*] that complies with the regulations;

**"government body"** means a federal, provincial, municipal or treaty first nation body, including an agency or ministry of the Crown in right of Canada or British Columbia and an agency of a municipality or treaty first nation;

**"high risk orphan site"** means an orphan site determined under section 58 [*orphan sites*] to be a high risk orphan site;

**"minor contributor"** means a responsible person determined under section 50 [*minor contributors*] to be a minor contributor;

**"municipality"** means a municipality as defined in section 1 but including the Islands Trust and not including an improvement district or the Greater Vancouver Sewerage and Drainage District;

**"operator"** means, subject to subsection (2), a person who is or was in control of or responsible for any operation located at a site, but does not include a secured creditor unless the secured creditor is described in section 45 (3) [*persons responsible for remediation of contaminated sites*];

**"orphan site"** means a contaminated site determined under section 58 [*orphan sites*] to be an orphan site;

**"owner"** means a person who

- (a) is in possession,
- (b) has the right of control, or
- (c) occupies or controls the use

of real property, and includes, without limitation, a person who has an estate or interest, legal or equitable, in the real property, but does not include a secured creditor unless the secured creditor is described in section 45 (3) [*persons responsible for remediation of contaminated sites*];

**"person"** includes a government body and any director, officer, employee or agent of a person or government body;

**"preliminary site investigation"** means a preliminary site investigation and report under section 41 [*site investigations*] that complies with the regulations;

**"protocol"** means a protocol established by a director under section 64 [*director's protocols*];

**"registrar"** means the registrar appointed under section 43 [*site registry*];

**"regulator"** has the same meaning as in the [Energy Resource Activities Act](#);

**"remediation order"** means a remediation order under section 48 [*remediation orders*];

**"remediation standards"** means numerical standards relating to concentrations of substances and standards relating to risk assessment, as prescribed in the regulations;

**"responsible person"** means a person described in section 45 [*persons responsible for remediation of contaminated sites*];

**"secured creditor"** means a person who holds a mortgage, charge, debenture, hypothecation or other security interest in property at a contaminated site, and includes an agent for that person;

**"site disclosure statement"** means a site disclosure statement under section 40 [*site disclosure statements*];

**"site investigation"** means a detailed or preliminary site investigation referred to in section 41 [*site investigations*];

**"site registry"** means the site registry established under section 43 [*site registry*];

**"specified industrial or commercial use"** means a use of land for a prescribed industrial or commercial purpose or activity;

**"subdivision"** means

- (a) a subdivision as defined in the *Land Title Act*, or
- (b) a subdivision under the *Strata Property Act*;

**"summary of site condition"** means a document that complies with subsection (3);

**"voluntary remediation agreement"** means a voluntary remediation agreement referred to in section 51 [*voluntary remediation agreements*].

(2) A government body is not an operator only as a result of

- (a) exercising regulatory authority with respect to a contaminated site,
- (b) carrying out remediation of a contaminated site, or
- (c) providing advice or information with respect to a contaminated site or an activity that took place on the contaminated site.

(3) A summary of site condition must be

- (a) prepared
  - (i) by an approved professional,
  - (ii) in the form established in a protocol, and
  - (iii) in accordance with the requirements prescribed by the minister, and
- (b) signed by the approved professional.

## **Division 2 — Identification of Contaminated Sites**

### **Site disclosure statements**

**40** (1) A person must provide, in accordance with the regulations, a site disclosure statement to the following, as applicable, for land that the person knows or reasonably should know has been used for a specified industrial or commercial use:

- (a) the approving officer, if the person applies for or otherwise seeks approval for subdivision of the land;
- (b) the applicable municipality, if the person applies for or otherwise seeks approval for
  - (i) zoning of the land,
  - (ii) a development permit, or a building permit, for an activity that will likely disturb soil on the land, or
  - (iii) a prescribed activity on the land.

(2) A person who is an owner or operator in relation to land that the person knows or reasonably should know has been used for a specified industrial or

commercial use must provide to the registrar a site disclosure statement for that land if any of the following applies:

- (a) the person, to the extent provided in the regulations,
  - (i) decommissions a site on the land, or
  - (ii) ceases operations on the land;
- (b) the person files for protection under, or otherwise becomes subject to, the *Companies' Creditors Arrangement Act* (Canada);
- (c) the person files a proposal, or a notice of intention to make a proposal, under Part III of the *Bankruptcy and Insolvency Act* (Canada).

(3) A permit holder under the *Energy Resource Activities Act* who is required under subsection (2) to provide a site disclosure statement must provide a copy of the site disclosure statement to the regulator.

- (4) A municipality or an approving officer, as applicable, must
- (a) assess, in accordance with the regulations, a site disclosure statement received under subsection (1), and
  - (b) forward a copy of the site disclosure statement to the registrar.

(5) A municipality or an approving officer may require a person to pay a fee for an assessment under subsection (4) (a).

(6) A vendor of real property must provide, in accordance with the regulations, a site disclosure statement to a prospective purchaser of the real property if the vendor knows or reasonably should know that the real property has been used for a specified industrial or commercial use.

- (7) A person
- (a) who is a trustee, receiver or liquidator or who commences foreclosure proceedings, and
  - (b) who takes possession or control of real property for the benefit of one or more creditors

must, immediately on taking possession or control of the real property, provide to the registrar a site disclosure statement if the person knows or reasonably should know that the real property has been used for a specified industrial or commercial use.

(8) A director may order a person to prepare and provide to the director a site disclosure statement if that person

- (a) owns or occupies land that, in the opinion of the director, may be a contaminated site on account of any past or current use on that or other land, or

(b) is a person referred to in subsection (1), (2) or (7) and fails to provide a satisfactorily completed site disclosure statement.

(9) If the director orders the preparation of a site disclosure statement respecting land that is subsequently determined not to be a contaminated site, the director is not liable for any costs incurred by a person in preparing the site disclosure statement.

(10) [Repealed 2019-19-2.]

### **Investigations required with provision of site disclosure statements**

**40.1** (1) This section applies

(a) to a person who is required to provide a site disclosure statement under section 40 (1), and

(b) in prescribed circumstances, to a person who is required to provide a site disclosure statement under section 40 (2), (7) or (8).

(2) Unless a director specifies otherwise, a person referred to in subsection (1) who is required to provide a site disclosure statement for land must, as required by the regulations, do the following in relation to that land:

(a) undertake investigations;

(b) prepare and submit, to a director, reports on the investigations referred to in paragraph (a) of this subsection;

(c) provide to a director other prescribed information.

### **Site investigations**

**41** (1) A director may order an owner or operator of a site, at the owner's or operator's own expense, to undertake a preliminary site investigation or a detailed site investigation and to prepare a report of the investigation in accordance with the regulations and any applicable protocol if the director reasonably suspects on the basis of a site disclosure statement, or any other information, that the site

(a) may be a contaminated site, or

(b) contains substances that may cause or threaten to cause adverse effects on human health or the environment.

(2) If a director orders a preliminary site investigation or a detailed site investigation respecting a site that is subsequently determined not to be a contaminated site, the director is not liable for any costs incurred by a person for completing the investigation and the related report.

(3) On receipt of a report of a preliminary site investigation or a detailed site investigation submitted under this section, the director

- (a) must determine whether the report and investigation comply with any applicable regulations and orders,
- (b) must give notice to the owner or operator of the site of the determination under paragraph (a), and
- (c) may require the additional investigation and reporting the director considers necessary for the report and investigation to comply with any applicable regulations or orders.

(4) The duty to undertake a preliminary site investigation or a detailed site investigation and to prepare a report of the investigation under this section does not apply if a person seeks and obtains a determination that a site is a contaminated site under section 44 (3) [*determination of contaminated sites*].

### **Approved professionals**

**42** (1) A director may designate classes of persons who are qualified to perform classes of activities, prepare classes of reports and other documents or make classes of recommendations that under this Act may be or are required to be performed, prepared or made by an approved professional.

(2) The director may establish a roster of persons who are in a class designated under subsection (1).

(3) A director may

- (a) make changes to the roster that are necessitated by the removal of a designation, and
- (b) add and remove names from the roster.

(4) If a qualified professional has performed activities in a manner that a director has reasonable grounds to believe does not satisfy the applicable protocol established under section 64 [*director's protocols*], the director may suspend the qualified professional from the roster on terms and conditions.

### **Site registry**

**43** (1) The minister must

- (a) establish a site registry, and
- (b) appoint a registrar to manage the site registry.

(2) A director must provide to the registrar, in a form suitable for inclusion in the site registry, information respecting

- (a) all site disclosure statements, preliminary site investigations and detailed site investigations that the director receives,
- (b) all orders, approvals, voluntary remediation agreements and decisions, including determinations under section 44

(3) *[determination of contaminated sites]*, made by the director under this Part,

(c) pollution abatement orders under section 83 *[pollution abatement orders]* that impose a requirement for remediation,

(d) notifications under section 54 *[independent remediation procedures]* respecting independent remediation,

(e) declarations and orders made by the minister under section 58 *[orphan sites]*, and

(f) other information required by the regulations.

(3) A director may request the registrar to enter in the site registry information that

(a) is already available to the director, and

(b) would normally be obtained through a site disclosure statement or site investigation,

if, before requesting the registrar to do so, the director provides

(c) notice to the owners or operators of the site, if known to the director, of the intention to make the request, and

(d) an opportunity for those owners or operators to show cause to the director why the information contained in the request should not be entered into the site registry.

(4) The registrar must enter by notation into the site registry

(a) information referred to in subsections (2) and (3),

(b) information respecting site disclosure statements that the registrar receives under section 40, and

(c) decisions of the appeal board.

(5) In accordance with the regulations, the registrar must provide for reasonable public access to information in the site registry.

### **Determination of contaminated sites**

**44** (1) A director may determine whether a site is a contaminated site and, if the site is a contaminated site, the director may determine the boundaries of the contaminated site.

(2) Subject to subsection (3), in determining whether a site is a contaminated site, the director must do all of the following:

(a) make a preliminary determination of whether or not a site is a contaminated site, on the basis of a site disclosure statement, a preliminary site investigation, a detailed site investigation or other available information;

- (b)give notice in writing of the preliminary determination to
  - (i)the person who submitted the site disclosure statement, preliminary site investigation or detailed site investigation for the site,
  - (ii)any municipality or approving officer that has received, assessed and forwarded to the registrar a site disclosure statement for the site to which the preliminary determination pertains,
  - (iii)any person with a registered interest in the site as shown in the records of the land title office or a land registry office of a treaty first nation at the time the director searches the land title records, and
  - (iv)any person known to the director who may be a responsible person under section 45 [*persons responsible for remediation of contaminated sites*] if the site is finally determined to be a contaminated site;
- (c)provide an opportunity for any person to comment on the preliminary determination;
- (d)make a final determination of whether or not a site is a contaminated site;
- (e)give notice in writing of the final determination to
  - (i)the person who submitted the site disclosure statement, preliminary site investigation or detailed site investigation for the site,
  - (ii)any municipality or approving officer that has received, assessed and forwarded to the registrar a site disclosure statement for the site to which the final determination pertains,
  - (iii)any person with a registered interest in the site as shown in the records of the land title office or a land registry office of a treaty first nation at the time of the final determination,
  - (iv)any person known to the director who may be a responsible person under section 45 [*persons responsible for remediation of contaminated sites*], and
  - (v)any person who has commented under paragraph (c);
- (f)carry out any other procedures specified in the regulations.

(3) A director, on request by any person, may omit the procedures set out in subsection (2) (a) to (c) and make a final determination that a site is a contaminated site if the person

(a) provides reasonably sufficient information to determine that the site is a contaminated site, and

(b) agrees to be a responsible person for the contaminated site.

(4) The lack of a determination under subsection (2) or (3) does not mean that a site is not a contaminated site.

(5) In addition to a site in respect of which a director makes a determination under subsection (1), a site is considered to be or to have been a contaminated site if a director has done any of the following:

(a) appointed an allocation panel with respect to the site under section 49 *[allocation panel]*;

(b) determined that a responsible person is a minor contributor with respect to the site under section 50 *[minor contributors]*;

(c) entered into a voluntary remediation agreement with respect to the site under section 51 *[voluntary remediation agreements]*;

(d) issued an approval in principle with respect to a proposed remediation plan for the site under section 53 (1) *[approvals in principle and certificates of compliance]*;

(e) issued a certificate of compliance with respect to remediation of the site under section 53 (3) *[approvals in principle and certificates of compliance]*.

(6) A final determination made under this section is a decision that may be appealed under Division 2 *[Appeals from Decisions under this Act]* of Part 8.

### **Division 3 — Liability for Remediation**

#### **Persons responsible for remediation of contaminated sites**

45 (1) Subject to section 46 *[persons not responsible for remediation]*, the following persons are responsible for remediation of a contaminated site:

(a) a current owner or operator of the site;

(b) a previous owner or operator of the site;

(c) a person who

(i) produced a substance, and

(ii) by contract, agreement or otherwise caused the substance to be disposed of, handled or treated in a manner that, in whole or in part, caused the site to become a contaminated site;

(d) a person who

- (i) transported or arranged for transport of a substance, and
- (ii) by contract, agreement or otherwise caused the substance to be disposed of, handled or treated in a manner that, in whole or in part, caused the site to become a contaminated site;

(e) a person who is in a class designated in the regulations as responsible for remediation.

(2) In addition to the persons referred to in subsection (1), the following persons are responsible for remediation of a contaminated site that was contaminated by migration of a substance to the contaminated site:

(a) a current owner or operator of the site from which the substance migrated;

(b) a previous owner or operator of the site from which the substance migrated;

(c) a person who

- (i) produced the substance, and
- (ii) by contract, agreement or otherwise caused the substance to be disposed of, handled or treated in a manner that, in whole or in part, caused the substance to migrate to the contaminated site;

(d) a person who

- (i) transported or arranged for transport of the substance, and
- (ii) by contract, agreement or otherwise caused the substance to be disposed of, handled or treated in a manner that, in whole or in part, caused the substance to migrate to the contaminated site.

(3) A secured creditor is responsible for remediation of a contaminated site if

(a) the secured creditor at any time exercised control over or imposed requirements on any person regarding the manner of treatment, disposal or handling of a substance and the control or requirements, in whole or in part, caused the site to become a contaminated site, or

(b) the secured creditor becomes the registered owner in fee simple of the real property at the contaminated site.

(4) A secured creditor is not responsible for remediation if it acts primarily to protect its security interest, including, without limitation, if the secured creditor

- (a) participates only in purely financial matters related to the site,
- (b) has the capacity or ability to influence any operation at the contaminated site in a manner that would have the effect of causing or increasing contamination, but does not exercise that capacity or ability in such a manner as to cause or increase contamination,
- (c) imposes requirements on any person, if the requirements do not have a reasonable probability of causing or increasing contamination at the site, or
- (d) appoints a person to inspect or investigate a contaminated site to determine future steps or actions that the secured creditor might take.

#### **Persons not responsible for remediation**

**46** (1) The following persons are not responsible for remediation of a contaminated site:

- (a) a person who would become a responsible person only because of an act of God that occurred before April 1, 1997, if the person exercised due diligence with respect to any substance that, in whole or in part, caused the site to become a contaminated site;
- (b) a person who would become a responsible person only because of an act of war if the person exercised due diligence with respect to any substance that, in whole or in part, caused the site to become a contaminated site;
- (c) a person who would become a responsible person only because of an act or omission of a third party, other than
  - (i) an employee,
  - (ii) an agent, or
  - (iii) a party with whom the person has a contractual relationship,

if the person exercised due diligence with respect to any substance that, in whole or in part, caused the site to become a contaminated site;

- (d) an owner or operator who establishes that
  - (i) at the time the person became an owner or operator of the site,

- (A)the site was a contaminated site,
- (B)the person had no knowledge or reason to know or suspect that the site was a contaminated site, and
- (C)the person undertook all appropriate inquiries into the previous ownership and uses of the site and undertook other investigations, consistent with good commercial or customary practice at that time, in an effort to minimize potential liability,
- (ii)if the person was an owner of the site, the person did not transfer any interest in the site without first disclosing any known contamination to the transferee, and
- (iii)the owner or operator did not, by any act or omission, cause or contribute to the contamination of the site;
- (e)an owner or operator who
  - (i)owned or occupied a site that at the time of acquisition was not a contaminated site, and
  - (ii)during the ownership or operation, did not dispose of, handle or treat a substance in a manner that, in whole or in part, caused the site to become a contaminated site;
- (f)a person described in section 45 (1) (c) or (d) or (2) (c) or
- (d) [*persons responsible for remediation of contaminated sites*] who
  - (i)transported or arranged to transport the substance to the site, if the owner or operator of the site was authorized under an Act to accept the substance at the time of its deposit, and
  - (ii)received permission from the owner or operator described in subparagraph (i) to deposit the substance;
- (g)a government body that involuntarily acquires an ownership interest in the contaminated site, other than by government restructuring or expropriation, unless the government body caused or contributed to the contamination of the site;
- (g.1)a government body that takes possession of or acquires an ownership interest in the contaminated site under an order of the court under section 5, 8 (3) or 14 of the [Civil Forfeiture Act](#) or a delegate under section 21 (2) of that Act who is exercising powers or performing functions and duties of the director, as defined in that Act, in relation to the contaminated site;

- (h) a person who provides assistance respecting remediation work at a contaminated site, unless the assistance is carried out in a negligent fashion;
- (i) a person who provides advice respecting remediation work at a contaminated site unless the advice is negligent;
- (j) a person who owns or operates a contaminated site that was contaminated only by the migration of a substance from other real property not owned or operated by the person;
- (k) an owner or operator of a contaminated site containing substances that are present only as natural occurrences not assisted by human activity and if those substances alone caused the site to be a contaminated site;
- (l) subject to subsection (2), a government body that possesses, owns or operates a roadway, highway or right of way for sewerage or waterworks on a contaminated site, to the extent of the possession, ownership or operation;
- (m) a person who was a responsible person for a contaminated site for which a certificate of compliance was issued and for which another person subsequently proposes or undertakes to
  - (i) change the use of the contaminated site, and
  - (ii) provide additional remediation;
- (n) a person who is in a class designated in the regulations as not responsible for remediation.

(2) Subsection (1) (l) does not apply with respect to contamination placed or deposited below a roadway, highway or right of way for sewerage or waterworks by the government body that possesses, owns or operates the roadway, highway or right of way for sewerage or waterworks.

(2.1) Subsection (1) (g.1) does not apply with respect to contamination if the government body or delegate referred to in that provision caused or contributed to the contamination of the site.

(3) A person seeking to establish that they are not a responsible person under subsection (1) has the burden to prove all elements of the exemption on a balance of probabilities.

### **General principles of liability for remediation**

**47** (1) A person who is responsible for remediation of a contaminated site is absolutely, retroactively and jointly and separately liable to any person or

government body for reasonably incurred costs of remediation of the contaminated site, whether incurred on or off the contaminated site.

(2) Subsection (1) must not be construed as prohibiting the apportionment of a share of liability to one or more responsible persons by the court in an action or proceeding under subsection (5) or by a director in an order under section 48 [*remediation orders*].

(3) For the purpose of this section, "**costs of remediation**" means all costs of remediation and includes, without limitation,

- (a) costs of preparing a site disclosure statement,
- (b) costs of carrying out a site investigation and preparing a report, whether or not there has been a determination under section 44 [*determination of contaminated sites*] as to whether or not the site is a contaminated site,
- (c) legal and consultant costs associated with seeking contributions from other responsible persons, and
- (d) fees imposed by a director, a municipality, an approving officer or the regulator under this Part.

(4) Liability under this Part applies

- (a) even though the introduction of a substance into the environment is or was not prohibited by any legislation if the introduction contributed in whole or in part to the site becoming a contaminated site, and
- (b) despite the terms of any cancelled, expired, abandoned or current permit or approval or waste management plan and its associated operational certificate that authorizes the discharge of waste into the environment.

(5) Subject to section 50 (3) [*minor contributors*], any person, including, but not limited to, a responsible person and a director, who incurs costs in carrying out remediation of a contaminated site may commence an action or a proceeding to recover the reasonably incurred costs of remediation from one or more responsible persons in accordance with the principles of liability set out in this Part.

(6) Subject to subsections (7) and (8), a person is not required to obtain, as a condition of an action or proceeding under subsection (5) being heard by a court,

- (a) a decision, determination, opinion or apportionment of liability for remediation from a director, or
- (b) an opinion respecting liability from an allocation panel.

(7) In all cases, the site that is the subject of an action or proceeding must be determined or considered under section 44 [*determination of contaminated sites*] to be or to have been a contaminated site before the court can hear the matter.

(8) Despite subsection (7), if independent remediation has been carried out at a site and the site has not been determined or considered under section 44 [*determination of contaminated sites*] to be or to have been a contaminated site, the court must determine whether the site is or was a contaminated site.

(9) The court may determine in accordance with the regulations, unless otherwise determined or established under this Part, any of the following:

- (a) whether a person is responsible for remediation of a contaminated site;
- (b) whether the costs of remediation of a contaminated site have been reasonably incurred and the amount of the reasonably incurred costs of remediation;
- (c) the apportionment of the reasonably incurred costs of remediation of a contaminated site among one or more responsible persons in accordance with the principles of liability set out in this Part;
- (d) such other determinations as are necessary to a fair and just disposition of these matters.

## **Remediation orders**

**48** (1) A director may issue a remediation order to any responsible person.

(2) A remediation order may require a person referred to in subsection (1) to do any or all of the following:

- (a) undertake remediation;
- (b) contribute, in cash or in kind, towards the costs of another person who has reasonably incurred costs of remediation;
- (c) give security, which may include real and personal property, in the amount and form the director specifies.

(3) For the purpose of deciding whether to require a person to undertake remediation under subsection (2), a director may consider whether remediation should begin promptly, and must consider each of the following:

- (a) adverse effects on human health or pollution of the environment caused by contamination at the site;
- (b) the potential for adverse effects on human health or pollution of the environment arising from contamination at the site;

- (c) the likelihood of the responsible persons or other persons not acting expeditiously or satisfactorily in implementing remediation;
- (d) in consultation with the chief permitting officer designated under the *Mines Act*, the requirements of a permit issued under section 10 of that Act;
- (e) in consultation with the regulator, the adequacy of remediation being undertaken under section 41 of the *Energy Resource Activities Act*;
- (e.1) the actions being undertaken or to be undertaken under a recovery plan approved under section 91.2 (5) [*responsible persons — spill response*];
- (f) other factors prescribed in the regulations.

(4) For the purpose of deciding who will be ordered to undertake or contribute to remediation under subsections (1) and (2), a director, to the extent feasible without jeopardizing remediation requirements, must

- (a) take into account private agreements between or among responsible persons respecting liability for remediation, if those agreements are known to the director, and
- (b) on the basis of information known to the director, name one or more persons whose activities, directly or indirectly, contributed most substantially to the site becoming a contaminated site, taking into account such factors as
  - (i) the degree of involvement by the persons in the generation, transportation, treatment, storage or disposal of any substance that contributed, in whole or in part, to the site becoming a contaminated site, and
  - (ii) the diligence exercised by persons with respect to the contamination.

(5) A remediation order does not affect or modify a right of a person affected by the order to seek or obtain relief under an agreement, other legislation or common law, including, but not limited to, damages for injury or loss resulting from a release or threatened release of a contaminating substance.

(6) If a remediation order, or a pollution abatement order under section 83 [*pollution abatement orders*] that imposes a requirement for remediation, is issued in respect of a site, and the director has not yet determined under section 44 [*determination of contaminated sites*] whether the site is a contaminated site, as soon as reasonably possible after the issuance of the order, the director must determine

- (a) whether the site is a contaminated site, in accordance with section 44 [*determination of contaminated sites*], and
- (b) whether the person named in the order is a responsible person under section 45 [*persons responsible for remediation of contaminated sites*].

(7) If a person named in an order referred to in subsection (6) is determined not to be a responsible person, the government must compensate the person, in accordance with the regulations, for any costs directly incurred by the person in complying with the order.

(8) A person who receives a remediation order under subsection (1) or notice of a remediation order under subsection (13) must not, without the consent of the director, knowingly do anything that diminishes or reduces assets that could be used to satisfy the terms and conditions of the remediation order, and if the person does so, the director despite any other remedy sought, may commence an action against the person to recover the amount of the diminishment or reduction.

(9) The director may provide in a remediation order that a responsible person is not required to begin remediation of a contaminated site for a specified period of time if the contaminated site does not present an imminent and significant threat or risk to

- (a) human health, given current and anticipated human exposure, or
- (b) the environment.

(10) A person who has submitted a site disclosure statement under section 40 (7) [*site disclosure statements of trustee, receiver, etc.*] must not directly or indirectly diminish or reduce assets at a site designated in the site registry as a contaminated site, including, without limitation, by

- (a) disposing of real or personal assets, or
- (b) subdividing land

unless the person first requests and obtains written notice from a director that the director does not intend to issue a remediation order.

(11) If a director issues or gives notice of the intention to issue a remediation order to a person referred to in subsection (10), subsection (8) applies.

(12) A director may amend or cancel a remediation order.

(13) A director, on making a remediation order must, within a reasonable time, provide notice of the order in writing to every person holding an interest in the contaminated site if the interest is registered in the land title office or a land registry office of a treaty first nation at the time of issuing the order.

(14) A remediation order may authorize, subject to the terms and conditions a director considers necessary and reasonable, any person designated by the director to enter specified land for the purpose of ensuring that the remediation order is carried out according to its terms.

(15) If a remediation order authorizes a person to enter specified land, the person who owns or occupies the land must allow the authorized person to enter in accordance with the authorization.

(16) Subsections (14) and (15) do not authorize any person to enter any structure or part of a structure that is used solely as a private residence.

### **Allocation panel**

**49** (1) The minister may appoint up to 12 persons with specialized knowledge in contamination, remediation or methods of dispute resolution to act as allocation advisors under this section.

(2) A director, on request by any person, may appoint an allocation panel consisting of 3 allocation advisors to provide an opinion as to any or all of the following:

- (a) whether the person is a responsible person;
- (b) whether a responsible person is a minor contributor;
- (c) the responsible person's contribution to the contamination and, if the costs of remediation are known or reasonably ascertainable, the share of those costs attributable to that contamination.

(3) For the purpose of providing an opinion under subsection (2) (b) and (c), the allocation panel must, to the extent of available information, consider the following:

- (a) the information available to identify a person's relative contribution to the contamination;
- (b) the nature and quantity of substances causing the contamination;
- (c) the degree of toxicity of the substances causing the contamination;
- (d) the degree of involvement by the responsible person, compared with one or more other responsible persons, in the generation, transportation, treatment, storage or disposal of the substances that caused the contamination;
- (e) the degree of diligence exercised by the responsible person, compared with one or more other responsible persons, with respect to the generation, transportation, treatment, storage or

disposal of the substances causing contamination, taking into account the characteristics of the substances;

(f) the degree of cooperation by the responsible person with government officials to prevent harm to human health or the environment;

(g) in the case of a minor contributor, factors set out in section 50 (1) (a) and (b) [*minor contributors*];

(h) other factors considered by the panel to be relevant to apportioning liability.

(4) A director may require, as a condition of entering a voluntary remediation agreement with a responsible person, that the responsible person, at the responsible person's own expense, seek and provide to the director the opinion of an allocation panel under subsection (2).

(5) If a director appoints an allocation panel with respect to a site, the site is considered to be a contaminated site at the time the allocation panel is appointed, despite the absence of a determination under section 44 (1) [*determination of contaminated sites*].

(6) A director may consider, but is not bound by, the opinion of an allocation panel.

(7) Work performed by the allocation panel must be paid for by the person who requests the opinion.

### **Minor contributors**

**50** (1) A director may determine that a responsible person is a minor contributor if the person demonstrates that

(a) only a minor portion of the contamination present at the site can be attributed to the person,

(b) either

(i) no remediation would be required solely as a result of the contribution of the person to the contamination at the site, or

(ii) the cost of remediation attributable to the person would be only a minor portion of the total cost of the remediation required at the site, and

(c) in all circumstances the application of joint and separate liability to the person would be unduly harsh.

(2) If a director makes a determination under subsection (1) that a responsible person is a minor contributor, the director must determine the amount or portion of remediation costs attributable to the responsible person.

(3) A responsible person determined to be a minor contributor under subsection (1) is liable for remediation costs in an action or proceeding brought by another person or the government under section 47 [*general principles of liability for remediation*] only up to the amount or portion specified by the director in the determination under subsection (2).

(4) If a director has determined that a responsible person is a minor contributor for a site, the site is considered to be a contaminated site at the time of that determination, despite the absence of a determination under section 44

(1) [*determination of contaminated sites*].

## **Division 4 — Implementation of Remediation**

### **Voluntary remediation agreements**

**51** (1) On the request of a responsible person, including a minor contributor, a director may enter into a voluntary remediation agreement in accordance with the regulations, consisting of

(a) provisions for financial or other contributions by the responsible person,

(b) a certification by the responsible person that the person has fully and accurately disclosed all information in the person's possession or control regarding site conditions and the person's activities respecting that site,

(c) security, which may include real and personal property, in the amount and form, and subject to the conditions the director specifies,

(d) a schedule of remediation acceptable to the director, and

(e) requirements that the director considers to be reasonably necessary to achieve remediation.

(2) If a responsible person enters into and performs a voluntary remediation agreement according to its terms,

(a) the responsible person is discharged from further liability,

(b) other responsible persons not named in the voluntary remediation agreement are not discharged from liability,

(c) the total potential liability of other responsible persons is reduced by any amount specified in the voluntary remediation agreement,

(d)the right of any person to seek or obtain relief under other legislation or under the common law, including, but not limited to, damages for injury or loss resulting from contamination, is not affected or modified in any way, and

(e)the director is not prevented from entering into another voluntary remediation agreement in respect of the same site.

(3)A director may stipulate in a voluntary remediation agreement that a responsible person is not required to begin remediation of a contaminated site for a specified period of time if the responsible person demonstrates that the contaminated site does not present an imminent and significant threat or risk to

(a)human health, given current and anticipated human exposure, or

(b)the environment.

(4)If a director has entered into a voluntary remediation agreement for a site, the site is considered to be a contaminated site at the time the agreement was made, despite the absence of a determination under section 44

(1) [*determination of contaminated sites*].

## **Public consultation and review**

**52** (1)A director may order that a responsible person, at the person's own expense, provide, in accordance with any regulations, for public consultation on a proposed remediation or a public review of remediation activities.

(2)For the purpose of deciding whether to make an order under subsection (1), the director may take into account any factors the director considers relevant, including without limitation, the following:

(a)the size and location of the contaminated site;

(b)the nature of contamination at the contaminated site;

(c)the potential for human exposure to contamination;

(d)the impact on the environment of the contamination;

(e)migration of contamination off the site;

(f)the remediation methods proposed to be used and the potential for long term health, environmental or financial impacts;

(g)opportunities for public involvement provided by any municipal development approval process;

(h)whether consultation with the public would improve the quality of information in a site investigation;

(i)whether consultation with the public would enable a well informed choice on the preferred remediation alternative;

(j)the extent to which public consultation has already taken place.

### **Approvals in principle and certificates of compliance**

**53** (1)For the purposes of exercising powers and performing duties under this section, a director may rely on any information the director considers sufficient for the purpose, including, but not limited to, a preliminary site investigation, a detailed site investigation, a risk assessment, a remediation plan or a summary of site condition.

(1.1)On application by a responsible person, a director, in accordance with the regulations, may issue an approval in principle stating that a remediation plan for a contaminated site

- (a)has been reviewed by the director,
- (b)has been approved by the director, and
- (c)may be implemented in accordance with conditions specified by the director.

(2)For the purpose of subsection (1.1), if a director has issued an approval in principle with respect to a proposed remediation plan for a site, the site is considered to be a contaminated site at the time the approval in principle was issued, despite the absence of a determination under section 44

(1) [*determination of contaminated sites*].

(3)A director, in accordance with the regulations, may issue a certificate of compliance with respect to remediation of a contaminated site if

- (a)the contaminated site has been remediated in accordance with
  - (i)the numerical or risk based standards prescribed for the purposes of the definition of "contaminated site",
  - (ii)any orders under this Act,
  - (iii)any remediation plan approved by the director, and
  - (iv)any requirements imposed by the director,

(b)[Repealed 2004-18-8.]

(c)a plan has been prepared for the purposes of containing, controlling and monitoring any substances remaining on the site and, if required by the director, works have been installed to implement the plan,

(d)any security in relation to the management of contamination, which security may include real and personal property in the amount and form and subject to the conditions specified by the director, has been provided in accordance with the minister's regulations, and

(e) the responsible person, if required by the director in prescribed circumstances or for prescribed purposes, has prepared and provided to the director proof of registration of a restrictive covenant under section 219 of the *Land Title Act* acceptable to the director.

(4) For the purpose of subsection (3) if a director has issued a certificate of compliance with respect to remediation of a site, the site is considered to have been a contaminated site at the time remediation of the site began, despite the absence of a determination under section 44 (1) [*determination of contaminated sites*].

(5) A director may withhold or rescind an approval in principle or a certificate of compliance if

- (a) conditions imposed on the approval or certificate are not complied with, or
- (b) any fees payable under this Part or the regulations are outstanding.

(6) A director may issue an approval in principle or a certificate of compliance for a part of a contaminated site.

### **Independent remediation procedures**

**54** (1) A responsible person may carry out independent remediation in accordance with the minister's regulations whether or not

- (a) a determination has been made as to whether the site is a contaminated site,
- (b) a remediation order has been issued with respect to the site, or
- (c) a voluntary remediation agreement with respect to the site has been entered into.

(2) Any person undertaking independent remediation of a contaminated site must

- (a) notify a director in writing promptly on initiating remediation, and
- (b) notify the director in writing within 90 days of completing remediation.

(3) A director may at any time during independent remediation by any person

- (a) inspect and monitor any aspect of the remediation to determine compliance with the regulations,
- (b) issue a remediation order as appropriate,

(c)order public consultation and review under section 52 [*public consultation and review*], or

(d)impose requirements that the director considers are reasonably necessary to achieve remediation.

(4)On request of a person carrying out independent remediation and on receiving adequate information respecting the independent remediation, a director may

(a)review the remediation in accordance with the regulations and any requirements imposed under subsection (3) (d), and

(b)issue an approval in principle or a certificate of compliance under section 53 [*approvals in principle and certificates of compliance*].

(5)The director may assess against a person, in accordance with the regulations, the prescribed fees for carrying out the actions referred to in subsection (4).

## **Removal and deposit of soil**

**55** (1)[Repealed 2020-3-2.]

(1.1)A person must not remove soil from a site that has been used for a specified industrial or commercial use unless the person has

(a)analyzed the quality of the soil, in accordance with the regulations, if any, and

(b)provided notice of the removal to the prescribed persons, in accordance with subsection (1.2).

(1.2)Notice under subsection (1.1) (b) must

(a)include the following information:

(i)the site from which the soil will be removed;

(ii)the site or sites at which the soil will be deposited;

(iii)the maximum amount of soil that will be deposited at each site;

(iv)a summary, prepared in accordance with the regulations, if any, of the analysis referred to in subsection (1.1) (a);

(v)the prescribed information,

(b)be provided in the prescribed form and manner, if any, and

(c)be provided by the prescribed date.

(1.3)If notice under subsection (1.1) is required to remove soil from a site, a person must not deposit the soil at another site unless

(a) the other site is specified in the notice in accordance with subsection (1.2) (a) (ii), and

(b) the amount of soil deposited is equal to or less than the maximum amount specified in relation to the other site in the notice, in accordance with subsection (1.2) (a) (iii).

(1.4) Subsection (1.1) does not apply in relation to the removal of soil if the amount of soil removed is less than the amount set out in the regulations.

(2) to (4) [Repealed 2020-3-2.]

(5) Nothing in this Part prevents a person from depositing soil at a site if the deposit is authorized by

(a) a valid and subsisting permit or approval,

(b) an order,

(c) a waste management plan approved by the minister, and its associated operational certificate, or

(d) the regulations.

(6) A municipality or treaty first nation, including its employees or members of its governing body, does not incur any liability and must not be considered a responsible person under this Act as a result of any bylaw, law, permit, licence, approval or other document adopted or issued under the *Community Charter*, the *Islands Trust Act*, the *Local Government Act*, the *Vancouver Charter* or a law of a treaty first nation that authorizes the removal or deposit of contaminated soil in the municipality or treaty lands.

(7) Despite section 37 (5) [*conflicts between this Act and bylaws, permits, etc. issued by a municipality*], subsection (6) of this section does not apply if

(a) a bylaw of a municipality or law of a treaty first nation, or

(b) a permit, licence, approval or other document issued under the authority of a municipal bylaw or law of a treaty first nation

establishes standards or procedures for testing, excavating, storing, removing, relocating or depositing contaminated soil that conflict with this Act or the regulations or a permit, approval, order or approved waste management plan.

(8) Subsection (6) does not give immunity to any municipality or treaty first nation from obligations the municipality or treaty first nation may have under this Act with respect to

(a) a contaminated site owned by the municipality or treaty first nation,

(b) contaminated soil that originated from property owned by the municipality or treaty first nation, or

(c)activities of the municipality or treaty first nation, other than regulatory activities, that caused or contributed to property becoming a contaminated site.

(9)[Repealed 2020-3-2.]

### **High volume soil receiving sites**

**55.1** (1)In this section, "**relocated industrial or commercial site soil**" means soil that has been relocated from a site that has been used for a specified industrial or commercial use.

(2)If the total amount of relocated industrial or commercial site soil present at a site is greater than the prescribed amount, the owner of the site must do the following, as required by the regulations:

- (a)prepare plans, and carry out actions, to prevent, contain, control and monitor the adverse effects, and potential adverse effects, on the environment or human health caused by the soil being present at the site;
- (b)provide to the director the prescribed information.

### **Selection of remediation options**

**56** (1)A person conducting or otherwise providing for remediation of a site must give preference to remediation alternatives that provide permanent solutions to the maximum extent practicable, taking into account the following factors:

- (a)any potential for adverse effects on human health or for pollution of the environment;
- (b)the technical feasibility and risks associated with alternative remediation options;
- (c)remediation costs associated with alternative remediation options and the potential economic benefits, costs and effects of the remediation options;
- (d)other prescribed factors.

(2)When issuing an approval in principle or a certificate of compliance, a director must consider whether permanent solutions have been given preference to the maximum extent practicable as determined in accordance with any guidelines set out in the regulations.

## **Division 5 — Delegation**

### **Delegation of responsibilities to municipalities or other ministries**

- 57 (1) The minister and a municipality may enter into an agreement authorizing the municipality to exercise powers and perform functions described in subsection (3), except in relation to a contaminated site that is owned by a municipality or for which a municipality is a responsible person.
- (2) For the purpose of enhancing coordination of Provincial regulatory activities, the minister and any other minister of the government may enter into an arrangement enabling officials of the ministry of the other minister to exercise or perform one or more powers and functions described in this Part, except in relation to a contaminated site that is owned by that ministry or for which that ministry is a responsible person.
- (3) If an agreement or arrangement under subsection (1) or (2) has been entered into, a director may delegate to one or more officials of a municipality or another ministry the powers and functions of a director respecting any or all of the following:
- (a) site disclosure statements;
  - (b) site investigations;
  - (c) remediation orders;
  - (d) voluntary remediation agreements;
  - (e) public consultations or reviews;
  - (f) approvals in principle;
  - (g) certificates of compliance.
  - (h) [Repealed 2020-3-4.]
- (4) A director may not delegate under subsection (3) any of the powers or functions with respect to the following:
- (a) determining whether a site is a contaminated site;
  - (b) determining whether a responsible person is a minor contributor.
- (5) If a power or function is delegated to a municipality or another ministry under this section, the municipality or other minister may assess the fees prescribed in the regulations with respect to that power or function.
- (6) If a power or function has been delegated to an official of a municipality or a ministry, a decision of the official is a decision that may be appealed to the appeal board under Division 2 [*Appeals of Decisions under this Act*] of Part 8.

## **Division 6 — Ministry Authority**

### **Orphan sites**

- 58 (1) A director may determine in accordance with the regulations whether
- (a) a contaminated site is an orphan site, and

(b)an orphan site is a high risk orphan site.

(2)The minister may declare, in writing, that it is necessary for the protection of human health or the environment for the government to undertake remediation of

(a)a contaminated site that is not otherwise being adequately remediated, or

(b)a high risk orphan site.

(3)If the minister has made a declaration under subsection (2), the minister may carry out remediation and recover the reasonably incurred costs of the remediation and the minister, or an officer authorized in writing by the minister, may, even though the ordered action interferes with or abrogates property rights, order any person to

(a)provide labour, services, material, equipment or facilities, or

(b)allow the use of land for the purpose of undertaking the remediation.

(4)If the minister has made a declaration under subsection (2), a director, an officer or any person directed to do so by the officer, may enter property and carry out remediation, even though the entry or remediation interferes with or abrogates property rights.

(5)A person affected by an order made under subsection (3) must comply with the order despite any other enactment.

(6)If the minister certifies that money is required to undertake remediation under this section, the amount the minister certifies to be required may be paid out of the consolidated revenue fund.

(7)A certificate signed by the minister and showing an amount of money spent by the government under this section is conclusive proof of the amount spent.

(8)If the minister makes a declaration under subsection (2) or an order under subsection (3), the registrar must make a notation of the declaration or order on the site registry.

### **Cost recovery if minister carries out remediation**

**59** (1)A director may recover all or a portion of the cost of remediation by

(a)taking steps to identify and recover costs from responsible persons during or after remediation,

(b)arranging to sell or selling any property comprising all or part of the site, or

(c)seeking contributions from available cost sharing agreements with government bodies or other persons.

(2) The amount shown on the certificate under section 58 (7) [*orphan sites*] is a debt due to the government and, subject to subsection (3) of this section, is recoverable

- (a) from any responsible person, by action in the Supreme Court, or
- (b) by order of the minister directing a person who is purchasing or otherwise acquiring an interest in land that is subject to remediation under section 58 [*orphan sites*] to pay to the minister, in respect of the amounts spent in remediation, instead of to the vendor, an amount not exceeding the amount owing to the vendor, and the purchaser is discharged in the amount paid to the minister from the obligation to pay the vendor.

(3) If the Supreme Court is satisfied that the expenditure incurred by the government under section 58 [*orphan sites*] is either

- (a) excessive, taking into consideration the requirements of the regulations governing remediation, or
- (b) unnecessary, taking into consideration the regulations governing remediation,

the Supreme Court may reduce or extinguish the amount of the judgment that it would otherwise have ordered to be entered against the person against whom the action has been brought.

(4) The minister may register a lien at the land title office against a contaminated site for the costs of remediation incurred by the government at the contaminated site that has been remediated under section 58 [*orphan sites*].

(5) A lien under subsection (4) is payable in priority over all liens, charges or mortgages of every person, whenever created or to be created, with respect to the site or proceeds of the site, except for liens for wages due to workers by their employer and liens under section 265 of the *Workers Compensation Act*.

(6) The exception in subsection (5) does not apply in respect of a lien for wages that is, by section 87 (5) of the *Employment Standards Act*, postponed to a mortgage or debenture.

(7) If the minister makes an order under subsection (2) (b), the registrar must make a notation of the order on the site registry.

### **Government retains right to take future action**

**60** A director may exercise any of a director's powers or functions under this Part, even though they have been previously exercised and despite any voluntary remediation agreement, if

- (a) additional information relevant to establishing liability for remediation becomes available, including information that indicates that a responsible person does not meet the requirements of a minor contributor,
- (b) activities occur on a site that may change its condition or use,
- (c) information becomes available about a site or a contaminating substance at the site that leads to a reasonable inference that the site poses a threat to human health or the environment,
- (d) a responsible person fails to exercise due care with respect to any contamination at the site, or
- (e) a responsible person directly or indirectly contributes to contamination at the site after previous action.

## **Division 7 — General Provision Respecting Contaminated Sites**

### **Immunity in relation to contaminated sites**

**61** (1) In this section, "**protected person**" means

- (a) the government,
- (b) the minister,
- (c) a municipality,
- (d) a current or former approving officer,
- (e) a current or former employee or agent of the government,
- (f) a current or former elected official of the government,
- (g) a current or former "local public officer" as defined in section 738 (1) [*immunity for individual local public officers*] of the [Local Government Act](#), and
- (h) a current or former "civic public officer" as defined in section 294 (4) of the [Vancouver Charter](#).

(2) Subject to subsection (3), no action lies and no proceedings may be brought against a protected person because of

- (a) any
  - (i) act, advice, including pre-application advice, or recommendation, or
  - (ii) failure to act, failure to provide advice, including pre-application advice, or failure to make recommendations

in relation to this Part, regulations under this Part, section 85.1 of the [Land Title Act](#), section 556 or 557 of the [Local Government](#)

*Act*, section 571B of the *Vancouver Charter* or section 34.1 of the *Islands Trust Act*, or

(b)any

(i)purported exercise or performance of powers, duties or functions, or

(ii)failure to exercise or perform any powers, duties or functions

arising under this Part, regulations under this Part, section 85.1 of the *Land Title Act*, section 556 or 557 of the *Local Government Act*, section 571B of the *Vancouver Charter* or section 34.1 of the *Islands Trust Act*.

(3)Subsection (2) does not provide a defence if, in relation to the subject matter of the action or proceedings,

(a)the protected person is a responsible person, or

(b)the conduct of the protected person was dishonest, malicious or wilful misconduct.

(4)Without limiting subsection (2), if a municipality, or its approving officer, employees, officers or elected officials, relies honestly and without malice or wilful misconduct on the contents of

(a)a preliminary determination or final determination,

(b)a certificate of compliance, or

(c)an approval in principle,

those protected persons are not liable for damages arising from reliance on the determination, approval or certificate.

(5)Without limiting subsection (2), if a municipality enters into an agreement under section 57 [*delegation of responsibilities to municipalities or other ministries*] enabling the municipality to issue an approval in principle or a certificate of compliance, the municipality, its approving officer, employees, officers and elected officials are not liable for damages if they rely on an approval in principle or a certificate of compliance where the contents of the approval in principle or the certificate of compliance have been prepared honestly and without malice or wilful misconduct.

## **Contaminated site regulations**

**62** (1)Without limiting section 138 (1) [*general authority to make regulations*], the Lieutenant Governor in Council may make regulations as follows:

- (a) requiring disclosures by persons not specified in section 40 [*site disclosure statements*], including, without limitation, disclosures by lessors and lessees;
- (b) prescribing fees for the purposes of this Part and Part 5 [*Remediation of Mineral Exploration Sites and Mines*] including, without limitation, fees for assessing or reviewing site disclosure statements, site investigation reports and remediation plans and reports, whether or not prepared under a remediation order;
- (c) governing the content of the site registry and the management of and procedures relating to the site registry, including requirements for public access to the registry and for persons to submit information to the registrar;
- (d) prescribing the information required for the purposes of section 43 (2) (f) [*site registry*];
- (e) designating classes of persons as responsible persons in addition to those referred to in section 45 [*persons responsible for remediation of contaminated sites*];
- (f) designating classes of persons who are not responsible persons in addition to those referred to in section 46 [*persons not responsible for remediation*];
- (f.1) for the purposes of section 40 (2) (a), respecting the activities or level of activity that constitutes decommissioning a site or ceasing operations;
- (g) prescribing requirements respecting the obligation of a vendor to provide a site disclosure statement under section 40 (6);
- (h) respecting allocation panels, including, without limitation,
  - (i) governing the procedures and deliberations of an allocation panel, and
  - (ii) establishing the fees payable to allocation panel members;
- (i) prescribing the information that must be provided to, and the procedures to be followed by, a director making a determination under section 50 [*minor contributors*];
- (j) establishing requirements for the purposes of section 52 [*public consultation and review*], including without limitation, requirements that consultations in respect of prescribed classes of remediation be facilitated by a medical health officer;
- (k) [Repealed 2020-3-5.]

- (k.1) respecting analysis of soil for the purposes of section 55 (1.1) (a);
- (k.2) prescribing persons for the purposes of section 55 (1.1) (b);
- (k.3) respecting the preparation of summaries of analyses for the purposes of section 55 (1.2) (a) (iv);
- (k.4) prescribing the form and manner in which notice is given for the purposes of section 55 (1.2) (b);
- (k.5) prescribing dates for the purposes of section 55 (1.2) (c);
- (k.6) setting out amounts of soil for the purposes of section 55 (1.4);
- (k.7) respecting notice that must be given, in addition to the notice required under section 55 (1.1), in respect of
  - (i) the removal of soil from sites that have been used for a specified industrial or commercial use, or
  - (ii) the deposit of soil referred to in subparagraph (i) of this paragraph;
- (k.8) for the purposes of section 55.1 (2), prescribing the total amount of relocated industrial or commercial site soil present at a site, and for this purpose, the amount prescribed may not be less than 5 000 m<sup>3</sup>;
- (l) establishing transitional requirements for remediation that began before April 1, 1997;
- (m) authorizing a director to require a report of a qualified professional and specify the requirements of the report before exercising the director's authority under this Part;
- (n) prescribing factors that must be considered in determining reasonable costs of remediation, circumstances in which costs of remediation are considered reasonable and evidentiary matters for the purposes of an apportionment of remediation costs by a court under section 47 [*general principles of liability for remediation*] or by the director in a remediation order under section 48 [*remediation orders*];
- (o) respecting compensation payable by the government under section 48 (7) [*remediation orders*];
- (p) prescribing procedures that must be followed and criteria that must be considered by a director under section 58 (1) [*orphan sites*];

- (q) exempting any person from any requirement under this Part in circumstances and on conditions that the Lieutenant Governor in Council may prescribe;
- (r) respecting modifications, interpretive guidelines and procedures for any exemptions set out in section 46 [*persons not responsible for remediation*].

(2) Section 139 [*regulations — general rules*] applies for the purpose of making regulations under this section.

### **Minister's regulations — contaminated sites**

**63** (1) The minister may make regulations in relation to contaminated site remediation as follows:

- (a) prescribing other activities for the purpose of the definition of "remediation" in section 1 (1), including but not limited to routine procedures applicable to remediation of contamination associated with underground storage tanks;
- (b) respecting site disclosure statements, including, without limitation,
  - (i) prescribing the information that must be provided in a site disclosure statement,
  - (ii) prescribing circumstances in which a specified person must provide a site disclosure statement to another specified person,
  - (iii) prescribing procedures for providing a site disclosure statement,
  - (iv) prescribing procedures for assessing a site disclosure statement, and
  - (v) prescribing when a site disclosure statement must be provided by a specified person;
- (b.1) for the purposes of section 40.1 (1) (b), respecting the circumstances in which section 40.1 (2) applies to a person required to submit a site disclosure statement under section 40 (2), (7) or (8);
- (b.2) for the purposes of section 40.1 (2) (a) and (b), respecting investigations that must be undertaken and reports that must be prepared and submitted, including, without limitation, requiring a person to undertake a site investigation and prepare a site investigation report;

(b.3)for the purposes of section 40.1 (2) (c), respecting information that must be provided under that section, including, without limitation, information respecting any past investigations of land;  
(c) and (d)[Repealed 2004-18-14.]

(e)prescribing procedures for undertaking, and the content of, a site investigation and a site investigation report;

(f)[Repealed 2004-18-14.]

(f.1)respecting summaries of site conditions, including, without limitation,

(i)prescribing the information that must be provided in a summary of site condition,

(ii)prescribing circumstances in which a specified person must provide a summary of site condition to another specified person,

(iii)prescribing circumstances in which a director may order a person to provide to the director or another person a summary of site condition,

(iv)prescribing procedures for providing a summary of site condition, and

(v)prescribing when a summary of site condition must be provided by a specified person;

(g) and (h)[Repealed 2004-18-14.]

(i)respecting a determination under section 44 [*determination of contaminated sites*], including, without limitation,

(i)prescribing procedures for making a determination,

(ii)prescribing the persons to whom a director must give notice of a determination under section 44 [*determinations of contaminated sites*],

(iii)prescribing circumstances in which a director may make a determination that a site is contaminated without following the procedures prescribed under subparagraph (i), and

(iv)prescribing circumstances in which a site is considered to be a contaminated site without a determination under section 44 (1);

(j)prescribing factors for the purposes of section 48 (3)

(f) [*remediation orders*];

- (k)prescribing procedures for entering into a voluntary remediation agreement and requirements of voluntary remediation agreements;
- (l)prescribing factors for the purposes of section 56 (1)
- (d) [*selection of remediation options*] and guidelines for the purposes of section 56 (2);
- (m)governing the issuance of approvals in principle and certificates of compliance under section 53 [*approvals in principle and certificates of compliance*], including, without limitation
  - (i)prescribing requirements for the purposes of section 53 (3) (d),
  - (ii)prescribing circumstances in which and purposes for which a director may require a covenant under section 53 (3) (e), and
  - (iii)prescribing circumstances in which a covenant under section 53 (3) (e) must be discharged;
- (n)prescribing substances and risk based or numerical criteria, standards and conditions for the purposes of the definition of "contaminated site" in section 39 [*definitions and interpretation*];
- (o)[Repealed 2020-3-6.]
- (p)prescribing matters for the purposes of section 64 (2)
- (p) [*director's protocols*];
- (q)exempting any person from any requirement under this Part in circumstances and on conditions that the minister may prescribe;
- (r)prescribing the manner of publication for the purposes of section 64 (2).

(1.1)The minister may make regulations as follows:

- (a)prescribing information for the purposes of section 55 (1.2) (a) (v);
- (b)for the purposes of section 55.1 (2) (a), respecting plans and actions to prevent, contain, control and monitor adverse effects, and potential adverse effects, on the environment and human health;
- (c)for the purposes of section 55.1 (2) (b), prescribing information that must be provided to the director.

(2)Section 139 [*regulations — general rules*] applies for the purposes of making regulations under this section.

## **Director's interim standards**

**63.1** (1) A director may make regulations prescribing substances and risk based or numerical criteria, standards and conditions for the purpose of the definition of "contaminated site" in section 39 *[definitions and interpretation]* if the director considers it necessary in the public interest.

(2) In the event of a conflict between a regulation under this section and a regulation under section 63 (1) (n), the regulation under this section prevails.

(3) A regulation under subsection (1) ceases to have effect one year after the date it was made.

### **Director's protocols**

**64** (1) A director may establish protocols, consistent with this Act and the regulations, in relation to any of the following:

(a) providing procedures of an allocation panel established under section 49 *[allocation panel]*;

(b) specifying information required in support of a public community based consultation process facilitated by the local medical health officer under section 52 *[public consultation and review]*;

(c) specifying requirements for any investigation, analysis and interpretation, assessment, preparation of a remediation plan or any other activity included in the definition of "remediation" in section 1 (1);

(d) establishing substantive and procedural requirements for persons planning, conducting or reporting on the remediation of a contaminated site, which may be different for sites contaminated with particular types of contamination;

(e) establishing procedures in respect of requiring, and establishing conditions for, security.

(2) For the purposes of protocols established under subsection (1), a director may establish protocols in respect of the following:

(a) choosing the substances for which field or laboratory analyses are required;

(b) sampling soil, water and other media;

(c) testing or analyzing soil, water and other media, including tests to estimate the bioavailability of substances to plants and animals;

(d) carrying out statistical designs, analyses and evaluations of data;

(e) carrying out risk assessment consisting of various steps and processes;

- (f) modelling physical, chemical or biological processes;
- (g) evaluating site conditions;
- (h) setting requirements relating to assessment and control of environmental impacts, including monitoring;
- (i) classifying sites as low, moderate, medium, intermediate or high risk sites based on an evaluation of risk to human health and the environment;
- (j) endorsing certain remediation approaches as the preferred alternatives for a certain type of site;
- (k) providing procedures for determining the timing, nature and extent of public consultation or review of remediation;
- (l) providing procedures for establishing the local background concentration of substances at a site, class of sites or geographical area;
- (m) establishing formats for summaries of site investigations and remediation plans for the purposes of their entry into the site registry;
- (n) developing soil, sediment and water numerical standards;
- (o) establishing standards for qualified professionals in relation to
  - (i) the performance of activities under this Act, and
  - (ii) conflict of interest;
- (o.1) summarizing or specifying activities, including the preparation of specified reports or documents, that may or must be performed by an approved professional;
- (p) a matter prescribed by the minister.

(3) Section 41 of the *Interpretation Act* and the *Regulations Act* do not apply in relation to a protocol under this section.

(4) On and after the date that a protocol under this section is published in accordance with the minister's regulations, a director may refuse to accept anything governed by the protocol that is not in compliance with it.

## **Part 5 — Remediation of Mineral Exploration Sites and Mines**

### **Definitions and interpretation**

65 (1) In this Part:

"advanced exploration site" means

- (a) an area described by a valid and subsisting mineral title as defined under the *Mineral Tenure Act* where mineral exploration activities have been undertaken,
- (b) an area described by a valid and subsisting Crown granted claim under the *Land Act* where mineral exploration activities have been undertaken, or
- (c) a valid and subsisting location as defined under the *Coal Act* where coal exploration activities have been undertaken,

if

- (d) bedrock has been excavated for the purpose of underground development, removed as bulk samples, or removed for trial cargos or test shipments, in an amount less than or equal to 1 000 tonnes, or
- (e) coal has been mined, removed as bulk samples, or removed for trial cargos or test shipments, in an amount less than or equal to
  - (i) 50 000 tonnes of coal, or
  - (ii) 200 000 tonnes of total material disturbed, including coal;

**"core area"** means any of the following areas at an advanced exploration site or at a producing or past producing mine site:

- (a) an area where waste rock or mine tailings are placed;
- (b) an area where there is disturbance of the ground by mechanical means including, without limitation, trenches, open pits and underground workings;
- (c) an area where there has been construction, modification, deactivation or reclamation of an access road;
- (d) an area where prescribed activities take place or that is used for a prescribed use;

**"dispute resolution process"** means a process to resolve disputes established in an agreement between the deputy ministers of the ministry of the minister responsible for the administration of the *Mines Act* and the ministry of the minister responsible for the administration of this Act concerning the administration of mines under the *Mines Act* and this Act;

**"exploration site"** means

- (a) an area described by a valid and subsisting mineral title as defined under the *Mineral Tenure Act* where mineral exploration activities have been undertaken,
- (b) an area described by a valid and subsisting Crown granted claim under the *Land Act* where mineral exploration activities have been undertaken, or
- (c) a valid and subsisting location as defined under the *Coal Act* where coal exploration activities have been undertaken,

if

- (d) bulk samples, trial cargos or test shipments have not been taken, and
- (e) bedrock has not been excavated for the purpose of underground development;

**"historic mine site"** means an area

- (a) where mechanical disturbance of the ground or any excavation has been made to produce coal or mineral bearing substances, including a site used for processing, concentrating or waste disposal, and
- (b) for which a *Mines Act* permit does not exist and no identifiable owner or operator is taking responsibility for contamination at the site;

**"non-core area"** means an area at an advanced exploration site or producing or past producing mine site that is not a core area including, without limitation, areas where facilities and operations such as maintenance shops, storage facilities, accommodation complexes, mineral crushing and processing mills and mineral treatment operations are located;

**"producing or past producing mine site"** means a mine

- (a) defined by the area of
  - (i) a mineral title as defined under the *Mineral Tenure Act*,
  - (ii) a Crown granted claim under the *Land Act*, or
  - (iii) a location as defined under the *Coal Act*,
- (b) in respect of which there is a valid and subsisting permit under the *Mines Act*, and
- (c) that is currently producing or has produced minerals or coal,

if

- (d) bedrock has been excavated for the purpose of underground development, removed as bulk samples or removed for trial cargos or test shipments, in an amount greater than 1 000 tonnes, or
- (e) coal has been mined, removed as bulk samples or removed for trial cargos or test shipments, in an amount greater than
  - (ii) 50 000 tonnes of coal, or
  - (ii) 200 000 tonnes of total material disturbed, including coal;

**"transfer agreement"** means a written agreement between the Chief Inspector of Mines under the *Mines Act* and a director under this Act regarding the transfer of a *Mines Act* permit.

(2) This Part does not restrict the powers of a director to issue and enforce a permit or approval for a discharge to air, land or water associated with an advanced exploration site or producing or past producing mine site.

(3) This Part does not apply to exploration, mine development or the production of placer minerals, marl, earth, soil, peat, sand, gravel, dimension stone, rock or any natural substance that is used for a construction purpose on land.

(4) If there is a conflict between anything in Part 4 [*Contaminated Site Remediation*] or sections 81 [*pollution prevention orders*] and 83 [*pollution abatement orders*] that are otherwise provided for in this Part, the provisions of this Part prevail.

(5) Despite sections 66 (5) [*exploration sites*], 67 (4) [*advanced exploration sites*] and 68 (4) [*producing or past producing mine sites*], a person who requests a director to issue an approval in principle or a certificate of compliance under section 53 [*approvals in principle and certificates of compliance*] or to provide any other services in relation to a contaminated site must pay the fees prescribed in the regulations for those services.

## Exploration sites

**66** (1) Despite section 45 [*persons responsible for remediation of contaminated sites*], the following persons who carried out mineral or coal exploration activities at an exploration site are not responsible for remediation of the site:

- (a) a previous owner or operator;
- (b) a current owner or operator who holds a valid and subsisting bond for the exploration site under the *Mines Act*.

(2) A director may not issue a remediation order under section 48 [*remediation orders*] to a current or previous owner or operator of an exploration site.

(3) A director may not issue a pollution prevention order under section 81 *[pollution prevention orders]* or a pollution abatement order under section 83 *[pollution abatement orders]* to a previous owner or operator of an exploration site in respect of the exploration site.

(4) A director may not require or accept security under this Act for remediation of an exploration site.

(5) Fees prescribed under this Act for the purposes of Part 4 *[Contaminated Site Remediation]* in relation to an exploration site are payable only with respect to the remediation of spills of substances.

### **Advanced exploration sites**

**67** (1) Despite section 45 *[persons responsible for remediation of contaminated sites]*, a previous owner or operator of an advanced exploration site is not responsible for remediation of the site if

(a) the owner or operator obtains a transfer agreement that excludes the owner or operator from liability for the contaminated site, or

(b) indemnification has been provided to the owner or operator for that site under the *Financial Administration Act*.

(2) A director may not issue a remediation order under section 48 *[remediation orders]* to a current or previous owner or operator of a core area within an advanced exploration site.

(3) A director may not require or accept security under this Act for remediation of an advanced exploration site.

(4) Fees prescribed under this Act for the purposes of Part 4 *[Contaminated Site Remediation]* in relation to an advanced exploration site are payable only with respect to

(a) the remediation of spills of substances, or

(b) an order issued under section 48 *[remediation orders]* for remediation of a non-core area.

### **Producing or past producing mine sites**

**68** (1) Despite section 45 *[persons responsible for remediation of contaminated sites]*, a previous owner or operator of a producing or past producing mine site is not responsible for remediation of the site if

(a) the owner or operator obtains a transfer agreement that

excludes the owner or operator from liability for the contaminated site, or

(b) indemnification has been provided to the owner or operator for that site under the *Financial Administration Act*.

(2) The director may not issue a remediation order under section 48 [*remediation orders*] in relation to the remediation of a core area of a producing or past producing mine unless

(a) requested to do so by the Chief Inspector of Mines under the *Mines Act*,

(b) this was agreed to in the resolution of a dispute under the dispute resolution process, or

(c) the land and water use at the producing or past producing mine site is formally changed from those approved in the applicable *Mines Act* permit.

(3) Subject to subsection (2), the director must not require or accept security under this Act for remediation of a producing or past producing mine site.

(4) Fees prescribed under this Act for the purposes of Part 4 [*Contaminated Site Remediation*] in relation to a producing or past producing mine site are payable only with respect to

(a) the remediation of spills of substances,

(b) a transfer agreement involving a core area,

(c) an order issued under section 48 [*remediation orders*] for remediation of a non-core area, or

(d) a formal change in land or water use from those uses approved in the applicable *Mines Act* permit.

### **Historic mine sites**

**69** Despite section 45 [*persons responsible for remediation of contaminated sites*], a person is not responsible for remediation of a historic mine site if

(a) indemnification has been provided to the person for that site under the *Financial Administration Act*, or

(b) the person acquired the mineral or coal rights at the site for the purpose of undertaking mineral or coal exploration activities and the exploration activities have not exacerbated any contamination that existed at the site at the time the person acquired those mineral or coal rights.

### **Regulations for purposes of Part 5**

**70** (1) Without limiting section 138 (1) [*general authority to make regulations*], the Lieutenant Governor in Council may make regulations as follows:

(a)prescribing other activities and uses for the purpose of the definition of "core area" in section 65 (1) [*definitions and interpretation*];

(b)prescribing the content of and criteria for transfer agreements for the purposes of this Part.

(2)Section 139 [*regulations — general rules*] applies for the purpose of making regulations under this section.

## Part 6 — Clean Air Provisions

### Definitions

71 In this Part:

**"emission control system"** means a system or device to prevent or reduce the emission of an air contaminant;

**"engine"** includes a motor vehicle engine and a propulsion system;

**"fuel"** means any fuel, other than solid fuel, used in an engine;

**"jurisdiction"** includes a foreign jurisdiction;

**"manufacturer"**, in relation to a product, means a manufacturer who produces the product anywhere and offers it for sale in British Columbia;

**"motor vehicle"** means a motor vehicle as defined in the *Motor Vehicle Act*, and includes mobile equipment and a motor assisted cycle as those terms are defined in that Act;

**"sell"** means to sell, lease or otherwise dispose of a thing or to offer to do any of those things.

### Control of air contaminants

72 (1)A person must not sell, display for sale or deliver to a purchaser an engine or new motor vehicle that is required by the regulations

- (a)to have an emission control system installed or incorporated, or
- (b)to meet specified design requirements,

unless the engine or motor vehicle complies with the applicable regulations under section 74 [*motor vehicle and engine emission regulations*].

(2)A person must not sell, deliver or provide to a purchaser a fuel of a class or type required by the regulations to meet prescribed standards, specifications and availability, unless the fuel complies with those regulations.

(3)Section 139 [*regulations — general rules*] applies for the purpose of making regulations under this section.

### **Fuel emission regulations**

**73** (1)Without limiting section 138 (1) [*general authority to make regulations*], the Lieutenant Governor in Council may make regulations for the purpose of preventing and reducing emissions from fuels and their combustion including, without limiting that power, regulations for one or more of the following:

- (a)prescribing standards for and specifications of fuels, providing for their testing and certification and specifying the quantities for and areas in British Columbia where fuels must be made available;
- (b)prescribing fees and charges to be paid in respect of any matter for which the ministry provides a service or performs a duty in relation to the testing and certification of fuels for compliance with the regulations, and prescribing by whom the fees and charges are to be paid;
- (c)requiring manufacturers and persons who test, certify or sell fuels to record and report specified information at the times and in the manner provided in the regulations;
- (d)specifying the areas in British Columbia to which the regulations apply and specifying the date on which the regulations become effective in those areas;
- (e)classifying fuels for the purpose of a regulation and exempting a class of fuel from a regulation.

(2)Section 139 [*regulations — general rules*] applies for the purpose of making regulations under this section.

### **Motor vehicle and engine emission regulations**

**74** (1)Without limiting section 138 (1) [*general authority to make regulations*], the Lieutenant Governor in Council may make regulations for the purpose of preventing and reducing emissions from new motor vehicles and from engines including, without limiting that power, regulations for one or more of the following:

- (a)requiring motor vehicles or engines to have installed on or incorporated in them one or more emission control systems;
- (b)requiring motor vehicles, engines or emission control systems to meet prescribed standards, specifications and design requirements;
- (c)prescribing standards, specifications and design requirements for the purposes of paragraph (b);

- (d) providing for the testing and certification of motor vehicles, engines and emission control systems for compliance with prescribed standards, specifications and design requirements;
- (e) requiring motor vehicles or engines to meet design requirements that are certified in a specified jurisdiction to conform to the emission control standards of that jurisdiction;
- (f) prohibiting the sale of a new motor vehicle or engine unless it meets prescribed requirements for labelling as to
  - (i) the emission control performance of the motor vehicle or engine,
  - (ii) compliance with requirements under this Act, and
  - (iii) maintenance specifications in relation to emission control;
- (g) prescribing the form, content and manner of placement for labels required under paragraph (f);
- (h) prohibiting, if a manufacturer produces within the same motor vehicle product line, or within a class within that product line, motor vehicles with different designs certified in a specified jurisdiction to conform to different emission control standards, the sale of motor vehicles within that product line or class that meet the less stringent emission control standards;
- (i) requiring manufacturers of new motor vehicles or engines to deliver and have available for sale in British Columbia a model of motor vehicle or engine that meets specified emission control standards;
- (j) establishing a scheme under which, for each manufacturer of new motor vehicles, the motor vehicles that are produced and delivered for sale in British Columbia during a specified time period must be a mix of motor vehicles determined in accordance with a specified formula;
- (k) requiring each manufacturer of new motor vehicles to
  - (i) develop, submit and have approved by the minister a plan for reducing emissions from motor vehicles in British Columbia that, in the opinion of the minister, meets the prescribed requirements for such plans, and
  - (ii) implement and comply with the plan approved under subparagraph (i);

- (l)prescribing requirements for the contents of, and emission reduction goals that must be met by, a plan under paragraph (k);
- (m)prohibiting the sale of a class of new motor vehicles or a class of engines produced by a manufacturer if, in relation to the manufacturer, requirements established under paragraph (i), (j) or (k) are not met;
- (n)prohibiting the sale of a new motor vehicle or engine unless it is sold with an emission control warranty that is provided by the manufacturer and that meets the content requirements specified in the regulation;
- (o)prescribing fees and charges to be paid in respect of any matter for which the ministry provides a service or performs a duty in relation to the testing and certification of motor vehicles or engines for compliance with the regulations, and prescribing by whom the fees and charges are to be paid;
- (p)requiring manufacturers and persons who test, certify or sell motor vehicles or engines to record and report specified information at the times and in the manner provided in the regulation;
- (q)defining words and expressions used in this section that are not otherwise defined by this Act;
- (r)classifying motor vehicles, engines, emission control systems and manufacturers for the purpose of a regulation and exempting such a class from a regulation.

(2)Section 139 [*regulations — general rules*] applies for the purpose of making regulations under this section.

### **Solid fuel burning domestic appliance regulations**

**75** (1)Without limiting section 138 (1) [*general authority to make regulations*], the Lieutenant Governor in Council may make regulations for the purposes of preventing or reducing pollution from new solid fuel burning domestic appliances including, without limitation, regulations for any of the following purposes:

- (a)regulating or imposing requirements or prohibitions in relation to the availability, sale, conditions of sale and lease of solid fuel burning domestic appliances for the purposes of preventing or reducing pollution;

- (b)prescribing emission limits for solid fuel burning domestic appliances or classes of solid fuel burning domestic appliances for the purposes of preventing or reducing pollution;
- (c)prescribing standards for and specifications of solid fuels burned in solid fuel burning domestic appliances for the purposes of preventing or reducing pollution;
- (d)regulating and requiring the testing and certification of solid fuel burning domestic appliances;
- (e)designating persons or organizations to test and certify solid fuel burning domestic appliances;
- (f)prescribing the form and content of labels that may be placed on a solid fuel burning domestic appliance;
- (g)providing for the manner of placing a prescribed label on a solid fuel burning domestic appliance that conforms to the prescribed standards of operation;
- (h)prescribing fees and charges to be paid in respect of any matter for which the ministry provides a service or performs a duty in relation to solid fuel burning domestic appliances, and prescribing by whom the fees and charges are to be paid;
- (i)exempting any solid fuel burning domestic appliance or class of solid fuel burning domestic appliance from any provision of this Act or the regulations;
- (j)providing for the recording and reporting of information by persons who manufacture, test, certify, offer for sale, sell, lease or otherwise dispose of solid fuel burning domestic appliances, including the frequency, time and manner for reporting.

(2)Section 139 [*regulations — general rules*] applies for the purpose of making regulations under this section.

### **Burning regulations**

**76** (1)Without limiting section 138 (1) [*general authority to make regulations*], the Lieutenant Governor in Council may make regulations prescribing conditions that must be met and controls that must be provided for the burning of material derived from land clearing, land grading or tilling.

(2)Section 139 [*regulations — general rules*] applies for the purpose of making regulations under this Part.

## **Part 6.1 — Greenhouse Gas Reduction**

## **Division 1**

### **Not in force. Repealed**

**76.1** [Not in force. Repealed 2014-29-57.]

## **Division 2 — Waste Management Facilities**

### **Management of greenhouse gases at waste management facilities**

**76.2** The owner or operator of a waste management facility of a prescribed class must manage, in accordance with the regulations, specified greenhouse gases produced from wastes handled at the waste management facility.

### **Regulations for purposes of Division 2**

**76.21** (1) Without limiting section 138 (1) [*general authority to make regulations*], the Lieutenant Governor in Council may make regulations as follows:

- (a) specifying greenhouse gases for the purposes of this Division;
- (b) prescribing actions that must be taken in relation to either or both of the following:
  - (i) the management or reduction of specified greenhouse gases;
  - (ii) the recovery of energy potential from specified greenhouse gases;
- (c) regulating and imposing requirements and prohibitions in relation to actions required under paragraph (b);
- (d) regulating and imposing requirements and prohibitions for the design, siting and operation of any works, activities or operations related to the management of, or the recovery of energy potential from, greenhouse gases;
- (e) exempting any works, activities or operations or any class of persons, works, activities or operations from any or all of the provisions of the regulations in circumstances or on conditions that the Lieutenant Governor in Council prescribes;
- (f) imposing monitoring and reporting requirements in relation to
  - (i) greenhouse gases or the recovery of energy potential from greenhouse gases,
  - (ii) handling, treating, transporting, discharging or storing greenhouse gases or energy potential recovered from greenhouse gases, and

(iii) places and things that the Lieutenant Governor in Council considers may be affected by the handling, treatment, transportation, discharge or storage of greenhouse gases or energy potential recovered from greenhouse gases,

including, without limitation, prescribing requirements for the publication of information and respecting to whom reports are to be submitted and the timing, form, content, supporting evidence, verification, certification and manner of submission of the reports;

(g) establishing requirements respecting the retention of records that support reports and information required to be provided to the director under this Division;

(h) defining words or expressions used but not defined in this Division.

(2) Section 139 [*regulations — general rules*] applies for the purpose of making regulations under this Division.

## **Division 3 and 4**

**Not in force. Repealed**

**76.3-**

**76.43** [Not in force. Repealed 2014-29-57.]

## **Division 5 — General**

**This Part does not affect authority under other Parts**

**76.5** Nothing in this Part affects the authority to deal with greenhouse gases under any other Part of this Act.

# **Part 7 — Powers in Relation to Managing the Environment**

## **Division 1 — Pollution Assessment, Prevention and Abatement**

**Requirement to provide information**

**77** (1) For the purpose of determining whether there are reasonable grounds for making a pollution prevention order under section 81 [*pollution prevention orders*] or a pollution abatement order under section 83 [*pollution abatement orders*], a director may order a person who is conducting an industry, trade or

business to provide to the director the information described in subsection (2) that the director requests, whether or not

(a) the industry, trade or business is prescribed for the purposes of section 6 (2) [*waste disposal*], or

(b) an activity or operation of the industry, trade or business is prescribed for the purposes of section 6 (3) [*waste disposal*].

(2) An order under subsection (1) must be served on the person to whom it applies and may require the person to provide, at the person's own expense, information relating to

(a) the operations or activities of the industry, trade or business, or

(b) substances used, stored, treated or introduced or caused or allowed to be introduced into the environment in the course of the industry, trade or business.

(3) Information required by an order under this section must be provided in the time and manner specified in the order.

(4) For the purposes of this section, "**person**" does not include a municipality.

### **Minister may require environmental impact assessment**

**78** If the minister considers that

(a) something a person proposes to do will have a detrimental environmental impact, and

(b) the environmental impact cannot be assessed from information available to the minister,

the minister may require the person to provide an environmental impact assessment in respect of that thing, prepared in accordance with the regulations.

### **Spill prevention and reporting**

**79** (1) In this section, "**polluting substance**" means any substance, whether gaseous, liquid or solid that, in the opinion of the minister, is capable of causing pollution if it were to

(a) escape into the air,

(b) be spilled onto any land or into any body of water, or

(c) escape onto any land or into any body of water.

(2) If a person has possession, charge or control of any polluting substance, the minister may, if the minister considers it reasonable and necessary to lessen the risk of an escape or spill of the substance, order that person

(a)to undertake investigations, tests, surveys and any other action the minister considers necessary to determine the magnitude of the risk and to report the results to the minister,

(b)to prepare, in accordance with the minister's directions, a contingency plan containing information the minister requires, and

(c)to construct, alter or acquire, at the person's expense, any works, or carry out at the person's expense any measures that the minister considers reasonable and necessary to prevent or abate an escape or spill of the substance.

(3)If an escape or spill occurs of a polluting substance for which a contingency plan was prepared, a director may order any person having possession, charge or control of the substance at the time it escaped or was spilled, or the person who prepared the plan or all of them to put the contingency plan into operation at their expense.

(4)The minister may order a person who prepared a contingency plan to test the plan.

(5)If a polluting substance escapes or is spilled or waste is introduced into the environment other than as allowed or authorized by

(a)section 6 [*waste disposal*], or

(b)a bylaw under section 31 [*control of air contaminants in Greater Vancouver*],

the person who had possession, charge or control of the substance or waste immediately before the escape, spill or introduction must, immediately after the person learns of the escape, spill or introduction, report the escape, spill or introduction in accordance with the regulations.

(6)In a prosecution for a contravention of subsection (5), it is presumed that the accused knew of the escape, spill or introduction at the time of the alleged contravention and the burden of proving that the accused did not know is on the accused.

(7)The minister may amend or cancel an order made under this section.

## **Repealed**

80 [Repealed 2016-20-3.]

## **Pollution prevention orders**

81 (1)If a director is satisfied on reasonable grounds that an activity or operation has been or is being performed by a person in a manner that is likely to release a substance that will cause pollution, the director may order a person

referred to in subsection (2), at that person's expense, to do any of the following:

- (a) provide to the director information the director requests relating to the activity, operation or substance;
- (b) undertake investigations, tests, surveys or any other action the director considers necessary to prevent the pollution and report the results to the director;
- (c) acquire, construct or carry out any works or measures that are reasonably necessary to prevent the pollution;
- (d) adjust, repair or alter any works to the extent reasonably necessary to prevent the pollution.

(2) An order made under subsection (1) may be served on one or more of the following persons:

- (a) a person who previously had or now has possession, charge or control of the substance;
- (b) a person who previously did anything, or who is now doing anything, which may cause the release of the substance;
- (c) a person who previously owned or occupied, or now owns or occupies, the land on which the substance is located.

(3) An order made under subsection (1) may authorize a person or persons designated by the director to enter land for the purpose of preventing the pollution.

(4) The powers of a director under this section may not be exercised in relation to any part of an activity or operation that is in compliance with the regulations or a permit, approval, order, waste management plan or operational certificate or an authorization made under the regulations.

(5) For the purposes of this section, "**person**" does not include a municipality.

### **Preventing municipal pollution**

**82** If the minister is satisfied on reasonable grounds that an activity or operation has been or is being performed by a municipality in a manner that is likely to release a substance that will cause pollution of the environment, the minister may, with respect to the municipality, exercise the powers that a director may exercise under section 81 (1) [*pollution prevention orders*] in relation to other persons.

### **Pollution abatement orders**

**83** (1) If a director is satisfied on reasonable grounds that a substance is causing pollution, the director may order any of the following persons to do any of the things referred to in subsection (2):

- (a) a person who had possession, charge or control of the substance at the time it was introduced or escaped into the environment;
- (b) a person who owns or occupies the land on which the substance is located or on which the substance was located immediately before it was introduced into the environment;
- (c) a person who caused or authorized the pollution.

(2) An order under subsection (1) must be served on the person to whom it applies and may require that person, at that person's own expense, to do one or more of the following:

- (a) provide to the director information that the director requests relating to the pollution;
- (b) undertake investigations, tests, surveys and any other action the director considers necessary to determine the extent and effects of the pollution and to report the results to the director;
- (c) acquire, construct or carry out any works or measures that are reasonably necessary to control, abate or stop the pollution;
- (d) adjust, repair or alter any works to the extent reasonably necessary to control, abate or stop the pollution;
- (e) abate the pollution;
- (f) carry out remediation in accordance with any criteria established by the director.

(3) An order under subsection (1) may authorize any persons designated by the director to enter land for the purpose of controlling, abating or stopping the pollution or to carry out remediation.

(4) A director may amend or cancel an order made under this section.

(5) The powers given by this section may be exercised even though the introduction of the substance into the environment is not prohibited under this Act or is authorized under this Act.

(6) For the purposes of this section, "**person**" does not include a municipality.

### **Abatement of municipal pollution**

**84** If the minister considers that a municipality is causing pollution, the minister may, with respect to the municipality, exercise the powers that a director may exercise under section 83 [*pollution abatement orders*] in relation to other persons.

### **Environmental protection orders**

**85** (1) The minister may declare that an existing or proposed work, undertaking, product use or resource use has, or potentially has, a detrimental environmental impact.

(2) A declaration under subsection (1)

- (a) must be in writing,
- (b) must state the facts on which it is based,
- (c) is conclusive proof of those facts for the purposes of the declaration, and
- (d) is binding on all persons and courts.

(3) If a declaration has been made under subsection (1), the minister, after notifying the person affected, but without the necessity of holding a hearing, may make an interim order

- (a) restricting, modifying or prohibiting the operation of the work or undertaking or the use of the product or resource, or
- (b) requiring the person to do anything that the minister requires to be done in relation to the work or undertaking or the use of the product or resource

for a period not exceeding 15 days and in a manner specified in the order.

(4) The minister may not extend or renew an interim order.

(5) Whether or not an interim order has been made or has expired, if a declaration has been made under subsection (1), the Lieutenant Governor in Council, after notifying the person affected, but without the necessity of holding a hearing, may make an order

- (a) restricting, modifying or prohibiting the operation of the work or undertaking or the use of the product or resource, or
- (b) requiring the person to do anything that the Lieutenant Governor in Council requires to be done in relation to the work or undertaking or the use of the product or resource

either permanently or for a specified period in a manner specified in the order.

(6) When an order of the Lieutenant Governor in Council under subsection (5) comes into force, an interim order in relation to the same subject matter expires.

(7) An order under subsection (3) or (5)

- (a) may not be made later than one year after the date of the minister's declaration under subsection (1), and
- (b) must state the reasons for making the order.

(8) Despite any other enactment, a person to whom an order under subsection (3) or (5) is expressed to apply must comply with the order.

**Environmental management plan — in relation to environmental protection order**

**86** (1) If the minister has made a declaration under section 85

(1) [*environmental protection orders*] respecting a detrimental environmental impact, the Lieutenant Governor in Council may direct the minister to prepare an environmental management plan for the locality that is, or would be, impacted.

(2) If an environmental management plan has been prepared under subsection (1), the Lieutenant Governor in Council may

(a) approve the plan with or without modification, and

(b) for the purpose of implementing the plan, order that

(i) no licence, permit or power under an enactment may be issued or exercised in the locality, and

(ii) no waste may be discharged in the locality

except as authorized by and in accordance with the order.

(3) A licence or permit issued, or a power exercised, contrary to an order under subsection (2) (b) has no effect.

### **Environmental emergency measures**

**87** (1) In this section and section 88 [*recovery of costs — environmental emergency*], "**environmental emergency**" means an occurrence or natural disaster that affects the environment and includes the following:

(a) a flood;

(b) a landslide;

(c) a spill or leakage of oil or of a poisonous or dangerous substance.

(2) If the minister considers that

(a) an environmental emergency exists, and

(b) immediate action is necessary to prevent, lessen or control any hazard that the emergency presents,

the minister may make a declaration in writing that an environmental emergency under this section exists.

(3) If the minister has made a declaration under subsection (2), the minister, or a public officer authorized by the minister in writing, may order any person to

(a) provide labour, services, material, equipment or facilities, or

(b) allow the use of land

for the purpose of preventing, lessening or controlling the hazard presented by the emergency,

(4) If an order is made under subsection (3),

- (a) compensation for labour or services must be paid as the Lieutenant Governor in Council provides, and
- (b) compensation for material, equipment, facilities or the use of land, if not agreed on, must be set by arbitration under the *Arbitration Act*.

(5) An order under subsection (3)

- (a) expires 15 days after it is made unless rescinded earlier under subsection (6), and
- (b) does not require any person to supply labour who is unfit to do so or is under the age of 19.

(6) The Lieutenant Governor in Council may by order

- (a) confirm, modify or rescind an order under subsection (3), and
- (b) extend the term of an order under subsection (3) for a period the Lieutenant Governor in Council considers necessary.

(7) Subsection (6) (b) may not be applied to extend a requirement that a person supply labour.

(8) Despite any other enactment, a person affected by an order under subsection (3) or (6) must comply with the order.

### **Recovery of costs — environmental emergency**

**88** (1) If the minister certifies that money is required for immediate response to an environmental emergency, the amount the minister certifies to be required may be paid out of the consolidated revenue fund without an appropriation other than this section.

(2) A certificate signed by the minister and showing an amount of money expended by the government under this section is conclusive as to the amount expended.

(3) An amount shown by a certificate referred to in subsection (2) is a debt due to the government and, subject to subsection (4), is recoverable, by action in the Supreme Court from any person whose act or omission caused or who authorized the events that caused the environmental emergency in proportions the court determines.

(4) If the court is satisfied that the expenditure incurred by the government under this section was either

- (a) excessive, taking into consideration the magnitude of the emergency and the results achieved by the expenditure, or

(b)unnecessary, taking into consideration the unlikelihood of significant material loss to any person had the government not acted under this section,

the court may reduce or extinguish the amount of the judgment that it otherwise would have ordered be entered against the person against whom the action has been brought.

(5)For the purpose of subsection (3), anything done or omitted by a person acting in the course of the person's employment is also the act or omission of the person's employer.

## **Division 2 — Area Based Management**

### **Area based management plans — plan development**

**89** (1)If the minister considers it advisable for purposes of environmental management in an area, the minister may, by order,

(a)designate the area for the purpose of developing an area based management plan for the area, and

(b)establish a process for the development of the area based management plan for the designated area.

(2)An order under subsection (1) may, without limitation,

(a)establish who is to be responsible for preparing the area based management plan,

(b)establish the terms of reference for the plan or authorize the preparation of some or all of the terms of reference subject to the approval of the minister,

(c)require the establishment of a technical advisory committee in relation to the development of the plan, and

(d)require the participation in the development of the plan by specified licensees, permit holders or other persons the minister considers will be affected by the plan.

(3)The terms of reference for an area based management plan must include

(a)the purpose of the plan,

(b)the issues to be addressed in the plan,

(c)a process for public and stakeholder consultation,

(d)if a management plan under another enactment is proposed or exists in relation to the same area, directions for coordination with persons responsible for that plan, and

(e)a time limit for completing the plan.

(4) Without limiting subsection (2) (b), the terms of reference for an area based management plan may include consideration of any of the following:

- (a) the impact of point and non point sources of waste;
- (b) cumulative impacts of point and non point sources of waste;
- (c) the economic and social costs and benefits of addressing risks to the environment through treatment;
- (d) environmental management objectives and outcomes for the area;
- (e) ongoing monitoring and reporting required to implement the plan.

### **Approval and effect of area based management plan**

**90** (1) The minister may approve, with or without amendment, an area based management plan ordered under section 89 [*area based management plans — plan development*].

(2) For the purpose of implementing an approved area based management plan, the minister, by order made applicable in relation to all or part of the designated area for the plan, may require that persons making decisions or classes of decisions under this Act consider the plan in making the decisions.

### **Permits under area based management plan**

**90.1** (1) Despite section 14 [*permits*], if the introduction of waste into the environment is provided for under an area based management plan, the minister may, in writing, order a director to issue a permit under that section authorizing the introduction of waste

- (a) within a specified time,
- (b) in accordance with any requirements or conditions, under section 14 (1) (a) to (f), specified in the order, and
- (c) subject to other requirements or conditions, under section 14 (1) (a) to (f), the director considers advisable for the protection of the environment.

(2) Subject to subsection (3) and section 16 (2) [*amendment of permits and approvals*], the issuance of a permit under this section is final and binding and may not be appealed under Division 2 [*Appeals from Decisions under this Act*] of Part 8.

(3) Requirements or conditions the director considers advisable under subsection (1) (c) and amendments the director makes under section 16 (2) may be appealed under Division 2 of Part 8.

## **Amendments to area based management plan**

**90.2** (1) If the minister considers it advisable for the purposes of environmental management, the minister may, by order, establish a process for the development of an amendment to an approved area based management plan.

(2) Section 89 (2) and (3) [*area based management plans — plan development*] applies to an order to amend an area based management plan.

(3) The minister may approve, with or without further amendment, an amendment to an area based management plan.

(4) Upon approval of an amendment, the area based management plan is conclusively deemed, for all purposes, to be as modified by the amendment.

## **Publication obligations**

**91** The minister must publish in the prescribed manner

(a) on the making of an order under section 89 (1) [*area based management plans — plan development*], the order,

(b) if an area based plan is approved under section 90 [*approval and effect of area based management plan*], the plan and any order under section 90 (2),

(c) an order under section 90.1 (1) [*permits under area based management plan*],

(d) an order under section 90.2 (1) [*amendments to area based management plan*], and

(e) if an amendment is approved under section 90.2 (3), the amendment.

## **Division 2.1 — Spill Preparedness, Response and Recovery**

### **Definitions**

**91.1** In this Division:

**"area response plan"** means a plan referred to in section 91.51 (1) [*area response plans*];

**"conditional PRO"** means a preparedness and response organization that holds a conditional PRO certificate;

**"conditional PRO certificate"** means a certificate issued under section 91.41 (1) [*preparedness and response organizations*];

**"environment"** includes

- (a) flora and fauna, and
- (b) for certainty, animal, fish and plant habitat;

**"first nation government"** means

- (a) the governing body of a band, as defined in the *Indian Act* (Canada),
- (b) a treaty first nation,
- (c) a Nisga'a Government, and
- (d) the council of the Sechelt Indian Band;

**"geographic response area"** means the area designated under section 91.31

(2) [*geographic response plans*] for a geographic response plan;

**"geographic response plan"** means a plan referred to in section 91.31 (2);

**"infrastructure"** includes buildings, bridges, drinking water intakes, utility conduits and wastewater treatment plants;

**"local government"** means

- (a) the council of a municipality,
- (b) the board of a regional district,
- (c) a local trust committee, or the trust council, as defined in section 1 of the *Islands Trust Act*,
- (d) a greater board, or
- (e) an improvement district;

**"preparedness and response organization"** means an organization that provides or intends to provide spill preparedness and response services in British Columbia;

**"PRO"** means a preparedness and response organization that holds a PRO certificate;

**"PRO certificate"** means a certificate issued under section 91.41 (2);

**"regulated person"** means

- (a) a person who, in the course of operating an industry, trade or business, has possession, charge or control of a prescribed substance in prescribed quantities, or
- (b) a person referred to in paragraph (a) whose employee, under the person's direction, has possession, charge or control of a prescribed substance in prescribed quantities;

**"responsible person"** means a person who has possession, charge or control of a substance or thing when a spill of the substance or thing occurs or is at imminent risk of occurring;

**"spill"** means the introduction into the environment, other than as authorized under this Act and whether intentional or unintentional, of a substance or thing that has the potential to cause adverse effects to the environment, human health or infrastructure;

**"spill contingency plan"** means a plan described in section 91.11 (1).

### **Regulated persons — spill contingency planning**

**91.11 (1)** A regulated person must ensure that

- (a) on or before the prescribed date, the regulated person has a spill contingency plan that complies with the regulations,
- (b) the spill contingency plan is reviewed, updated and tested in the prescribed manner and at the prescribed frequency,
- (c) the spill contingency plan is made available to employees of the regulated person in accordance with the regulations,
- (d) the spill contingency plan demonstrates that the regulated person has the capability to effectively respond to a spill, and
- (e) if required by the regulations, the spill contingency plan is published in accordance with the regulations.

(2) Before a spill contingency plan is prepared in relation to a regulated person, the regulated person must ensure that investigations, tests and surveys are undertaken in accordance with the regulations, if any, that are necessary to determine the magnitude of the risk to

- (a) the environment and human health, and
- (b) infrastructure

that would result from a spill of the substance in respect of which the person is a regulated person.

(3) A regulated person must ensure that, in accordance with the regulations,

- (a) records respecting investigations, tests and surveys referred to in subsection (2) are prepared and kept for the prescribed period,
- (b) prescribed reports are prepared and submitted to a director,
- (c) employees of the regulated person receive prescribed training to prescribed standards, and

(d)employees of the regulated person engage in spill response training exercises and drills in the prescribed manner and at the prescribed frequency.

(4)A regulated person must ensure that, if a spill occurs, a spill contingency plan is implemented to the extent the plan is applicable.

(5)If ordered by a director, a regulated person must provide to the director, at the regulated person's own expense and in the time and manner specified by the director,

(a)a copy of the regulated person's spill contingency plan,

(b)information relating to

(i)the operations or activities of the industry, trade or business, or

(ii)substances used, stored, treated, produced or transported by the regulated person,

(c)prescribed declarations in respect of spill preparedness and response capability, and

(d)prescribed information.

(6)A director who requests a copy of a spill contingency plan may order that the spill contingency plan be amended in accordance with the director's directions and resubmitted in the time specified by the director, if the director is satisfied that the spill contingency plan does not comply with this Act or the regulations.

(7)A director may order a regulated person to test the efficacy of the regulated person's spill contingency plan in the time and manner specified by the director.

### **Responsible persons — spill response**

**91.2** (1)A responsible person in relation to a spill must, in accordance with the regulations,

(a)report the prescribed information about the spill to the prescribed persons in the prescribed time and manner,

(b)provide any information to an officer that the officer requests respecting response activities in relation to the spill, and

(c)ensure that persons with the skills, experience, resources and equipment necessary to properly deal with the spill

(i)arrive at the spill site, sites affected by the spill and prescribed sites associated with the spill within the prescribed period after the spill, and

(ii)implement an incident command system in the prescribed time and manner.

(2)Subject to the regulations, if a spill occurs or is at imminent risk of occurring, the responsible person in relation to the spill must ensure that the actions necessary to address the threat or hazard caused by the spill are taken, which actions may include, but are not limited to, the following actions, if applicable:

(a)assess, monitor and prevent, or prevent the continuation of, the threat or hazard caused by the spill;

(b)stabilize, contain, remove and clean up the spill;

(c)identify and evaluate the immediate risks to and impacts on the environment, human health or infrastructure and, as necessary,

(i)advise persons to take protective action in relation to the spill,

(ii)protect infrastructure, and

(iii)protect, recover and restore the environment;

(d)identify and evaluate the long term impacts of the spill;

(e)take steps to resolve or mitigate those immediate and long term impacts.

(3)If a director is satisfied on reasonable grounds that compliance with the regulations is not sufficient to fully deal with the adverse effects of a spill on the environment, human health or infrastructure, the director may order the responsible person to take specified spill response actions that the director considers are necessary or advisable in addition to the regulatory requirements.

(4)A director may order a responsible person in relation to a spill to prepare, in accordance with the regulations, and submit to the director, in the time and manner specified by the director, a recovery plan, or an amended recovery plan, to resolve or mitigate the impacts of the spill.

(5)The director may

(a)approve, by order, a recovery plan submitted under subsection (4), or

(b)direct that the recovery plan be amended in accordance with the director's directions and resubmitted in the time and manner specified by the director.

(6)A responsible person must ensure that

(a)an approved recovery plan is carried out by a person the director is satisfied has

- (i) the qualifications necessary to properly carry out the plan, and
  - (ii) access to personnel with the necessary skills and training,
  - (b) an approved recovery plan is carried out by the date specified by the director, and
  - (c) at the conclusion of the recovery process, in accordance with the regulations, a report is prepared and submitted to the director.
- (7) Section 91.4 (8) and (9) (a) [*government spill response*] applies to a director in relation to the exercise of the director's powers and performance of the director's duties under this section.

### **When restoration not reasonably achievable**

**91.21** (1) This section applies

- (a) if a director is satisfied that
    - (i) the impacts of a spill on the environment cannot be restored, or cannot be completely restored, at sites affected by the spill,
    - (ii) the impacts of a spill on the environment cannot reasonably be restored, or cannot reasonably be completely restored, because the following would not be commensurate with the result of restoration or complete restoration activities:
      - (A) damage to the environment or human health;
      - (B) the costs of the restoration activities, or
    - (iii) it is not safe to undertake restoration activities at sites affected by the spill, or
  - (b) in prescribed circumstances.
- (2) In the circumstances described in subsection (1), the director may order that the recovery plan for the spill provide for
- (a) mitigation measures, to be taken elsewhere, that compensate, or partially compensate, for the type of damage caused by the spill, or
  - (b) payment by the responsible person, to a person specified by the director, of an amount the director considers equivalent to the amount the responsible person would have been liable to if restoration or complete restoration were reasonably or safely achievable.

(3)A director may specify a person for the purposes of subsection (2) (b) only if the director is satisfied that

(a)the person operates on a predominately not-for-profit basis and has purposes restricted to

(i)the conservation or enhancement of biological diversity, fish, fish habitat, wildlife or wildlife habitat, or

(ii)a prescribed purpose, and

(b)the person will apply the funds to a project that will, in whole or in part, compensate for the damage caused by the spill.

### **Certificate of recovery**

**91.3** If a director is satisfied on the basis of a report under section 91.2 (6)

(c) [*responsible persons — spill response*] that an approved recovery plan has been carried out, the director may issue to the responsible person a certificate to that effect.

### **Geographic response plans**

**91.31** (1)For the purposes of this section, "**plan leaders**" means the regulated persons ordered under subsection (3) to prepare a geographic response plan.

(2)The minister, by order, may designate an area for the purpose of the development of a geographic response plan applicable throughout the area

(a)if the minister considers that a geographic response plan will assist

(i)in minimizing the effects of a spill on a body of water, a sensitive ecosystem or a culturally sensitive or archaeologically, socially, economically or historically significant site in the area, or

(ii)in increasing the efficiency of spill response in the area, or

(b)in prescribed circumstances.

(3)In an order under subsection (2), the minister may order the regulated persons who carry on an industry, trade or business, or related activities, in the geographic response area, or a class of those regulated persons, to prepare, or to review, update and test, a geographic response plan in accordance with the minister's order and the regulations.

(4)An order under subsection (2) must establish the terms of reference for the geographic response plan, or authorize the preparation of some or all of the terms of reference subject to the approval of the minister, which terms of reference must include, but are not limited to,

- (a) the matters to be addressed in the proposed geographic response plan, which matters may include, but are not limited to,
  - (i) locations of bodies of water, sensitive ecosystems, culturally sensitive or archeologically, socially, economically or historically significant sites in the area,
  - (ii) locations of potential response staging sites,
  - (iii) locations and profiles of the biological and other resources that could be affected by a spill, including, without limitation,
    - (A) threatened and endangered species,
    - (B) important or unique animal, fish or plant habitat,
    - (C) areas of human habitation and recreational activities, and
    - (D) water and agricultural resources,
  - (iv) locations of key infrastructure,
  - (v) tactics for addressing spills and impacts of spills in the area, including, without limitation, collection techniques, and
  - (vi) prescribed matters,
- (b) a time limit for completing the proposed plan, and
- (c) any other prescribed information.

- (5) An order under subsection (2) may, subject to the regulations,
  - (a) require the establishment of an advisory committee in relation to the development, review, testing and updating of the geographic response plan and the reimbursement of the members of the committee for reasonable travelling and out-of-pocket expenses necessarily incurred in carrying out their duties,
  - (b) specify persons and organizations or classes of persons or organizations whose input must be invited and considered,
  - (c) require the plan leaders to carry out a public consultation in accordance with the regulations, and
  - (d) specify persons or organizations or classes of persons or organizations who are responsible for paying the reasonable costs of developing, reviewing, testing and updating the geographic response plan.

- (6) A geographic response plan must
  - (a) be in the prescribed form,
  - (b) contain provisions respecting the prescribed matters, and

(c) be published in accordance with the regulations.

### **Government spill response**

**91.4** (1) The government may carry out actions described in section 91.2

(2) [*responsible persons — spill response*] if an officer considers that

(a) a spill has occurred or there is an imminent risk of a spill occurring,

(b) action is necessary to address a spill or the risk of a spill or to resolve or mitigate long term effects of a spill, and

(c) one or more of the following apply:

(i) there is no responsible person in relation to the spill;

(ii) an officer has reasonable grounds to believe that government action is required to safeguard the environment, human health or infrastructure;

(iii) the responsible person in relation to the spill requests that the government assist with spill response and recovery actions.

(2) In addition to actions under section 91.2 (2), if a director considers it necessary or desirable in the event of a spill, the government may take actions in relation to any of the following:

(a) any aspect of the management of the spill and its effects;

(b) impacts of the spill on public property, public amenities or areas to which the public has access;

(c) impacts of the spill on private property;

(d) impacts of the spill on any part of the environment.

(3) Subject to the regulations, the costs incurred by the government under this Division in relation to a spill are a debt due to the government by the responsible person and the owner of the substance or thing spilled.

(4) The costs referred to in subsection (3) include all of the government's costs in relation to the spill, including, without limitation,

(a) for

(i) the use of government employees or contractors in the response, including hourly rates and expenses, including food, accommodation and mileage,

(ii) the use of government vehicles, including mileage,

(iii) the use of consulting and other professional services,

(iv) the use, maintenance and repair of government equipment,

- (v) private goods and services contracted, hired, rented or purchased,
  - (vi) research and analytical services related to recovery actions, and
  - (vii) mitigating the effects of the spill on the public, and
- (b) a prescribed percentage of those costs the Lieutenant Governor in Council considers is sufficient to meet the government's administrative costs.

(5) The responsible person and owner referred to in subsection (3) are jointly and separately liable for amounts described in that subsection.

(6) For the purpose of recovering costs referred to in subsection (3), a director may file a certificate with a court that has jurisdiction, and, upon filing, the certificate has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the court with which it is filed against the persons named, and in the amount set out, in that certificate.

(7) A certificate under subsection (6) may be in the prescribed form, must be signed by a director and must contain

- (a) the name of the responsible person in relation to the spill and the owner of the substance or thing that was spilled,
- (b) the date and place of the spill to which the certificate relates, and
- (c) the costs referred to in subsection (3).

(8) No legal proceeding for damages lies or may be commenced or maintained against the government, an employee of the government or a person acting on behalf of or under the direction of the government because of anything done or omitted

- (a) in the performance or intended performance of any duty under this section in relation to a spill, or
- (b) in the exercise or intended exercise of any power under this section in relation to a spill.

(9) Subsection (8) does not apply to

- (a) a person referred to in that subsection in relation to anything done or omitted by that person in bad faith, or
- (b) a responsible person, whether or not the responsible person is acting under the direction of the government.

## **Preparedness and response organizations**

**91.41** (1) On application in accordance with the directions of the minister and the regulations, if any, the minister may issue a conditional PRO certificate to a

preparedness and response organization that demonstrates to the minister's satisfaction that the organization has the capacity to be fully capable and intends to be fully capable, within the period and the area specified by the minister, to

- (a) promptly and capably deal with spills and the impacts of spills within that area, including having access to the necessary equipment, personnel and other resources, and
- (b) perform prescribed duties given under this Part to a regulated person or a PRO.

(2) On application by a conditional PRO or on the minister's own initiative, the minister may, if the minister is satisfied that the conditional PRO is fully capable as described in subsection (1), issue a PRO certificate to the conditional PRO or, on the minister's own initiative, the minister may, at the expiry of a conditional PRO certificate, revoke the conditional PRO certificate.

(3) A conditional PRO certificate and a PRO certificate

- (a) must contain the prescribed terms and conditions, if any, and
- (b) may contain the terms and conditions the minister considers necessary or advisable.

(4) A conditional PRO and a PRO must comply with the terms and conditions of the conditional PRO certificate or the PRO certificate, as applicable.

(5) To ensure that a conditional PRO or PRO, as applicable, becomes or remains, as applicable, fully capable as described in subsection (1) (a) and (b), the minister may amend, as the minister considers necessary or advisable for that purpose, the terms and conditions of

- (a) a conditional PRO certificate, including by extending the period specified in the conditional PRO certificate if the minister is satisfied that the conditional PRO has the capacity to be capable as described in subsection (1) by the end of the extension, or
- (b) a PRO certificate.

(6) An application under subsection (1) must include, for the approval of the minister,

- (a) a business plan that demonstrates that the organization has the capacity to be fully capable as described in subsection (1) within the period specified under that subsection,
- (b) prescribed information and records, if any, and
- (c) any other information or records the minister requests.

(7) To be eligible for a PRO certificate, a conditional PRO must provide all of the following:

(a)an area response plan, prepared by the conditional PRO, that demonstrates to the satisfaction of the minister that the conditional PRO, in accordance with the regulations,

(i)consulted any person who would have an interest in the event of a spill in the specified area, and

(ii)enabled the participation of persons referred to subparagraph (i) in the development of the area response plan, including, in the case of local governments and first nation governments, providing reimbursement of reasonable travelling and out-of-pocket expenses necessarily incurred as a result of that participation;

(b)prescribed information and records, if any;

(c)any other information or records the minister requests.

(8)It is a term of a PRO certificate that the PRO must establish, and include in its arrangements with regulated persons, a procedure for dealing with complaints made to the PRO by those regulated persons, in respect of the fees and other amounts charged by the PRO.

(9)Subject to the regulations, if the minister is satisfied that a conditional PRO or a PRO is not complying with the terms and conditions of the conditional PRO certificate or PRO certificate, as applicable, the minister may cancel the certificate.

### **Complaint to minister respecting fees**

**91.5** (1)A person who is required under the regulations to use the services of a PRO and who has a complaint about the fees or other charges the PRO is imposing for those services may, on payment of the prescribed fee for filing a complaint, if any, file a complaint with the minister.

(2)On receiving a complaint under subsection (1), the minister may, by order,

(a)dismiss the complaint, or

(b)after hearing from the PRO and the complainant in any manner the minister considers appropriate,

(i)dismiss the complaint,

(ii)order the PRO to adjust its fees,

(iii)waive a fee payable by the complainant to the PRO, or

(iv)prohibit the fee being imposed on any person.

(3)After exercising authority under subsection (2) in relation to a complaint, the minister may, by order, award costs to the PRO or the complainant in the amount the minister considers appropriate.

(4) A person in whose favour an order is made under subsection (3) may file the order with a court that has jurisdiction and, upon filing, that order has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the court with which it is filed against the person named, and in the amount set out, in the order.

### **Area response plans**

**91.51** (1) A conditional PRO that wishes to be certified as a PRO must prepare, and publish, in accordance with the regulations and in the time specified by the minister, a response plan for the area designated in its conditional PRO certificate.

(2) A PRO, in accordance with the regulations, must review, update, test and republish an area response plan prepared under subsection (1).

(3) Subject to the regulations, an area response plan must include information respecting spill response procedures and strategies, including, without limitation,

- (a) available equipment and other resources,
- (b) where the equipment and resources can be obtained,
- (c) other logistical information, and
- (d) prescribed information respecting prescribed matters.

(4) Subject to the regulations, a conditional PRO preparing an area response plan and a PRO reviewing and updating an area response plan must

- (a) establish an advisory committee in relation to the development of an area response plan, and
- (b) reimburse the advisory committee members for reasonable travelling and out-of-pocket expenses necessarily incurred in carrying out their duties.

### **Right of entry to respond to spill**

**91.6** The government, and any person directed by the government, may carry out spill response actions anywhere and, without limiting this, may enter on private property for the purpose of carrying out those actions.

### **Minister's advisory committee respecting spill response**

**91.61** (1) The minister may establish an advisory committee, consisting of individuals appointed by the minister, to provide advice and recommendations to the minister on any aspect of spill preparedness, response or recovery under this Division.

(2)The minister may appoint to a minister's advisory committee any individual whose advice or recommendations the minister considers desirable, including, without limitation,

- (a)representatives of local governments,
- (b)representatives of first nation governments, and
- (c)individuals with technical expertise in relation to spill preparedness, response or recovery.

(3)An individual appointed to a minister's advisory committee must be reimbursed, in accordance with the general directives of Treasury Board, for reasonable travelling and out-of-pocket expenses necessarily incurred in carrying out the individual's duties.

### **Report to the Legislative Assembly**

**91.7** At the prescribed frequency, the minister must lay before the Legislative Assembly a report respecting the administration and operation of this Division, and the effectiveness of the spill response scheme under this Division, for the period beginning, as applicable,

- (a)on the date this section comes into force, or
- (b)on the date the last report under this section is laid before the Legislative Assembly.

### **Requirement to provide information**

**91.71** (1)A person who, in the course of operating an industry, trade or business, has possession, charge or control of a substance, other than a substance prescribed for the purposes of the definition of "regulated person" in section 91.1, that a director has reasonable grounds to believe may, if spilled, cause adverse effects on the environment, human health or infrastructure must, on request of the director, provide the following within the time specified by the director:

- (a)information respecting the substance and its properties;
- (b)information respecting the potential adverse effects that would be caused to the environment, human health or infrastructure were the substance spilled;
- (c)information respecting the quantities of the substance of which the person has, or intends to have, possession, charge or control;
- (d)prescribed information.

(2)A person who, in the course of operating an industry, trade or business, has possession, charge or control of a substance prescribed for the purposes of the definition of "regulated person" in section 91.1 must, on request of a director,

provide information, within the time specified by the director, respecting the quantities of the substance of which the person has, or intends to have, possession, charge or control.

### **Division 3 — Regulations for Part 7**

#### **Regulations for purposes of Part 7**

92 (1) Without limiting section 138 (1) [*general authority to make regulations*], the Lieutenant Governor in Council may make the following regulations:

(a) [Repealed 2016-20-5.]

(a.1) respecting conditional PROs and PROs, including, without limitation,

(i) prescribing application requirements,

(ii) prescribing qualifications that a preparedness and response organization must have and requirements that the organization must satisfy to be conditionally certified as a conditional PRO or certified as a PRO,

(iii) respecting the issuance, amendment, suspension, reinstatement, cancellation or renewal of a conditional PRO certificate or a PRO certificate, and

(iv) respecting the terms and conditions of a conditional PRO certificate or a PRO certificate;

(a.2) requiring regulated persons to enter into arrangements with a PRO respecting the regulated person's use of a PRO's services to meet specified obligations of a regulated person under Division 2.1 [*Spill Preparedness, Response and Recovery*];

(a.3) respecting geographic response plans, including, without limitation,

(i) respecting the form and content of a geographic response plan,

(ii) respecting the terms of reference the minister must establish or authorize the preparation of under section 91.31 (4) [*geographic response plans*],

(iii) providing for the review, testing, updating and publication of geographic response plans,

(iv) respecting the consultation process referred to in 91.31 (5) (c), and

(v) requiring a regulated person that carries on business or related activities in a geographic response area to ensure

that the geographic response plan addresses a spill of the substance in respect of which the person is a regulated person;

- (a.4) respecting recovery plans, including, without limitation,
- (i) prescribing the matters that must be addressed by a recovery plan, including, without limitation, providing for complete recovery of the spill site or compensation payable in accordance with section 91.21 (2) [*when restoration not reasonably achievable*] by the responsible person for the spill for damage to the environment, human health or infrastructure or loss of public use,
  - (ii) prescribing a process for public review and comment,
  - (iii) prescribing a process for obtaining the director's approval of the recovery plan, and
  - (iv) requiring a plan for long term monitoring of sites affected by a spill;

- (a.5) respecting area response plans, including, without limitation,
- (i) respecting the form, content and publication of an area response plan,
  - (ii) respecting the development, review, updating and testing of an area response plan, including, without limitation, imposing requirements on a conditional PRO or a PRO to

(A) engage in a prescribed process of public consultation, or

(B) establish an advisory committee and reimburse its members for reasonable travelling and out-of-pocket expenses necessarily incurred in carrying out their duties;

- (b) respecting the costs referred to in section 91.4 (3) [*government spill response*];

- (c) respecting the publication required under section 91 [*publication obligations*];

- (d) exempting a person, an organization or a thing or a class of persons, organizations or things from any provisions of Division 2.1 or the regulations under this Division, in circumstances and on conditions that the Lieutenant Governor in Council prescribes.

(2)Section 139 [*regulations — general rules*] applies for the purpose of making regulations under this section.

### **Minister's regulations for purposes of Part 7**

**92.1** (1)Without limiting section 138 (1) [*general authority to make regulations*], the minister may make the following regulations:

- (a)respecting spill response actions, including, without limitation, imposing requirements, procedures and standards on responsible persons respecting
  - (i)implementation of an incident command system, including, without limitation,
    - (A)requiring that an incident command system be established within a specified time after the spill, and
    - (B)establishing requirements and standards in relation to the incident command system,
  - (ii)notification of spills or imminent risks of spills,
  - (iii)sampling, testing, monitoring and assessing,
  - (iv)response times,
  - (v)communications,
  - (vi)equipment and personnel,
  - (vii)education, training and practice,
  - (viii)record keeping, and
  - (ix)reporting and publication requirements;
- (b)respecting spill contingency plans, including, without limitation, respecting
  - (i)the content of spill contingency plans, and
  - (ii)requirements, assessments, procedures and standards for the content, review, evaluation, updating, publication and testing of spill contingency plans;
- (c)establishing the contravention of a regulation under this section as an offence and prescribing a penalty for the offence of a fine not exceeding \$200 000.

(2)Regulations under subsection (1) may require that a spill contingency plan of a regulated person address the worst case scenario of a spill of the substance in respect of which the person is a regulated person.

## **Part 8 — Appeals**

## Division 1 — Environmental Appeal Board

### Environmental Appeal Board

- 93** (1) The Environmental Appeal Board is continued to hear appeals that under the provisions of any enactment are to be heard by the appeal board.
- (2) In relation to an appeal under another enactment, the appeal board has the powers given to it by that other enactment.
- (3) The appeal board consists of the following individuals appointed by the Lieutenant Governor in Council after a merit-based process:
- (a) a member designated as the chair;
  - (b) one or more members designated as vice chairs after consultation with the chair;
  - (c) other members appointed after consultation with the chair.
- (4) [Repealed 2015-10-60.]
- (5) and (6) [Repealed 2003-47-24.]
- (7) to (11) [Repealed 2015-10-60.]

### Application of *Administrative Tribunals Act*

- 93.1** (1) Subject to subsection (2), for the purposes of an appeal, the following provisions of the *Administrative Tribunals Act* apply to the appeal board:
- (a) Part 1 [*Interpretation and Application*];
  - (b) Part 2 [*Appointments*];
  - (c) Part 3 [*Clustering*];
  - (d) Part 4 [*Practice and Procedure*], except the following:
    - (i) section 23 [*notice of appeal (exclusive of prescribed fee)*];
    - (ii) section 24 [*time limit for appeals*];
    - (iii) section 33 [*interveners*];
    - (iv) section 34 (1) and (2) [*party power to compel witnesses and require disclosure*];
  - (e) Part 6 [*Costs and Sanctions*];
  - (f) Part 7 [*Decisions*];
  - (g) Part 8 [*Immunities*];
  - (h) section 57 [*time limit for judicial review*];
  - (i) section 59.1 [*surveys*];
  - (j) section 59.2 [*reporting*];
  - (k) section 60 [*power to make regulations*].
- (2) A reference to an intervener in a provision of the *Administrative Tribunals Act* made applicable to the appeal board under subsection (1) must be read as a reference to a person or body to which both of the following apply:

- (a) the appeal board has given the person or body the right to appear before it;
- (b) the person or body does not have full party status.

#### **Parties and witnesses**

- 94** (1) In an appeal, the appeal board or panel
- (a) may hear the evidence of any person, including a person the appeal board or a panel invites to appear before it, and
  - (b) on request of
    - (i) the person,
    - (ii) a member of the body, or
    - (iii) a representative of the person or body,
- whose decision is the subject of the appeal or review, must give that person or body full party status.
- (2) and (3) [Repealed 2015-10-62.]

#### **Repealed**

- 95** [Repealed 2015-10-62.]

#### **Decision of appeal board**

- 96** If the appeal board or a panel makes an order or decision with respect to an appeal the chair must send a copy of the order or decision to the minister and to the parties.

#### **Varying and rescinding orders of appeal board**

- 97** The Lieutenant Governor in Council may, in the public interest, vary or rescind an order or decision of the appeal board.

#### **Appeal board power to enter property**

- 98** The members of the appeal board have, for the purposes of an appeal, the right to enter any property except a private residence.

### **Division 2 — Appeals from Decisions under this Act**

#### **Definition of "decision"**

- 99** For the purpose of this Division, "**decision**" means
- (a) making an order,
  - (b) imposing a requirement,
  - (c) exercising a power except a power of delegation,

(d)issuing, amending, renewing, suspending, refusing, cancelling or refusing to amend a permit, approval or operational certificate,  
(e)including a requirement or a condition in an order, permit, approval or operational certificate,  
(f)determining to impose an administrative penalty, and  
(g)determining that the terms and conditions of an agreement under section 115 (4) [*administrative penalties*] have not been performed.

### **Appeals to Environmental Appeal Board**

**100** (1)A person aggrieved by a decision of a director or a district director may appeal the decision to the appeal board in accordance with this Division.  
(2)For certainty, a decision under this Act of the Lieutenant Governor in Council or the minister is not appealable to the appeal board.

### **Time limit for commencing appeal**

**101** The time limit for commencing an appeal of a decision is 30 days after notice of the decision is given.

### **Procedure on appeals**

**102** (1)Division 1 [*Environmental Appeal Board*] of this Part applies to an appeal under this Division.  
(2)The appeal board may conduct an appeal under this Division by way of a new hearing.

### **Powers of appeal board in deciding appeal**

**103** On an appeal under this Division, the appeal board may  
(a)send the matter back to the person who made the decision, with directions,  
(b)confirm, reverse or vary the decision being appealed, or  
(c)make any decision that the person whose decision is appealed could have made, and that the appeal board considers appropriate in the circumstances.

### **Repealed**

**104** [Repealed 2015-10-64.]

## **Division 3**

### **Repealed**

## **Part 9 — Conservation Officer Service**

### **Division 1 — Conservation Officer Service**

#### **Conservation Officer Service**

**106** (1) The Conservation Officer Service is continued.

(2) The Conservation Officer Service consists of

- (a) a person employed in the ministry who is appointed by the minister as the chief conservation officer, and
- (b) the persons designated under subsection (3) (b) (i).

(3) Subject to the direction of the minister,

(a) the chief conservation officer has general supervision over the Conservation Officer Service, and

(b) the chief conservation officer, or a member of the Conservation Officer Service designated by the chief conservation officer for the purpose, may do all the following:

- (i) designate persons employed in the ministry, each of whom the chief conservation officer considers suitable, as members of the Conservation Officer Service;
- (ii) designate persons, or a class of persons, employed in the ministry as auxiliary conservation officers;
- (iii) designate persons, or a class of persons, as special conservation officers;
- (iv) impose and confer on an auxiliary or a special conservation officer, or on a class of auxiliary or special conservation officers, any of the duties imposed and powers conferred on a member of the Conservation Officer Service under this Act or another enactment;
- (v) establish standards and procedures, including, but not limited to, establishing training and retraining standards and specifying operational procedures for the efficient discharge of duties and functions by the Conservation Officer Service and its members;
- (vi) specify equipment, including, but not limited to, uniform apparel, vehicles and firearms to be used by members of the Conservation Officer Service;

(vii) establish rules for the prevention of neglect and abuse by members of the Conservation Officer Service.

(4) An auxiliary or a special conservation officer may perform and exercise the duties and powers imposed and conferred on the officer under subsection (3) (b) (iv).

(5) Members of the Conservation Officer Service

(a) may exercise the powers and perform the duties of a conservation officer under this Act or any other enactment,

(b) are peace officers for the purposes of

(i) exercising the powers and performing the duties of a conservation officer under this Act or another enactment,

(ii) exercising the powers and performing the duties of a prescribed official under an enactment prescribed for the purposes of section 107 (1) (a), and

(iii) enforcing an enactment prescribed for the purposes of section 107 (1) (b), and

(c) have the immunities, and are authorized to exercise the powers and perform the duties, of a peace officer exclusively for the purpose of

(i) exercising the powers and performing the duties of a conservation officer under this Act or another enactment,

(ii) exercising the powers and performing the duties of a prescribed official under an enactment prescribed for the purposes of section 107 (1) (a), and

(iii) enforcing an enactment prescribed for the purposes of section 107 (1) (b).

## **Powers and duties of conservation officers**

**107** (1) A member of the Conservation Officer Service may

(a) exercise the powers and perform the duties of

(i) an officer under this Act, and

(ii) a prescribed official under a prescribed enactment, and

(b) enforce the prohibitions or requirements of prescribed enactments.

(2) to (5) [Repealed 2019-19-13.]

(6) and (7) [Repealed 2006-15-6.]

(8) and (9) [Repealed 2019-19-13.]

## **Division 2 — General Enforcement Tools**

## **Definition**

**107.01** In this Division, "**designated enactment**" means an enactment referred to in section 106 (5) (b).

## **Search warrant**

**107.02** (1) On information on oath that there are reasonable grounds to believe that an offence under a designated enactment has occurred or is occurring, a justice, on being satisfied that an entry and a search are likely to provide evidence of such an offence, may issue a warrant authorizing a conservation officer

(a) to enter and search the real or personal property specified in the warrant,

(b) to seize and remove anything that the conservation officer has reasonable grounds for believing is evidence of an offence, and

(c) to take other actions as the justice considers appropriate in the circumstances and authorizes in the warrant.

(2) A conservation officer who enters on property in accordance with a warrant issued under subsection (1) may bring persons and equipment that may be necessary for the purpose of the warrant.

## **Warrantless search in exigent circumstances**

**107.03** (1) This section applies despite section 107.02.

(2) If the conditions necessary for obtaining a warrant under section 107.02 exist but the delay necessary to obtain the warrant would result in a danger to human life or safety, a member of the Conservation Officer Service may, without a warrant,

(a) search real or personal property, including premises or a part of premises occupied solely as a private residence, and

(b) seize and remove anything that the member has reasonable or probable grounds for believing may provide evidence of the commission of an offence under a designated enactment.

(3) If the conditions necessary for obtaining a warrant under section 107.02 exist but the delay necessary to obtain the warrant would result in the loss or destruction of evidence, a member of the Conservation Officer Service may, without a warrant,

(a) search real or personal property, except premises or a part of premises occupied solely as a private residence, and

(b)seize and remove anything that the member has reasonable or probable grounds for believing may provide evidence of the commission of an offence under a designated enactment.

### **Inspection of records and warrant to seize records**

**107.04** (1)A person required by a designated enactment to keep records must submit the records to a conservation officer for inspection on request.

(2)If a person refuses to submit records for inspection as required under this section, a justice, on being satisfied that an inspection of the records is necessary for the administration of the enactment that requires them to be kept, may issue a warrant authorizing a conservation officer to enter property specified in the warrant and to seize the records.

(3)A conservation officer who enters on property in accordance with a warrant issued under subsection (2) may bring persons and equipment that may be necessary for the purpose of the warrant.

### **Application of *Offence Act* in relation to sections 107.02 and 107.03 and to inspections**

**107.1** (1)The forms referred to in section 21 of the *Offence Act*, and sections 22 to 24.2 of that Act, apply to a warrant under section 107.02 of this Act, and to a search and anything seized by a conservation officer under section 107.02 or 107.03 of this Act.

(2)If, under section 24 (2) (a) of the *Offence Act*, a justice orders that something referred to in subsection (1) of this section be detained, despite section 24 (3) of the *Offence Act*, the thing may be detained for up to one year before an order under section 24 (5) of that Act, authorizing its continued detention, is required.

(3)Despite subsections (1) and (2) or anything to the contrary in the enactment authorizing the inspection, if the chief conservation officer, or a member of the Conservation Officer Service designated by the chief conservation officer for the purpose, considers anything seized in a search under section 107.02 or 107.03 or in an inspection under a designated enactment

(a)to be a pollutant or an environmental hazard, it must not be returned and the person claiming it is not entitled to compensation, or

(b)to be contaminated by a pollutant, it must not be returned unless it is decontaminated at the expense of the person entitled to it.

### **Application of *Criminal Code* — demands and orders**

**107.2** (1)Section 487.012 [*preservation demand*] of the *Criminal Code* (Canada) applies for the purposes of the enforcement of a designated enactment and is to be read as authorizing a conservation officer to make a demand.

(2)The following provisions of the *Criminal Code* (Canada) apply for the purposes of the enforcement of a designated enactment and are to be read as authorizing the issuance of an order on application by a conservation officer:

- (a)section 487.013 [*preservation order — computer data*];
- (b)section 487.014 [*general production order*];
- (c)section 487.015 [*production order to trace specified communication*];
- (d)section 487.016 [*production order — transmission data*];
- (e)section 487.017 [*production order — tracking data*];
- (f)section 487.018 [*production order — financial data*].

(3)The following provisions of the *Criminal Code* (Canada) apply, so far as applicable, in relation to a demand under subsection (1):

- (a)section 487.0191 [*order prohibiting disclosure*];
- (b)section 487.0194 [*destruction of preserved computer data and documents*];
- (c)section 487.0195 [*no civil or criminal liability*], except that subsection (2) applies only as it relates to civil liability.

(4)The following provisions of the *Criminal Code* (Canada) apply, so far as applicable, in relation to an order under subsection (2):

- (a)section 487.019 [*conditions in preservation and production orders*], except section 487.019 (2);
- (b)section 487.0191 [*order prohibiting disclosure*];
- (c)section 487.0192 [*particulars — production orders*];
- (d)section 487.0193 [*application for review of production order*];
- (e)section 487.0194 [*destruction of preserved computer data and documents*];
- (f)section 487.0195 [*no civil or criminal liability*], except that subsection (2) applies only as it relates to civil liability;
- (g)section 487.0196 [*self-incrimination*].

(5)Section 487.02 [*assistance order*] of the *Criminal Code* (Canada) applies in relation to a warrant or authorization under section 107.02 (1), 107.04 (2) or 107.3 (1), (3) or (5) of this Act and is to be read as authorizing the issuance of an order on application by a conservation officer.

(6)Section 487.3 [*order denying access to information*] of the [Criminal Code](#) (Canada) applies in relation to a warrant under section 107.02 (1) or 107.3 (1) or (3) of this Act and an order under subsection (2) of this section and is to be read as authorizing the issuance of an order on application by a conservation officer.

#### **Application of *Criminal Code* — warrants and authorizations**

**107.3** (1)Section 487.01 [*general warrant*] of the [Criminal Code](#) (Canada) applies for the purposes of the enforcement of a designated enactment and is to be read

(a)as authorizing the issuance of a warrant conferring authority on a conservation officer, and

(b)as referring in section 487.01 (5) to the following provisions of the [Criminal Code](#) (Canada):

(i)section 183.1 [*consent to interception*];

(ii)section 184.2 [*authorization to intercept communications with consent*];

(iii)section 184.3 [*application by means of telecommunication*];

(iv)section 187 [*manner in which application to be kept secret*];

(v)section 188.2 [*no civil or criminal liability*], as it relates to civil liability;

(vi)section 189 (5) [*notice of intention to produce evidence*];

(vii)section 190 [*further particulars*].

(2)The following provisions of the [Criminal Code](#) (Canada) apply in relation to a warrant under subsection (1):

(a)section 489.1 [*restitution of property or report by peace officer*];

(b)section 490 [*detention of things seized*];

(c)section 490.01 [*perishable things*].

(3)The following provisions of the [Criminal Code](#) (Canada) apply for the purposes of the enforcement of a designated enactment and are to be read as authorizing the issuance of a warrant conferring authority on a conservation officer:

(a)section 487.092 [*impression warrant*];

(b)section 492.1 [*warrant for tracking device*];

(c)section 492.2 [*warrant for transmission data recorder*].

(4)Section 487.11 [*where warrant not necessary*] of the *Criminal Code* (Canada), as it relates to section 492.1, applies for the purposes of the enforcement of a designated enactment and is to be read as referring to a conservation officer.

(5)Section 184.2 [*authorization to intercept communications with consent*] of the *Criminal Code* (Canada) applies for the purposes of the enforcement of a designated enactment and is to be read

(a)as authorizing the issuance of an authorization on application by a conservation officer, and

(b)as referring in section 184.2 (5) to

(i)a warrant under section 107.02 (1) of this Act or subsection (1) or (3) (b) or (c) of this section, and

(ii)an order under section 107.2 (2) (b) to (f) of this Act.

(6)The following provisions of the *Criminal Code* (Canada) apply in relation to an authorization under subsection (5):

(a)section 183.1 [*consent to interception*];

(b)section 184.3 [*application by means of telecommunication*];

(c)section 187 [*manner in which application to be kept secret*];

(d)section 188.2 [*no civil or criminal liability*], as it relates to civil liability;

(e)section 189 [*notice of intention to produce evidence*];

(f)section 190 [*further particulars*].

## **Repealed**

**108** [Repealed 2019-19-18.]

## **Certificate evidence of the chief conservation officer**

**108.1** A certificate purporting to have been signed by the chief conservation officer certifying

(a)the manner and content of an exercise of the chief conservation officer's powers under section 106 (3),

(b)a decision of the chief conservation officer under section 107.1 (3), or

(c)the content of an agreement the chief conservation officer has entered into under section 135 [*interagency agreements*],

is admissible in a proceeding in relation to, or in a prosecution under, an enactment referred to in section 106 (5) (b) without proof of the signature or official character of the person appearing to have signed the certificate and is proof of the certified matters.

## Division 3 — Regulations for Part 9

### Regulations for purposes of Part 9

**108.2** (1) Without limiting section 138 (1) [*general authority to make regulations*], the Lieutenant Governor in Council may make regulations prescribing, with the prior approval of the minister responsible for the administration of the *Police Act*,

- (a) officials and enactments for the purposes of section 107 (1) (a)
- (ii) [*powers and duties of conservation officers*], and
- (b) enactments for the purposes of section 107 (1) (b).

(2) Section 139 [*regulations — general rules*] applies for the purpose of making regulations under this section.

## Part 9.1 — Compliance

### Division 1 — General Powers

#### Inspections

**109** (1) For the purposes of ensuring compliance with this Act and the regulations, an officer may enter land or premises, except premises or a part of premises occupied solely as a private residence, at any reasonable time and inspect any process, works or activity that

- (a) produces or is capable of producing waste,
- (b) causes or is capable of causing pollution, or
- (c) is used for the storage, handling, treatment, destruction or disposal of waste.

(2) An officer may exercise powers under this section in respect of premises or a part of premises occupied solely as a private residence only

- (a) with the consent of the occupant, or
- (b) under the authority of a warrant under subsection (3) or another enactment.

(3) If satisfied by evidence on oath that access to premises or a part of premises occupied solely as a private residence is necessary for the purposes of this Act, a justice may issue a warrant authorizing a person named in the warrant to enter the premises and conduct an inspection.

(4) An officer who enters on land or premises under subsection (1), with consent under subsection (2) or under a warrant under subsection (3), may do any of the following:

- (a) inspect, analyze, measure, sample or test land, and any article, substance or waste located on or in the land, and premises to ascertain
  - (i) whether pollution is present,
  - (ii) the quantity of waste produced, treated, stored, handled, transported or discharged, or
  - (iii) the characteristics of waste produced, treated, stored, handled, transported or discharged;
- (b) take away samples of land, articles, substances or waste;
- (c) examine and take away copies of records relating to
  - (i) the production, treatment, storage, handling, transportation and discharge of waste, and
  - (ii) the characteristics of the waste produced, treated, stored, handled, transported or discharged;
- (d) require that anything related to the production, treatment, storage, handling, transportation or discharge of waste be operated, used or set in motion under conditions specified by the officer;
- (e) use a computer system at the place that is being inspected to examine data, contained in or available to the computer system, related to the production, treatment, storage, handling, transportation or discharge of waste;
- (f) record or copy by any method any information related to the production, treatment, storage, handling, transportation or discharge of waste;
- (g) use any machine, structure, material or equipment in the place that is being inspected as is necessary to carry out the inspection;
- (h) use copying equipment located at the place that is being inspected to make copies to take away;
- (i) take photographs or make audio or video records.

(5) An officer who enters land or premises in accordance with this section

- (a) may take with the officer the persons and equipment that may be necessary for the purposes of the inspection, and
- (b) on request, must provide proof of identity to a person present on the land or premises entered.

(6) A person who is or was a director, receiver, receiver manager, officer, employee, banker, auditor or agent of a person who is the subject of an inspection under this section must, on request of the inspecting officer,

(a) produce, without charge or unreasonable delay, for examination by the inspecting officer

(i) any approval, licence, order, permit or waste management plan related to waste produced, treated, stored, handled, transported or discharged on or from the land or premises, and

(ii) any other record that touches on any matter relating to the production, treatment, storage, handling, transport or discharge of waste on or from the land or premises, and

(b) provide the inspecting officer with information relevant to the purposes of the inspection.

### **Minister may enter on private land**

**110** The minister and other persons the minister designates in writing have for the purposes of this Act the right to enter any property except premises or a part of premises occupied solely as a private residence.

### **Inspection of vehicles**

**111** (1) In this section:

"**officer**" includes a peace officer as defined in the *Motor Vehicle Act*;

"**vehicle**" includes a vehicle as defined in the *Motor Vehicle Act*, an off-road vehicle as defined in the *Off-Road Vehicle Act*, a rail vehicle as defined in the *Transport of Dangerous Goods Act* and a vessel.

(2) For the purposes of ensuring compliance with this Act or the regulations, including with a permit, licence, order, waste management plan or approval, if an officer has reasonable grounds for believing that a vehicle is being used for the transportation or handling of waste, the officer may, at any reasonable time,

(a) require a person operating the vehicle to stop the vehicle and provide identification, and

(b) carry out an inspection in accordance with this section.

(2.1) When requested or signalled to do so by an officer who is readily identifiable as a conservation officer, or as a peace officer as defined in the *Motor Vehicle Act*, the operator of a motor vehicle must immediately

(a) stop the vehicle, and

(b) provide identification and the information that the officer or peace officer considers necessary to determine whether this Act and the regulations are being complied with.

(2.2) For the purposes of carrying out an inspection under this section, an officer may

- (a) require that any compartment of the vehicle or any container in or on the vehicle be opened, and
- (b) exercise any of the powers under section 109 (4) [*inspections*].

(3) If, as a result of an inspection or a test carried out under this section, it appears to the officer that the vehicle is transporting hazardous waste in a manner that creates a risk of harm to the public or the environment, the officer may require the driver to drive the vehicle to a place the officer specifies and the officer may do one or more of the following:

- (a) order one or more of the following persons to deal with the hazardous waste in accordance with the officer's directions:
  - (i) the owner of the hazardous waste;
  - (ii) the person operating the vehicle;
  - (iii) the owner of the vehicle;
- (b) seize and, in accordance with the regulations, dispose of
  - (i) the hazardous waste, and
  - (ii) any package or container holding the hazardous waste;
- (c) detain the vehicle for any period that the officer considers necessary in order to exercise the officer's powers under paragraphs (a) and (b).

(4) The owner of the hazardous waste, package or container and the owner of the vehicle that was transporting the hazardous waste, package or container are jointly and separately liable to the government for the cost of disposing of the hazardous waste, package or container under subsection (3) (b), and that cost is recoverable from them by the government as a simple contract debt.

### **Seizures and prevention orders**

**112** (1) If an officer concludes in the course of an inspection under this Act that the officer has reasonable grounds to believe that a person has contravened or is contravening this Act or the regulations, the officer may

- (a) order a person to do anything the officer considers necessary to stop the contravention or prevent another contravention, and
- (b) seize anything validly inspected by the officer that the officer believes on reasonable grounds
  - (i) was used or is being used in the contravention, or
  - (ii) will afford evidence of the contravention.

(2) Sections 23 (4) and 24 to 24.2 of the *Offence Act* apply in respect of anything seized under subsection (1) of this section and, for the purposes of section 23 (4) of the *Offence Act*, an officer is deemed to be a peace officer.

(3) If, under section 24 (2) (a) of the *Offence Act*, a justice orders that something referred to in subsection (2) of this section be detained, despite section 24 (3) of the *Offence Act*, the thing may be detained for up to one year before an order under section 24 (5) of that Act, authorizing its continued detention, is required.

(4) If a director considers that a thing seized in an inspection or, despite subsections (2) and (3), under subsection (1), is

(a) a pollutant or an environmental hazard, it must not be returned,  
or

(b) contaminated by a pollutant, it must not be returned unless it is decontaminated at the expense of the person entitled to it.

(5) Compensation is not payable by the government in respect of anything lawfully seized, detained or destroyed under this Act.

(6) Sections 23 to 24.2 of the *Offence Act* do not apply in relation to anything taken in the course of an inspection under section 109 or 111 of this Act unless subsection (1) of this section applies.

## **Inquiries**

**113** (1) If the minister considers it necessary, the minister may

- (a) order an inquiry with respect to the environment, and
- (b) appoint a person to conduct the inquiry.

(2) A person appointed under subsection (1) must conduct the inquiry in accordance with terms of reference and any procedural guidelines specified by the minister for the inquiry.

(3) For the purposes of an inquiry under this section, the minister or person appointed under subsection (1) has the powers, privileges and protection of a commission under sections 16, 17, 22 (1), 23 (a), (b) and (d) to (f) and 32 of the *Public Inquiry Act*.

## **Restraining orders**

**114** (1) If a person, by carrying on an activity or operation, contravenes any of the following, the activity or operation may be restrained in a proceeding brought by the minister in the Supreme Court:

- (a) section 6 [*waste disposal*];
- (b) section 9 [*hazardous waste storage and disposal*];
- (c) section 10 [*transportation of hazardous waste*];

- (d)a suspension or cancellation made under section 18 [*suspension or cancellation of permits and approvals*];
- (e)an order made under Part 4 [*Contaminated Site Remediation*];
- (f)section 76.2 [*management of greenhouse gases at waste management facilities*];
- (g)[Not in force.]

(2)The making of an order by the court under subsection (1) in relation to a matter does not interfere with the imposition of a penalty in respect of an offence in relation to the same contravention.

## **Division 2 — Administrative Penalties**

### **Administrative penalties**

**115** (1)Subject to the regulations, if a director is satisfied on a balance of probabilities that a person has

- (a)contravened a prescribed provision of this Act or the regulations,
- (b)failed to comply with an order under this Act,
- (c)failed to comply with a requirement of a permit or approval issued or given under this Act, or
- (d)failed to comply with a term or condition of a conditional PRO certificate, or a PRO certificate, as those terms are defined in section 91.1,

the director may serve the person with a determination requiring the person to pay an administrative penalty in the amount specified in the determination.

(2)A determination under subsection (1) must be in the prescribed form and contain the prescribed information.

(3)A penalty imposed under this section must be paid within the prescribed time.

(4)Before the date an administrative penalty under this section is due, the director may, subject to the regulations, enter into an agreement with the person who is liable for the penalty.

(5)An agreement under subsection (4) may provide, in accordance with the regulations, for the reduction or cancellation of the penalty subject to the terms and conditions the director considers necessary or desirable.

(6)An agreement under subsection (4) must specify the time for performing the terms and conditions and if the person fails to perform those terms and conditions by the date specified, the penalty specified in the notice under subsection (1) is due and payable on that date.

(7) Neither a director's decision whether to enter into an agreement nor the terms and conditions of an agreement under subsection (4) may be appealed under Division 2 [*Appeals from Decisions under this Act*] of Part 8.

(8) If a director issues an administrative penalty notice to a person in respect of a contravention or failure referred to in subsection (1), a prosecution for an offence under this Act in respect of the same contravention or failure may not be brought against the person.

(9) If a corporation contravenes the Act or regulation or fails to comply with an order, permit or approval as described under subsection (1), an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the contravention or failure is also liable under this section even though the corporation is liable for or pays an administrative penalty.

### **Effect of charging an offence**

**116** A person who has been charged with an offence under this Act may not be subject to an administrative penalty in respect of the circumstances that gave rise to the charge.

### **Recovery of administrative penalties**

**117** (1) Subject to a decision of the appeal board cancelling a determination under section 115 (1) [*administrative penalties*], an administrative penalty under this Act may be recovered as a debt due to the government.

(2) If a person fails to pay an administrative penalty as required under section 115 [*administrative penalties*], the officer who made the determination may file a certificate in a court that has jurisdiction and, upon filing, the certificate has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the court with which it is filed.

(3) A certificate under subsection (2) may be in the prescribed form, must be signed by the officer and must contain

- (a) the name of the person who is liable for the penalty,
- (b) the contravention or failure in relation to which the penalty is imposed, and
- (c) the amount of the penalty.

## **Division 3 — Economic Instruments**

### **Environmental certification**

**118** (1) The Lieutenant Governor in Council, by regulation, may limit the circumstances in which prescribed words, names, phrases, symbols, labels,

marks or packaging may be used in relation to products or services to indicate that the product or service

(a) was produced or provided using prescribed environmental practices, or

(b) meets prescribed environmental quality or production standards.

(2) A regulation referred to in subsection (1) may adopt standards developed by a prescribed person for use of the prescribed word, name, phrase, symbol, label, mark or packaging.

## **Division 4 — Regulations for Part 9.1**

### **Regulations for purposes of Part 9.1**

**119** (1) Without limiting section 138 (1) [*general authority to make regulations*], the Lieutenant Governor in Council may make the following regulations:

(a) for the purposes of providing economic incentives to promote environmentally responsible behaviour,

(i) respecting the variation of fees payable by a person under this Act, including without limitation,

(A) authorizing a director to vary fees,

(B) establishing the criteria the person must satisfy to be eligible for or subject to a variation, and

(C) limiting the amount of a variation authorized by the director,

(ii) respecting agreements under which the requirements of this Act or the regulations may be varied, including by adding to, restricting the application of or eliminating requirements, in relation to that person for the term of the agreement, including without limitation

(A) authorizing the minister to enter into agreements,

(B) establishing the criteria the person must satisfy to be eligible for an agreement,

(C) specifying the provisions of the Act or regulations that may be varied under an agreement, and

(D) requiring public notification to persons affected by an agreement, and

(iii) respecting the establishment of a program of discharge monitoring, registration and trading, including offsets or credits;

(b) for the purposes of section 115 [*administrative penalties*],

(i) prescribing procedures for making a determination including, but not limited to,

(A) prescribing the form and content of an administrative penalty notice,

(B) prescribing contraventions in relation to which an administrative penalty notice may be sent and a determination made, and

(C) establishing procedures for providing a person on whom a notice of an administrative penalty has been served with an opportunity to make representations which need not entail an oral hearing,

(ii) prescribing a schedule of monetary penalties that may be imposed and the matters that must be considered by an officer in establishing a penalty in a particular case,

(iii) authorizing administrative penalties to be imposed on a daily basis for continuing contraventions or failures,

(iv) prescribing time limits for paying administrative penalties,

(v) prescribing, in relation to a contravention or failure described in section 115 (1), whether a notice of an administrative penalty must be cancelled if the person on whom it was served demonstrates to the satisfaction of a director that the person exercised due diligence to prevent the specified contravention or failure,

(vi) respecting agreements, including prescribing terms and conditions that must be included, under section 115 (4),

(vii) prescribing a limitation period for imposing an administrative penalty and evidentiary matters in relation to that period,

(viii) prescribing for manners of paying a monetary penalty,

(ix) prescribing the consequences of failing to pay an administrative penalty which may include, but are not limited to, imposing additional penalties,

(x)providing for the publication of an officer's determination to impose an administrative penalty, and  
(xi)prescribing the form of a certificate under section 117 [*recovery of administrative penalties*].

(c)[Repealed 2019-19-25.]

(2)Section 139 [*regulations — general rules*] applies for the purpose of making regulations under this section.

## **Part 10 — General**

### **Division 1 — Offences and Penalties**

#### **Offences and penalties**

**120** (1)A person who contravenes section 12 [*littering*] or 13 [*discharge of waste from recreational vehicles*] commits an offence and is liable on conviction to a fine not exceeding \$2 000 or imprisonment for not more than 6 months, or both.

(2)A person who contravenes any of the following commits an offence and is liable on conviction to a fine not exceeding \$200 000 or imprisonment for not more than 6 months, or both:

(a)section 9 (3) [*hazardous waste storage and disposal*];

(b)section 10 (1) (a), (b) or (c) or (2) [*transportation of hazardous waste*];

(c)section 11 [*packaging, product containers and single-use products*];

(d)section 72 (1) or (2) [*control of air contaminants*];

(e)[Not in force. Repealed 2014-29-57.]

(f)[Repealed 2016-20-8.]

(g)section 131 (1) [*confidentiality*];

(h)a regulation under section 74 (1) (i), (j) or (k) [*motor vehicle and engine emission regulations*];

(i)section 91.2 (1) (a) [*responsible persons — spill response*] by

(i)failing to report the prescribed information,

(ii)failing to report to the prescribed persons, or

(iii)failing to report in the prescribed time or manner;

(j)section 91.2 (1) (c) by

- (i) failing to ensure that the persons, resources and equipment described in that section arrive at the spill site within the prescribed period, or
- (ii) failing to ensure that those persons implement an incident command system in the prescribed time and manner.

(3) A person who contravenes any of the following commits an offence and is liable on conviction to a fine not exceeding \$1 000 000 or imprisonment for not more than 6 months, or both:

- (a) section 6 (2), (3) or (4) [*waste disposal*];
- (b) section 7 (1) or (2) [*hazardous waste — confinement*];
- (c) section 8 [*hazardous waste disposal facility*];
- (d) section 9 (1) or (4) [*hazardous waste storage and disposal*];
- (e) section 76.2 [*management of greenhouse gases at waste management facilities*];
- (f) to (h) [Not in force. Repealed 2014-29-57.]

(4) A person who inserts in a manifest required by section 10 [*transportation of hazardous waste*] information that the person knows to be untrue or misleading commits an offence and is liable on conviction to a fine not exceeding \$200 000 or imprisonment for not more than 6 months, or both.

(5) A person who obstructs or resists an officer who is performing duties under this Act or who fails to comply with a requirement of an officer imposed under this Act commits an offence and is liable on conviction to a fine not exceeding \$200 000 or imprisonment for not more than 6 months, or both.

(6) A person who, holding a permit or approval issued to the person under this Act to introduce waste into the environment, introduces waste into the environment without having complied with the requirements of the permit or approval commits an offence and is liable on conviction to a fine not exceeding \$1 000 000 or imprisonment for not more than 6 months, or both.

(7) A person who, holding a permit or approval issued under this Act to introduce waste into the environment, fails to comply with the requirements of the permit or approval commits an offence and is liable to a penalty not exceeding \$300 000 or imprisonment for not more than 6 months, or both.

(8) A person who contravenes section 10 (3) [*transportation of hazardous waste*] by failing to comply with a requirement of section 10 (3) (a) or (b) commits an offence and is liable on conviction to a fine not exceeding \$200 000 or imprisonment for not more than 6 months, or both.

(9)A person who contravenes section 10 (3) [*transportation of hazardous waste*] by failing to comply with a requirement of section 10 (3) (c) commits an offence and is liable on conviction to a fine not exceeding \$300 000 or imprisonment for not more than 6 months, or both.

(10)A person who contravenes an order or requirement, other than an order under section 9 (3) [*hazardous waste storage and disposal*] or 90.1 (1) [*permits under area based management plan*], that is given, made or imposed under this Act by a sewage control manager, a district director, a director, the minister or the appeal board commits an offence and is liable on conviction to a fine not exceeding \$300 000 or imprisonment for not more than 6 months, or both, but an order or requirement is not contravened unless it

(a)was given in writing, and

(b)specified a reasonable period of time for compliance and that period has expired.

(11)A municipality that

(a)fails to submit to the minister a waste management plan as requested or directed by the minister under section 24 (2) or

(3) [*waste management plans*], or

(b)contravenes a waste management plan that has been approved by the minister

commits an offence and is liable on conviction to a fine not exceeding \$300 000.

(12)A person who contravenes a requirement of the regulations respecting hazardous waste commits an offence and is liable on conviction to a fine not exceeding \$1 000 000 or imprisonment for not more than 6 months, or both.

(13)A person who contravenes a requirement of a regulation that specifies the quantity or characteristics of waste that may be introduced into the environment commits an offence and is liable on conviction to a fine not exceeding \$1 000 000 or imprisonment for not more than 6 months, or both.

(14)A person who contravenes an order under section 127 [*additional sentencing orders*] or 128 [*variation of section 127 orders*] commits an offence and is liable to the penalties provided for the offence in relation to which the order was made.

(15)A person who

(a)neglects or refuses to supply an environmental impact assessment if required to do so under section 78 [*environmental impact assessment*], or

(b)contravenes section 87 (8) [*environmental emergency measures*]

commits an offence and is liable on conviction to a fine of not more than \$10 000.

(16) A person who

- (a) supplies an environmental impact assessment under section 78 [*environmental impact assessment*] that the person knows to be false or misleading, or to contain false or misleading information, or
- (b) contravenes section 85 (8) [*environmental protection orders*]

commits an offence and is liable on conviction to a fine of not more than \$100 000.

(17) A person who

- (a) fails to submit a site disclosure statement as required under section 40 [*site disclosure statements*] or the regulations or supplies a site disclosure statement that the person knows to contain false or misleading information,
- (a.1) contravenes section 40.1 (2),
- (b) fails to undertake a preliminary site investigation or a detailed site investigation and to prepare a report of the investigation as required under section 41 (1) or (3) [*site investigations*],
- (c) fails to comply with a remediation order under section 48 [*remediation orders*],
- (d) contravenes section 48 (8) [*remediation orders*],
- (e) fails to seek an opinion from an allocation panel if required to do so under section 49 (4) [*allocation panel*],
- (f) fails to comply with the requirements of a director in a voluntary remediation agreement under section 51 (1) [*voluntary remediation agreements*],
- (g) fails to notify a director of initiating or completing independent remediation under section 54 (2) [*independent remediation procedures*],
- (h) fails to comply with requirements of a director under section 54 (3) [*independent remediation procedures*] regarding independent remediation,
- (i) contravenes section 55 (1.1) or (1.3) [*removal and deposit of soil*],
- (i.1) contravenes section 55.1 (2) [*high volume soil receiving sites*],
- or
- (j) fails to comply with a provision of the regulations under section 62 [*contaminated site regulations*] or 63 [*minister's regulations — contaminated sites*]

commits an offence and is liable on conviction to a fine not exceeding \$200 000 or imprisonment for not more than 6 months, or both.

(18) A person who contravenes a requirement that has been substituted by a director or the minister for a requirement under the regulations, including a code of practice, commits an offence and is liable on conviction to a fine not exceeding \$1 000 000 or imprisonment for not more than 6 months, or both.

(19) A person who contravenes a requirement of a protocol under section 64 [*director's protocols*] commits an offence and is liable on conviction to a fine not exceeding \$200 000 or imprisonment for not more than 6 months, or both.

(20) A proceeding, conviction or penalty for an offence under this Act does not relieve a person from any other liability.

(21) A person who does any of the following commits an offence and is liable on conviction to a fine not exceeding \$300 000 or imprisonment for not more than 6 months, or both:

(a) contravenes section 91.2 (2) [*responsible persons — spill response*] by failing to ensure that the actions necessary to address the threat or hazard created by the spill are taken;

(b) fails to comply with an order under section 91.2 (4) by

- (i) failing to prepare or amend a recovery plan, or
- (ii) failing to submit a recovery plan in the time and manner specified by the director;

(c) contravenes section 91.2 (6) by

- (i) failing to have an approved recovery plan carried out,
- (ii) failing to have a person described in section 91.2 (6) (a) carry out an approved recovery plan,
- (iii) failing to have an approved recovery plan carried out by the date specified by the director under section 91.2 (6) (b),
- (iv) failing to have a report prepared and submitted to the director, or
- (v) submitting a report that does not comply with the regulations.

(22) A regulated person who does any of the following commits an offence and is liable on conviction to a fine not exceeding \$400 000 or imprisonment for not more than 6 months, or both:

(a) fails to have a spill contingency plan on or before the prescribed date;

(b) prepares a spill contingency plan that does not comply with this Act or the regulations;

- (c) fails to comply with section 91.11 (2) [*regulated persons — spill contingency planning*];
- (d) contravenes section 91.11 (3) (a), (b), (c) or (d);
- (e) contravenes section 91.11 (4) by failing to implement an applicable spill contingency plan;
- (f) fails to comply with an order of a director under section 91.11 (5) (a), (b) (i) or (ii), (c) or (d), (6) or (7).

### **Offence by a corporation**

**121** (1) If a corporation commits an offence under this Act, an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the offence commits the offence whether or not the corporation is convicted.

(2) In a prosecution for an offence under or arising out of a contravention of section 9 (1) [*hazardous waste storage and disposal*] or 10 (1) or

(3) [*transportation of hazardous waste*], or of a regulation made with respect to hazardous waste, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the accused's knowledge or consent or that the accused exercised all due diligence to prevent its commission.

### **Continuing offences**

**122** (1) If an offence under section 120 [*offences and penalties*] or an offence, established by a regulation, that is prescribed for the purposes of this section continues for more than one day, separate fines, each not exceeding the maximum fine for that offence, may be imposed for each day the offence continues.

(2) Subsection (1) does not apply in respect of a continuing offence under section 120 (15) or (16) (a) [*offences and penalties*].

### **Offence Act application**

**123** Sections 4 and 5 of the *Offence Act* do not apply in respect of this Act or the regulations.

### **Time limit for prosecuting offence**

**124** (1) The time limit for laying an information for an offence under this Act is

(a) 5 years after the date that the facts on which the information is based arose, or

(b) if the minister completes a certificate described in subsection (2), 18 months after the date that the facts on which the information is based first came to the knowledge of the minister.

(2) A certificate purporting to have been issued by the minister, certifying the date that the facts on which the information is based first came to the knowledge of the minister,

(a) is admissible without proof of the signature or official character of the person appearing to have signed the certificate, and

(b) is proof of the certified matters.

### **Additional fine**

**125** (1) If a person is convicted of an offence under this Act and the court is satisfied that, as a result of the commission of the offence, the person acquired any monetary benefits or that monetary benefits accrued to the person, the court may order the person to pay a fine equal to the court's estimation of the amount of those monetary benefits.

(2) A fine under subsection (1) is in addition to and not in place of a fine under section 120 [*offences and penalties*] or 126 [*intentional damage*].

### **Intentional damage**

**126** A person who, in contravention of this Act,

(a) intentionally causes damage to or loss of the use of the environment, or

(b) shows wanton or reckless disregard for the lives or safety of other persons by causing a risk of death or harm to other persons

commits an offence and is liable on conviction to a fine of not more than \$3 000 000 or imprisonment for not more than 3 years, or both.

### **Additional sentencing orders**

**127** (1) If a person is convicted of an offence under this Act, in addition to any punishment imposed, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing one or more of the following prohibitions, directions or requirements:

(a) prohibiting the person from doing any act or engaging in any activity that may, in the opinion of the court, result in the continuation or repetition of the offence;

- (b) directing the person to take any action the court considers appropriate to remedy or avoid any harm to the environment that resulted or may result from the commission of the offence;
- (c) directing the person to pay the government an amount of money as compensation, in whole or in part, for the cost of any remedial or preventive action taken by or caused to be taken on behalf of the government as a result of the commission of the offence;
- (d) directing the person to perform community service;
- (e) directing the person to pay an amount of money the court considers appropriate to the trustee under Part 3 of the [Wildlife Act](#) for inclusion in the trust property, as that term is defined in section 118 of that Act;
- (f) directing the person to post a bond or pay into court an amount of money the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement under this section;
- (g) directing the person to submit to the minister, on application by the minister within 3 years after the date of the conviction, any information respecting the activities of the person that the court considers appropriate in the circumstances;
- (h) directing the person to publish, in any manner the court considers appropriate, the facts relating to the commission of the offence;
- (i) requiring the person to comply with any other conditions that the court considers appropriate for securing the person's good conduct and for preventing the person from repeating the offence or committing other offences under this Act.

(2) If a person fails to comply with an order referred to in subsection (1) (h) directing the person to publish the facts relating to the commission of an offence, the minister may publish those facts and recover the costs of publication from the person.

(3) If

- (a) an order under this section or section 128 *[variation of section 127 orders]* directs a person to pay an amount of money as compensation or for any other purpose, or
- (b) the minister incurs publication costs under subsection (2) of this section,

the amount and any interest payable on that amount constitute a debt due to the government and may be recovered as such in any court of competent jurisdiction.

#### **Variation of section 127 orders**

**128** (1)An application for variation of an order under section 127 [*additional sentencing orders*] may be made to the court that made the order by

- (a)the Attorney General, or
- (b)the person against whom the order under section 127 [*additional sentencing orders*] was made.

(2)Before hearing an application under subsection (1), the court may order the applicant to give notice of the application in accordance with the directions of the court.

(3)On an application under subsection (1), if the court considers variation appropriate because of a change in circumstances, the court may make an order doing one or more of the following:

- (a)changing the original order or any conditions specified in it;
- (b)relieving the person referred to in subsection (1) (b) absolutely or partially from compliance with all or part of the original order;
- (c)reducing the period for which the original order is to remain in effect;
- (d)extending the period for which the original order is to remain in effect, subject to the limit that this extension must not be longer than one year.

(4)If an application under subsection (1) has been heard by a court, no other application may be made in respect of the order under section 127 [*additional sentencing orders*] except with leave of the court.

### **Division 2 — Immunity**

#### **Conservation officers exempt**

**129** The offence provisions of an enactment do not apply to a conservation officer engaged in the performance of the conservation officer's duties under that enactment.

### **Division 3 — Miscellaneous**

#### **Evidence**

**130** (1)An order, permit, licence, approval or certificate that is issued under this Act or any other enactment administered by the minister and that purports

to be signed by, or a copy that purports to be certified as a true copy and to be signed by,

- (a) the minister, the chief conservation officer, a director or a manager,
- (b) a public officer designated by the minister, or
- (c) an analyst designated by the minister under subsection (2),

is admissible in a proceeding without proof of office or signature of the person signing, and, in the absence of evidence to the contrary, is evidence of the order, permit, licence, approval or certificate and of the matters set out in it.

(2) For purposes of this or any other enactment administered by the minister, the minister may designate as an analyst a person the minister considers qualified.

(3) A person designated as an analyst under subsection (2) may issue a certificate of analysis with respect to a sample held in the person's custody and analyzed by the person.

### **Confidentiality**

**131** (1) If, under this Act, information relating to any trade secret or any proprietary right in a process or technique that the user keeps confidential is disclosed to or obtained by any person engaged in the administration of this Act, a person who has access to the information so disclosed or obtained must not disclose the information except

- (a) as may be required in connection with the administration of this Act or any proceeding under this Act,
- (b) to the person's counsel, or
- (c) with the consent of the person rightfully possessing or using the trade secret, process or technique to which the information relates.

(2) Except in a proceeding under this Act, a person is not required to give testimony, other than testimony in respect of the deposit, addition, emission or discharge of a contaminant into the natural environment, in any civil suit or proceeding with regard to information obtained by or in the course of any investigation, survey, examination, test or inquiry under this Act.

### **Ownership of waste**

**132** (1) The ownership of waste that is accepted at a waste management facility by the owner of the facility is transferred to the owner of the facility on acceptance.

(2) If, at a waste management facility, waste is stored or introduced into the environment without having been accepted by the owner of the facility, the ownership of the waste is deemed to have been transferred to the owner of the facility immediately before the waste was stored or introduced into the environment.

(3) Subsections (1) and (2) apply only in respect of a waste management facility that is authorized in accordance with this Act and the regulations.

(4) Subsection (1) applies only in the absence of a contract to the contrary.

(5) Subsections (1) to (4) do not relieve any person from liability except liability as owner of waste that is delivered to and accepted by the owner of a waste management facility in accordance with this section.

(6) If the owner of a waste management facility is not the owner of the land on which the facility is located, subsections (1) and (2) do not prevent the ownership of waste that is accepted or deposited at the site from being transferred to the owner of the land.

## Service

**133** (1) Anything that under this Act must be given to or served on an individual may be given or served

(a) by leaving it with the individual,

(b) by sending it by registered mail to the last known address of the individual, or

(c) by sending it by electronic mail to the last known electronic mail address of the individual used in relation to a registration, permit, approval, order, waste management plan, inspection or investigation under this Act.

(2) Anything that under this Act must be given or served on a corporation may be given or served

(a) by leaving it with any director, senior officer, liquidator or receiver manager of the corporation,

(b) by sending it by registered mail as follows:

(i) if the corporation is a company within the meaning of the *Business Corporations Act*, to the mailing address shown for the registered office of the corporation in the corporate register;

(ii) if the corporation is an extraprovincial company within the meaning of the *Business Corporations Act*,

- (A) to the mailing address shown in the corporate register for the head office of the corporation if the head office is in British Columbia, or
- (B) to the mailing address shown in the corporate register for any attorney of the corporation;
- (iii) in all other cases, to the head office of the corporation, or
- (c) by sending it by electronic mail to the last known electronic mail address
  - (i) of the corporation or of a director, officer or employee of the corporation, and
  - (ii) used in relation to a registration, permit, approval, order, waste management plan inspection or investigation under this Act.

(3) Anything sent by registered mail for the purposes of this Act is deemed to be received by the person to whom it is addressed on the 14th day after deposit with Canada Post, unless the person received actual service before that day.

(4) Anything sent by electronic mail for the purposes of this Act is deemed to be received by the person to whom it is addressed on the third day after it is sent.

(5) This section does not apply to notices or documents of the appeal board.

### **Charges, fees and costs to be paid to the government**

**134** Each of the following must pay to the government, in the time and manner prescribed in the regulations, the fees and charges established by the regulations:

- (a) a holder of a permit or approval;
- (b) the holder of a licence for the transportation of hazardous wastes;
- (c) the subject of an order under this Act;
- (d) a municipality in respect of which a waste management plan has been approved under Part 3 [*Municipal Waste Management*].

### **Interagency agreements**

**135** (1) Subject to the direction of the minister, the chief conservation officer or any other person designated by the minister may enter into agreements with other agencies of government, including those of the federal government and of provincial, municipal and first nations governments, respecting

- (a) law enforcement delivery related to environmental protection or natural resource use,

(b)activities that may be carried out by an officer, as defined in the *Wildlife Act*, related to wildlife-human conflict response and management, and

(c)cooperative working agreements between the Conservation Officer Service and another enforcement agency that are within the mandate of either agency.

(2)Agreements entered into under subsection (1) may contain provisions setting out requirements for compensation or other legal recourse in the event that the agreement is breached by one or more of the parties to the agreement.

### **Waste Management Trust Fund**

**136** (1)The minister may establish a fund to be known as the Waste Management Trust Fund.

(2)The money in the Waste Management Trust Fund must be held in trust by the government for the purposes specified in this section.

(3)The object of the Waste Management Trust Fund is to provide money for the purposes of

(a)environmental clean up necessitated by inadequate closure of waste management facilities, and

(b)long term care and maintenance of waste management facilities.

(4)Money collected or received under the regulations for the purposes of the Waste Management Trust Fund must be paid into the Waste Management Trust Fund.

(5)Money may be paid out of the Waste Management Trust Fund in a manner the minister considers appropriate on the requisition of the minister for the purposes of the fund.

(6)If money of the Waste Management Trust Fund is spent for the purpose referred to in subsection (3) (a), a certificate signed by the minister and showing the amount spent is conclusive proof as to the amount spent.

(7)An amount shown by a certificate referred to in subsection (6) is a debt due to the government recoverable, subject to subsection (8), by action in the Supreme Court from the person who was the owner of the waste management facility immediately before its closure.

(8)If the Supreme Court is satisfied that the expenditure incurred by the government under this section was either

(a)excessive, taking into consideration the reasons for the clean up and the results achieved by the expenditure, or

(b)unnecessary, taking into consideration the unlikelihood of significant material damage to any person had the government not acted under this section,

the court may reduce or extinguish the amount of the judgment that it would otherwise have ordered be entered against the person against whom the action has been brought.

(9)Money recovered under subsection (7) must be paid into the Waste Management Trust Fund and may be spent for the purposes of that fund.

### **Powers that Lieutenant Governor in Council may exercise**

**137** (1)If the Lieutenant Governor in Council considers it to be necessary in the public interest, the Lieutenant Governor in Council has and may exercise, in respect of wastes, all the powers that a director may exercise under this Act in respect of wastes.

(2)Without limiting subsection (1), the Lieutenant Governor in Council, after any consultations the Lieutenant Governor in Council considers desirable, may issue permits for the construction and operation of facilities for the management, treatment, disposal, recycling, storage and destruction of wastes or for the introduction of wastes into the environment.

(3)In acting under this section, the Lieutenant Governor in Council may act in a manner the Lieutenant Governor in Council considers to be in the public interest and is not limited to the considerations that would be taken into account by a director, district director or officer.

## **Division 4 — Regulation Making Authorities**

### **General authority to make regulations**

**138** (1)The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2)Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

- (a)establishing an area of British Columbia as a waste management region, abolishing and varying boundaries and names of waste management regions and consolidating waste management regions;
- (b)prescribing the form and content of any notice;
- (c)requiring applicants to pay fees for making applications under this Act, and prescribing the amount of those fees;
- (d)requiring persons to whom a permit, approval, operational certificate, exemption or other licence or privilege is issued under

this Act to pay to the government charges in respect of the permit, approval, operational certificate, exemption, licence or privilege, establishing the amount of those charges or the method of their determination and requiring that they be paid yearly or otherwise;

(e) establishing procedures for making applications under this Act, and establishing the information that must be submitted in those applications;

(f) requiring consultations among ministries before an application under this Act is disposed of, setting time limits for those consultations and authorizing a director to extend those time limits;

(g) requiring that any person who is authorized to make a decision or a determination under this Act give notice in writing and publish the decision or determination;

(h) authorizing and establishing amounts for the rebate of fees or charges under this Act to foster expenditures in or contributions towards projects or purposes that the Lieutenant Governor in Council considers to be in the interest of the environment including authorizing the minister to pay money out of the Sustainable Environment Fund continued under the *Sustainable Environment Fund Act* for the issuance of any rebate authorized under the regulations;

(i) prescribing a material as a recyclable material and for this purpose may establish conditions and circumstances when a prescribed material is a recyclable material;

(j) regulating and imposing requirements and prohibitions respecting

- (i) the transportation, labelling, handling, treatment, recycling, recovery, storage, disposal and destruction, and
- (ii) the selling, giving or otherwise transferring of the ownership or possession,

of recyclable materials or wastes or classes of wastes or reusable resources, including energy potential recovered from wastes;

(k) regulating and imposing requirements and prohibitions respecting the siting, planning, construction and operation of facilities for the treatment, recycling, storage, disposal and destruction of recyclable materials or wastes;

(l) authorizing the minister or a director, on receipt of an application or on the minister's or director's own initiative, to substitute a

different requirement for a requirement contained in the regulations, including a code of practice prescribed under section 22 [*minister's regulations — codes of practice*], if the minister or director considers that, in the individual case,

(i) the substitution is necessary to protect the public or the environment, or

(ii) the intent of the regulations will be met by the substitution;

(m) requiring the director to give or require notification to the public of an application or a decision to substitute a different requirement for a requirement in a regulation, including a code of practice;

(n) requiring that the owner or operator of the waste management facility make adequate arrangements to maintain the facility after it has been closed and, if required by the government, to transfer to the government ownership of the facility after its closure;

(o) requiring that the owner or operator of the waste management facility make contributions to the Waste Management Trust Fund, the amount of the contributions to be prescribed or established by agreement or both;

(o.1) requiring the owner or operator of a waste management facility to give security to the minister in the amount and form and subject to the conditions specified, or authorizing a director to require the owner or operator of a waste management facility to give security in the amount and form and subject to the conditions the director may specify;

(o.2) requiring the owner or operator of a waste management facility to provide evidence that a covenant under section 219 of the *Land Title Act* has been entered into in favour of the Crown, and respecting the provisions that are to be included in the covenant, or authorizing a director to require evidence of such a covenant and specify the provisions that are to be included in the covenant;

(p) prescribing a substance as a waste and prescribing circumstances in which a substance is a waste;

(q) regulating and imposing requirements and prohibitions respecting the quantity of wastes and the characteristics and components of wastes that may be discharged into sewage facilities owned by a municipality;

(r)prohibiting, regulating or restricting the use, supply, storage, transportation, handling, treatment or disposal of any substance specified in the regulations, whether natural or artificial and whether in a solid or liquid or other form, if the Lieutenant Governor in Council considers it appropriate to do so for the purpose of preventing the substance from causing damage to persons, animals or plants or polluting air, water or land;

(s)exempting any operation, activity, industry, waste or works or any class of persons, operations, activities, industries, wastes or works from any or all of the provisions of this Act or the regulations in circumstances and on conditions that the Lieutenant Governor in Council prescribes;

(t)requiring the keeping of and allowing the inspection of records;

(u)requiring, on request of the minister, that a person or a class of persons involved in the manufacture, distribution, sale, transportation or importation of empty or filled beverage containers of a prescribed type, or a person or association on behalf of that class of persons, supply information respecting the use, reuse and wastage of a prescribed type of beverage container;

(v)regulating and imposing requirements and prohibitions for the design, siting and operation of any works, activities or operations that produce waste;

(w)regulating and imposing requirements and prohibitions for the installation of septic tanks, the siting and performance standards to be met if sewage disposal systems using septic tanks are installed, and respecting the use and operation of systems using septic tanks;

(x)requiring a municipality designated by the minister to administer regulations under this section relating to hazardous wastes as they apply to effluent discharged by an industry connected to the municipal sewer system;

(y)authorizing a municipality designated under paragraph (x) to collect fees from industries for the purpose of administering the regulations relating to hazardous wastes and respecting the amount of those fees;

(z)regulating and imposing requirements and prohibitions for the registration, siting, installation, testing, use and removal of tanks used to store petroleum products, or used to store any other

prescribed substance, and prescribing performance and operating standards for those tanks.

(3) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

(a) requiring and establishing requirements for the certification or licensing of persons who install the tanks described under subsection (2) (z);

(b) requiring persons to pay fees with respect to services provided by the government or a municipality with respect to the tanks described under subsection (2) (z), and prescribing the amount of those fees;

(c) authorizing a municipality to collect and retain the fees prescribed under paragraph (b);

(d) prescribing for a contravention of a regulation a penalty not exceeding \$200 000;

(e) regulating and imposing requirements and prohibitions respecting flood hazard management, including without limitation, requiring a diking authority as defined in the *Dike Maintenance Act*, or a local authority as defined in the *Community Charter* to develop plans or programs in accordance with those regulations or requirements for the purposes of

(i) preventing, mitigating or reducing potential flood hazards,

(ii) protecting the environment and the public from damage caused by flood waters or potential flooding, and

(iii) restoring or enhancing the environment or public safety after a flood or a series of floods;

(f) imposing monitoring and reporting requirements, including requirements for the publication of information, in relation to

(i) waste,

(ii) handling, treating, transporting, discharging or storing waste or recyclable material and reusable resources, including energy potential from waste, and

(iii) places and things that the minister considers may be affected by the handling, treatment, transportation, discharge or storage of waste or recyclable material and reusable resources, including energy potential from waste;

(g)prescribing sampling, analytical, quality control and reporting procedures that must be followed by a person required to monitor or report under a regulation;

(h)authorizing the minister to amend, by setting out opposite a prescribed industry, trade, business, activity or operation the title of a code of practice prescribed by the minister under section 22 [*minister's regulations — codes of practice*], a schedule to a regulation of the Lieutenant Governor in Council that prescribes industries, trades, businesses, activities or operations for the purposes of section 6 (2) or (3) [*waste disposal*];

(i)respecting any matter for which regulations are contemplated by this Act.

(4)The minister may make regulations as follows:

(a)respecting the sampling, analytical, quality control and reporting procedures that must be followed by a person required to submit environmental monitoring data as a requirement of an order, permit, licence, approval or certificate issued under this or any other enactment administered by the minister including imposing restrictions in relation to the facilities that may perform the procedures and prescribing and requiring the payment of fees to defray the costs to the ministry of auditing samples, analytical results, data and reports;

(b)if land is or would likely be subject to flooding, requiring

(i)a person having an interest in the land or improvements on the land, or

(ii)a person responsible for the development, sale, or other disposition of the land or improvements on the land

to disclose the information prescribed by the minister to potential transferees of the land or an interest in the land or the improvements in respect of

(iii)whether the land, any part of the land or any improvements on the land are or may be susceptible to damage by flood waters, and

(iv)steps that have been taken to mitigate that susceptibility;

(c)prescribing the form and content of a disclosure required by a regulation under paragraph (b).

(5)Section 139 [*regulations — general rules*] applies for the purpose of making regulations under this section.

### **Regulations — general rules**

**139** (1)A regulation under this Act may delegate to the minister or a director those powers and functions that the Lieutenant Governor in Council or the minister, as applicable, considers desirable.

(2)A power to make regulations under this Act in relation to a person, thing, matter or substance, may be exercised to make regulations that are different for different classes of persons, things, matters or substances.

(3)A regulation under this Act may establish classes for the purposes of subsection (2).

(4)A regulation under this Act may be made applicable generally or in respect of a specified area of the Province.

(5)A regulation under this Act may adopt by reference, in whole or in part and with any changes considered appropriate by the Lieutenant Governor in Council or the minister, as applicable, a code, standard or rule

(a)set by a provincial, national, international or any other code or standard making body, or

(b)enacted as or under a law of another jurisdiction, including a foreign jurisdiction.

(6)A code, standard or rule referred to in subsection (5) may be adopted as amended from time to time.

(7)The regulations may establish different charges, different bases for rebate, and different administrative costs for different persons, permits, approvals or orders or different classes of persons, permits, approvals or orders.

## **Part 11 — Transitional Provisions and Consequential Amendments**

### **Transitional**

**140** (1)If under this Act a regulation making authority that under the *Waste Management Act* was provided to the Lieutenant Governor in Council has been provided exclusively to the minister, regulations made by the Lieutenant Governor in Council made under that previous authority that are in force on the date this Act comes into force are deemed to have been made by the minister.

(2)A decision of a manager under the *Waste Management Act* is deemed to be a decision of a director under this Act.

- (3)A decision of the Environmental Appeal Board in relation to an appeal under the *Waste Management Act* is deemed to have been made under Division 2 [Appeals from Decisions under this Act] of Part 8 of this Act.
- (4)A protocol approved or adopted by a director under the regulations to the *Waste Management Act* is deemed to be a protocol established under section 64 of this Act.
- (5)A conditional certificate of compliance issued under the *Waste Management Act* that is valid and subsisting on the date this Act comes into force is deemed to be a certificate of compliance that is
- (a)subject to the conditions in the conditional certificate, and
  - (b)issued under and in accordance with this Act.

### Transitional regulations

- 141** (1)The Lieutenant Governor in Council may make regulations the Lieutenant Governor in Council considers necessary or advisable for the orderly transition from the application of the *Environment Management Act* and the *Waste Management Act* to their replacement by this Act.
- (2)Without limiting subsection (1), the Lieutenant Governor in Council, by regulation, may waive or reduce any fee under this Act.
- (3)Unless earlier repealed, a regulation under this section is repealed 2 years after it is enacted.

### Consequential Amendments and Repeals

#### Editorial Note

| Section(s) | Affected Act                                         |
|------------|------------------------------------------------------|
| 142        | <i>Agricultural Land Commission Act</i>              |
| 143        | <i>Commercial River Rafting Safety Act</i>           |
| 144        | <i>Energy and Mines Statutes Amendment Act, 2002</i> |
| 145        | <i>Energy and Mines Statutes Amendment Act, 2003</i> |
| 146        | <i>Environment Management Act</i>                    |
| 147        | <i>Environment Management Act — Supplement</i>       |
| 148        | <i>Farm Practices Protection (Right to Farm) Act</i> |
| 149        | <i>Firearm Act</i>                                   |

|         |                                                             |
|---------|-------------------------------------------------------------|
| 150     | <i>Fisheries Act</i>                                        |
| 151     | <i>Greater Vancouver Sewerage and Drainage District Act</i> |
| 152     | <i>Greenbelt Act</i>                                        |
| 153     | <i>Health Act</i>                                           |
| 154     | <i>Hydro and Power Authority Act</i>                        |
| 155     | <i>Islands Trust Act</i>                                    |
| 156-157 | <i>Land Title Act</i>                                       |
| 158-162 | <i>Local Government Act</i>                                 |
| 163     | <i>Miscellaneous Statutes Amendment Act (No. 2), 2002</i>   |
| 164     | <i>Motor Vehicle Act</i>                                    |
| 165     | <i>Motor Vehicle (All Terrain) Act</i>                      |
| 166     | <i>Oil and Gas Commission Act</i>                           |
| 167     | <i>Park Act</i>                                             |
| 168     | <i>Petroleum and Natural Gas Act</i>                        |
| 169     | <i>Property Law Act</i>                                     |
| 170     | <i>Sustainable Environment Fund Act</i>                     |
| 171     | <i>Transport of Dangerous Goods Act</i>                     |
| 172     | <i>Trespass Act</i>                                         |
| 173     | <i>Vancouver Charter</i>                                    |
| 174     | <i>Waste Management Act</i>                                 |
| 175-176 | <i>Water Act</i>                                            |
| 177     | <i>Wildlife Act</i>                                         |

#### **Amendments to this Act**

|     |                                     |
|-----|-------------------------------------|
| 178 | <i>Environmental Management Act</i> |
|-----|-------------------------------------|

#### **Commencement**

**179** This Act comes into force by regulation of the Lieutenant Governor in Council.