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SNL2002 CHAPTER W-4.01

WATER RESOURCES ACT

Amended:

2004 cL-3.1 s66; 2008 c47 s20; 2008 cE-9.1 s28; 2013 c16 s25;
2016 c45 s15

CHAPTER W-4.01

**AN ACT RESPECTING THE CONTROL AND MANAGEMENT OF
WATER RESOURCES IN THE PROVINCE**

(Assented to May 22, 2002)

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Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short title

1. This Act may be cited as the *Water Resources Act* .

[2002 cW-4.01 s1](#)

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Interpretation

2. (1) In this Act

- (a) "activity" means an activity or part of an activity as defined or prescribed by regulation;
- (b) "adverse effect" means an effect that impairs or damages water, a body of water, wetlands or other water resources, or that may cause injury to an animal, plant or human that consumes, lives in or adjacent to that water, body of water, wetland or other water resource;
- (c) "alteration" means, with respect to a body of water, a change in the direction, quantity or quality of the water flow, and includes the addition to, augmentation, blasting, carriage, collection, constriction, discharge, displacement, ditching, diversion, draining, dyking, extraction, infilling, pollution, pondage, penning back, regulation and storage of, entry into or onto and other uses of, water or water flow;
- (d) "body of water" means a surface or subterranean source of fresh or salt water within the jurisdiction of the province, whether that source usually contains liquid or frozen water or not, and includes water above the bed of the sea that is within the jurisdiction of the province, a river, stream, brook, creek, watercourse, lake, pond, spring, lagoon, ravine, gully, canal, wetland and other flowing or standing water and the land occupied by that body of water;
- (e) "department", unless the context indicates otherwise, means the department presided over by the minister;
- (f) "divert" and "diversion" means
 - (i) to impound, store, take or remove water for any purpose, or
 - (ii) to do an act that has the effect of altering the flow of water or changing the location of water or the course of flow of water;
- (g) "domestic purposes" means the use of water for a household, for sanitation and fire protection, the watering of domestic animals and poultry and the irrigation of a garden that adjoins a dwelling house on the land of a riparian owner that does not exceed an area that the minister may designate;
- (h) "environment" includes
 - (i) air, land and water,
 - (ii) plant and animal life, including human life,
 - (iii) the social, economic, recreational, cultural and aesthetic conditions and factors that influence the life of humans or a community,
 - (iv) a building, structure, machine or other device or thing made by humans, or
 - (v) a part or a combination of those things referred to in subparagraphs (i) to (iv), and the interrelationships between 2 or more of them;
- (i) "groundwater" means all water that exists beneath the land surface in the zone of saturation and includes springs;
- (j) "industrial purposes" means the operation of factories, stores, railways, warehouses and pulp and paper, mining, fishing and other manufacturing operations, but does not include the sale or barter of water for those purposes;

- (k) "inspector" means a person designated as an inspector under section 66;
- (l) "licence", unless the context indicates otherwise, means a licence granted under section 14;
- (m) "licensee", includes a person who holds a valid licence and a person who holds a water right under a statute or by virtue of a grant, lease, licence or other instrument given or granted before the coming into force of this Act;
- (n) "minister" means the minister appointed under the *Executive Council Act* to administer this Act;
- (o) "municipal authority" means
 - (i) the City of Corner Brook ,
 - (ii) the City of St. Johns ,
 - (iii) the City of Mount Pearl , and
 - (iv) a local service district committee, or a council of a community, town or region constituted or continued under the *Municipalities Act, 1999* ;
- (p) "municipal purposes" means
 - (i) household and sanitary purposes,
 - (ii) the watering of animals,
 - (iii) the watering of streets, walks, paths, boulevards and gardens,
 - (iv) fire protection,
 - (v) the flushing of sewers,
 - (vi) the servicing of an industry by a municipality,
 - (vii) the use of water for the construction of buildings and of civic works, and
 - (viii) other purposes usually served by water within a municipal authority;
- (q) "permit" means a permit issued under section 48 as required under this Act and the regulations;
- (r) "person" includes a municipal authority;
- (s) "person responsible" means, with respect to a substance, thing or activity that causes or may cause an adverse effect,
 - (i) the owner of the substance or thing,
 - (ii) the holder of a right, licence or permit under this or another Act that relates to water to which an adverse effect has occurred or may occur,
 - (iii) the owner or operator of a sewage works, waterworks, undertaking or other work,
 - (iv) a previous owner of the substance or thing,

- (v) a person who handles or has or had care, management or control, including care, management or control during the generation, manufacture, treatment, sale, handling, distribution, use, storage, disposal, transportation, display or method of application of a substance or thing,
- (vi) a successor, assignee, executor, administrator, receiver, receiver-manager or trustee of a person referred to in subparagraphs (i) to (v), or
- (vii) a person who acts as the principal or agent of a person referred to in subparagraphs (i) to (vi);
- (t) "sewage" means residential, municipal, commercial or industrial waterborne and solid wastes which would, if left untreated, cause an adverse effect, and drainage and storm water collected from natural runoff;
- (u) "sewage works" means works for or incidental to the collection, transmission, treatment and disposal of sewage or a part of those sewage works;
- (v) "storm water" is water that flows across open ground or paved areas as a result of rainfall or snow or ice melting;
- (w) "treatment" means the deliberate alteration of the chemical or physical properties of water in order to improve its quality;
- (x) "undertaking" includes
 - (i) an activity or work required or proposed to develop, transport, transmit, distribute or utilize water or water power in accordance with this Act,
 - (ii) the storage, pondage, penning back, regulation, augmentation, carriage, diversion and use of water or the flow of water,
 - (iii) the constructing, maintaining and operating of works,
 - (iv) the carrying on of investigations and collecting of data with respect to activities and works,
 - (v) the use of land and works or an interest in the land and works,
 - (vi) the management of land and works,
 - (vii) the operation, modification, rehabilitation and decommissioning of an activity or works, and
 - (viii) those undertakings prescribed by regulation;
- (y) "water" means all water located in or derived from a body of water;
- (z) "water power" means a force or energy contained in or capable of being produced or generated from moving, flowing or falling water in sufficient quantity to make it of value for the production of electricity;
- (aa) "water resources" means all bodies of water within the jurisdiction of the province;
- (bb) "waterworks" means all or a part of public, commercial or industrial works for the collection, production, treatment, storage, supply and distribution of water;

(cc) "wetland" means land that has the water table at, near or above the land surface and includes bogs, fens, marshes, swamps and other shallow open water areas; and

(dd) "works" includes property, buildings, erections, plants, machinery, installations, materials, ditches, headgates, divide gates, pipelines, flumes, penstocks, chutes, drops, power stations, transmission lines, terminal stations and substations, dams, canals, devices, fittings, apparatus, appliances and equipment.

(2) Where, under this Act, the minister makes a decision or determination with respect to a matter, that decision or determination shall be considered to be made by the minister in his or her absolute discretion.

[2002 cW-4.01 s2](#)

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Labrador Inuit rights

2.1 (1) This Act and regulations made under this Act shall be read and applied in conjunction with the *Labrador Inuit Land Claims Agreement Act* and, where a provision of this Act or regulations made under this Act is inconsistent or conflicts with a provision, term or condition of the *Labrador Inuit Land Claims Agreement Act*, the provision, term or condition of the *Labrador Inuit Land Claims Agreement Act* shall have precedence over the provision of this Act or a regulation made under this Act.

(2) Where, under this Act, the minister issues a permit or licence the minister may add to that permit or licence terms and conditions that the holder of the permit or licence is required to comply with in order to ensure compliance with the terms and conditions of the *Labrador Inuit Land Claims Agreement Act*.

[2004 cL-3.1 s66](#)

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Upper Churchill Development

3. This Act does not apply to water rights conferred on a person under *The Churchill Falls (Labrador) Corporation Limited (Lease) Act, 1961*, the Act No. 51 of 1961, as amended by the Act No. 2 of 1963 and by the Act No. 43 of 1964, and the Agreement forming the Schedule and made under the Act No. 51 of 1961, as that Agreement is amended by the Act No. 2 of 1963 and by the Agreement forming the Schedule and made under the Act No. 43 of 1964, the Act No. 53 of 1966, the Act No. 84 of 1966-67, the Act No. 101 of 1968, the Acts Nos. 76 and 77 of 1969 and the Act No. 62 of 1970.

[2002 cW-4.01 s3](#)

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Domestic purposes

4. (1) This Act does not affect the riparian right of a natural person owning or lawfully occupying land adjoining a river, stream, pond, lake or other body of water, to use a quantity of that water as he or she requires for domestic purposes without appreciable alteration in its quantity or quality.

(2) A natural person with a right under subsection (1), may pump or otherwise convey water for domestic purposes without a licence.

[2002 cW-4.01 s4](#)

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City & municipal water rights

5. This Act does not affect the ownership of water rights vested in and assumed by
- (a) the Corner Brook City Council under section 180 of the *City of Corner Brook Act* ;
 - (b) the Mount Pearl City Council under section 179 of the *City of Mount Pearl Act* ;
 - (c) the St. Johns Municipal Council under sections 104 and 208 of the *City of St. Johns Act* ;
and
 - (d) a municipality under the *Municipalities Act, 1999* .

[2002 cW-4.01 s5](#)

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Ground-water

6. A reference in this Act to surface water shall be considered to include a reference to groundwater.

[2002 cW-4.01 s6](#)

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Crown bound

7. This Act binds the Crown.

[2002 cW-4.01 s7](#)

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Non-application of this Part

8. This Part does not apply to the
- (a) Lower Churchill Basin as defined in paragraph 1(1)(f) of the Option Agreement appended to the *Lower Churchill Development Act* ; and
 - (b) water rights that may be granted to the Lower Churchill Development Corporation Limited under the Option Agreement referred to in paragraph (a).

[2002 cW-4.01 s8](#)

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Property in water

9. (1) The property in and the right to the use and flow of water in a body of water in the province are for all purposes vested in the Crown, and a right to divert or use water or a body of water shall not be acquired by prescription.

(2) Notwithstanding subsection (1), the property in and the right to the use and flow of water vested in the Crown by virtue of that subsection shall be subject to rights of property, use and flow conferred on a person by a grant, lease, licence or other instrument or under a statute of the province.

(3) This Act, another Act or a grant, lease, licence or other instrument shall not confer or be construed to confer the right or privilege to cause an adverse effect on water.

(4) A right or privilege of a person to cause an adverse effect on water that exists immediately before the commencement of this Act, whether conferred by statute, lease, grant or operation of law is extinguished.

[2002 cW-4.01 s9](#)

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Notification of prior water rights

10. (1) Notwithstanding another Act, a person with a right to the use or flow of water acquired under an Act, grant, lease, licence or other instrument before the commencement of this Act, shall notify the minister of that right to the use and flow of water and shall register that right in the registry established under section 13.

(2) Where, in the opinion of the minister, it is in the public interest to do so, the Lieutenant-Governor in Council, on the advice of the minister, may take an action that it considers necessary to return water rights under a licence to the Crown in whole or in part and up to a time and on those terms and conditions that the Lieutenant-Governor in Council considers necessary.

(3) Notwithstanding subsection 9(2), the exercise of a water right held by a person under a licence, grant, lease, other instrument or statute of the province immediately before the commencement of this Act is subject to subsections (5), (6), 12(2) and (3) and Parts II to X of this Act.

(4) A person who has water rights acquired under an Act, grant, lease, licence or other instrument before the commencement of this Act, shall, on the expiry of those water rights apply for a licence or permit under this Act.

(5) A right or privilege to remove water from the province, other than water referred to in subsection 12(3), vested in, acquired by or accruing to a person, by whatever means, before the coming into force of this Act, is cancelled and abrogated.

(6) An action or proceeding, including an action or proceeding for compensation or damages, does not lie against the Crown, or a minister or employee of the Crown, for or in respect of a cancellation or abrogation of a right or privilege under subsection (5), or in respect of a statement made or an undertaking given, whether orally or in writing, which a person may have acted upon to his or her detriment.

[2002 cW-4.01 s10](#)

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Notification of use etc.

11. (1) A person who, immediately before the commencement of this Act, used or diverted water while not authorized by an Act of the province to make that use or diversion shall, upon the coming

into force of this Act, submit an application and documents in support of the use or diversion of that water and the minister may grant to that person a licence or permit conferring water rights under this Act.

(2) The exercise of a right, granted under a licence or permit issued under this Act is subject to this Act, orders and terms and conditions under the licence or permit that the minister may impose.

[2002 cW-4.01 s11](#)

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Rights to divert or use water

12. (1) A right to the permanent diversion or to the exclusive use of water shall not be acquired by a riparian owner or another person by length of use or otherwise than in accordance with this Act.

- (2) A person shall not remove water from the province.
- (3) Notwithstanding subsection (2), water may be removed from the province where
 - (a) the water is contained in containers of not more than 30 litres in volume;
 - (b) the water is being transported in a motor vehicle, vessel or aircraft and is necessary for the operation of the motor vehicle, vessel or aircraft or is intended for the use by or consumption of persons in or on the motor vehicle, vessel or aircraft;
 - (c) the water is used to transport food or an industrial product out of the province; and
 - (d) the water is removed for a non-commercial purpose approved by the minister, including for safety or humanitarian purposes.

[2002 cW-4.01 s12](#)

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Registry

13. (1) The minister may establish in the department a Registry of Water Rights and, where that registry is established,

- (a) the minister may, in writing, designate an employee of the department to be the Registrar of Water Rights and the Registrar shall maintain the Registry of Water Rights as required by the minister;
- (b) a licence, amended licence, evidence of the transfer, suspension or cancellation of a licence and an application made for them under this Act shall be registered in the Registry of Water Rights; and
- (c) the Registry of Water Rights shall be open for inspection by the public during usual business hours.

(2) A person who, before the coming into force of this Act, holds a water right described in subsection 14(1), under a statute or otherwise, shall register that right in the Registry of Water Rights.

[2002 cW-4.01 s13](#)

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Licence

14. (1) A person shall apply for and the minister may, after considering the potential adverse effects, issue to that person, with or without terms and conditions, a licence

- (a) to divert or use water for a municipal, agricultural, institutional, commercial or industrial purpose, and for water and thermal power generation and other purposes that the minister considers necessary;
- (b) to divert or impound water for the purpose of water management, flood control, erosion control, flow regulation, conservation, recreation or the propagation of fish or wildlife;
- (c) to use water in its natural state for the purpose of a commercial recreational use, conservation and for the propagation of plant, fish or other animal life; and
- (d) for another purpose that the minister may establish.

(2) A person who applies for a licence shall file with the minister the information and plans as required by the minister and, where required, an authorization from a municipal authority.

(3) The minister shall, immediately after receiving an application and plans referred to in subsection (2), notify other departments of the government of the province that are affected by that application and the municipal authority in which the undertaking is located.

(4) The minister may post public notices of the application for a licence, plans referred to in subsection (3) and those other things that the minister considers necessary or that are required by regulation.

(5) Notwithstanding section 4, a person referred to in that section may apply under this section for a licence and the minister may issue a licence to that person in accordance with this section.

[2002 cW-4.01 s14](#)

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Priority

15. (1) Where, concurrently, more than one application for a licence has been made with respect to the use of water from the same body of water, the applications and licences issued as a result of those applications shall have priority in the following order:

- (a) domestic purposes;
- (b) municipal purposes;
- (c) agricultural purposes;
- (d) commercial, institutional and industrial purposes;
- (e) water and thermal power generation purposes; and
- (f) other purposes prescribed by regulation.

(2) The minister may, with respect to an application for a licence,

- (a) refuse to grant the licence;
- (b) require additional information with respect to the design, construction, operation or other matters applicable to the proposed licence;
- (c) require a modification or alteration of plans, specifications or other details applicable to the proposed undertaking;
- (d) grant a licence subject to the modifications or alterations and on terms or conditions that the minister considers necessary;
- (e) grant the licence; and
- (f) issue a temporary licence for a time and upon terms and conditions that the minister considers necessary.

(3) The minister shall, with respect to applications for licences, determine the priority of those applications in accordance with subsection (1) but, notwithstanding that subsection, the minister may, with the approval of the Lieutenant-Governor in Council, alter the priority of use with respect to a body of water where that body of water is adapted for or suited to a particular purpose.

(4) A person does not have a priority of right to water because that person makes an application for a licence before another person with respect to the same body of water.

(5) Where a person requires water from a body of water for a purpose which has a higher priority than the purpose for which a licence already exists, that person may apply to the minister to have the existing licence cancelled or diminished and the minister may approve or deny that application as he or she considers to be appropriate and an action shall not lie against the Crown and compensation shall not be payable by the Crown with respect to a decision of the minister under this subsection.

(6) The holder of a licence that has been cancelled or diminished under subsection (5) is entitled to compensation from the person whose application under subsection (5) caused a loss or damage as a result of the cancelling or diminishing of that licence.

(7) Where the applicant referred to in subsection (6) and the licence holder whose licence is cancelled or diminished cannot agree upon the amount and terms of compensation, the matter shall be determined under the *Arbitration Act*.

[2002 cW-4.01 s15](#)

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Unappropriated water

16. (1) Notwithstanding section 15, the minister may, in accordance with the regulations, reserve unappropriated water from a body of water in order to determine how the water may best be used and may authorize the allocation of the whole or a part of that water among applicants for a licence as he or she thinks is in the public interest.

(2) In this section, "unappropriated water" means water for which a licence, permit, right of use or ownership has not been granted under this or another Act or under common law.

[2002 cW-4.01 s16](#)

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Hydro use of water

17. (1) Notwithstanding sections 15 and 16, the Lieutenant-Governor in Council may determine that the first priority of use for water in a body of water shall be given to the Newfoundland and Labrador Hydro-Electric Corporation where that corporation proposes to use the water for a water power or thermal power generation purpose, and where the Lieutenant-Governor in Council makes that determination the minister shall issue the required licence to that corporation and may establish terms and conditions applicable to that licence.

(2) Notwithstanding subsection (1), where a person applies for a licence with respect to a body of water for which the Newfoundland and Labrador Hydro-Electric Corporation holds an existing licence and that persons proposed use of water has a higher priority under subsection 15(1) than the purpose for which that existing licence has been issued, the Lieutenant-Governor in Council may revoke the existing licence or may diminish the use of the existing licence.

[2002 cW-4.01 s17](#)

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Amendment

18. (1) A person may apply to the minister for an amendment to the terms of his or her licence.

(2) A person who applies for an amendment under subsection (1) shall make that application in the required form and provide to the minister at the time of the application the information and documents that the minister considers necessary including, where required, the written permission of a municipal authority for that intended amendment.

(3) Subsections 15(3) to (7) apply to an application made under this section.

(4) Where an application is made under this section, the minister shall notify those persons whose rights under this or another Act would be affected and shall consider objections, which may be made to the application.

(5) Where a notice has been given and objections considered under subsection (4), the minister may refuse to amend a licence or may, on terms and conditions which he or she considers necessary,

- (a) authorize a requested diversion or alteration of use of water;
- (b) extend the time for the commencement of construction or completion of works;
- (c) extend the time fixed for making a beneficial use of water;
- (d) authorize additional or other works than those previously authorized;
- (e) correct an error in a licence;
- (f) remove a provision of the licence;
- (g) extend the term of a licence;
- (h) authorize the use of water for a purpose other than that specified in the licence; and
- (i) increase or decrease the quantity of water authorized to be diverted.

(6) Where, in the opinion of the minister, an amendment would substantially change a licence, the minister may cancel the existing licence and issue a new licence under section 14 on terms and conditions that he or she considers necessary.

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Emergencies

19. (1) Where there are conditions that the minister considers to be an emergency, the minister may, by order,

- (a) suspend the operation of a licence; and
 - (b) designate the purposes for which, and quantities in which, water may be used.
- (2) The minister may, in an order made under subsection (1), direct that the order
- (a) apply in all or a specified area of the province; and
 - (b) be for a specified period of time.

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Consent of property owner

20. A licensee shall obtain the written consent of a property owner, municipal authority or other government authority, prior to entering upon or occupying land for a purpose allowed under this Act.

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Priority of right

21. (1) Where licence holders have priority among themselves in accordance with subsections 15(1) and (3), a licence holder is entitled to receive the whole of the supply of water to which the licence entitles that person before a licence holder using water for a lower priority purpose has a claim to that supply.

(2) The minister may, on receiving a complaint that a licence holder is receiving water from a supply to which another licence holder has a priority of right under this Act, direct an inspector to investigate the matter and submit a report to the minister on that investigation as soon as is practicable.

(3) If, following an investigation and report under subsection (2), it is established that a licence holder is receiving water to which the licence holder is not entitled, the minister shall take the action that he or she considers necessary to ensure reallocation of the water under the terms of the licence.

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Licence holder's rights limited

22. (1) Where works for carrying water are not of a sufficient capacity to carry the quantity of water for which a right has been granted under this Act, or the licence holder uses less water than

that to which the licence holder is entitled, the licence holders right may be limited to the quantity that the works are capable of carrying, or the quantity of water that the licence holder is using, whichever is less.

(2) Where a licence holder's right is limited under subsection (1), that limitation shall be indicated by an amendment to the licence holder's licence.

(3) In the case of a dispute as to the quantity of water used or diverted, or the capacity of works, the minister may order an inspection of the works and that inspection may include flow measurements.

(4) Following an inspection under subsection (3), the minister may make an order respecting the water or works that he or she considers necessary.

[2002 cW-4.01 s22](#)

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Complaint

23. (1) A person may, in writing, make a complaint to the minister respecting a failure of a licence holder to

- (a) keep works in a proper and safe condition;
- (b) comply with the terms or conditions of a licence; and
- (c) comply with the Act.

(2) Where the minister receives a complaint under subsection (1), he or she shall direct an inspector to investigate the complaint and submit a report on that investigation to the minister as soon as is practicable.

(3) The minister shall consider the report received under subsection (2) and shall order the licence holder to immediately take the remedial action necessary to correct the situation causing the complaint or shall dismiss the complaint.

(4) The minister shall notify a person who has made a complaint under this section of his or her decision under subsection (3).

(5) Where a licence holder does not comply with an order made under subsection (3), the minister may, in writing and with reasons, order the suspension of an applicable licence for a specified period of time or may, by order, cancel the licence.

[2002 cW-4.01 s23](#)

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Uncompleted works

24. (1) Where the terms of a licence authorize the completion of works and those works are not completed in accordance with that licence, all rights granted under the licence cease.

(2) Works constructed or acquired on or before the date that all rights cease under subsection (1) may, on the written direction of the minister, be forfeited to the Crown and may be disposed of by the minister in accordance with this Act and the *Environmental Protection Act*.

(3) Notwithstanding subsections (1) and (2), the minister may approve and confirm the rights under a licence referred to in subsection (1) with respect to those things that are necessary for the effective operation of the portion of the works that have been completed.

[2002 cW-4.01 s24](#)

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Licence where there is flooding

25. (1) Where a licence is issued solely to permit the flooding of lands in connection with a storage reservoir or for regulating the flow of a stream or for another purpose, the particulars of the authorized flooding shall be set out in the licence separately from the lands required for other purposes and a licence shall not convey a further use of those lands other than the right of flooding.

(2) A licence to flood lands in the province with respect to an undertaking shall be subject to the Crown's right under the *Lands Act* to grant to a person the right to enter upon, use or occupy the lands, where,

- (a) in the opinion of the minister, there will be no prejudicial interference with the rights of the licence holder; and
- (b) the minister gives the licence holder notice of the intention to grant an additional right, and an opportunity of being heard.

(3) Flooded lands referred to in this section shall not be fenced or otherwise enclosed except with the prior written consent of the minister.

[2002 cW-4.01 s25](#)

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Licence re bed of body of water

26. (1) Lands forming a part of the bed of a body of water, the use or occupation of which is required for the site of works or for their construction or operation shall be set out in the licence separately from lands required for other purposes, and a licence shall not convey an exclusive right in or to the use or occupancy of those lands, or a further right than may be required for the actual construction and operation of those works.

(2) A licence to use or occupy lands in the province forming part of the bed of a body of water shall be subject to the right of the Crown under the *Lands Act* to grant an additional right to a person to enter upon, use or occupy those lands where

- (a) the rights of that licence holder are not prejudicially interfered with by the grant; and
- (b) the minister gives that licence holder notice of the intention to grant an additional right, and an opportunity of being heard.

[2002 cW-4.01 s26](#)

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Property of the Crown

27. Where a minister of the Crown has jurisdiction over a road, trail, building, or other improvement on property of the Crown, that road, trail, building or other improvement shall not be

removed, altered or affected by a licensee in the construction or operation of the licensee's works without that minister's consent in writing having been first obtained, and upon terms and conditions that that minister may impose.

[2002 cW-4.01 s27](#)

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Transfer of right

28. (1) Where it is proposed that the land or undertaking to which a licence relates be conveyed or transferred to another person, the licence holder may apply to the minister to have the licence transferred to the person to whom the land or undertaking will be conveyed or transferred.

- (2) Upon receipt of an application under subsection (1), the minister may
 - (a) grant the transfer of the licence upon the terms and conditions that he or she considers necessary;
 - (b) require that notice be given of the proposed transfer;
 - (c) grant the transfer of the licence, in whole or in part;
 - (d) issue a new licence to the proposed transferee of the licence; and
 - (e) where he or she believes it to be advisable, refuse to grant the transfer of the licence.

[2002 cW-4.01 s28](#); [2008 c47 s20](#)

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Royalties and water use charges

29. (1) The Lieutenant-Governor in Council may establish, in accordance with the regulations, economic measures such as incentives, royalties, subsidies, administrative and other fees and water use charges, for the purposes of ensuring the conservation and proper utilization of water resources, and for the financing of programs and other measures.

(2) A royalty on all water resources that are the property of the Crown is reserved to the Crown.

[2002 cW-4.01 s29](#)

PART II PROTECTION OF WATER

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Flood plains, shorelines and wetlands

30. (1) The minister may, in cooperation with other departments of the government of the province, undertake

- (a) an inventory and mapping of wetlands, flood plains, shorelines, coastal waters and other aquatic systems;
- (b) the classification of aquatic systems depending on their sensitivity and productivity; and

- (c) research on hydrology and the management of aquatic systems and the assessment of the impact of development activities.

(2) The minister may control and determine the use of, or modifications which shall apply to, wetlands, including the drainage, infilling and permanent flooding of wetlands and the addition of wastewater or stormwater discharges to, or the physical, chemical or biological modification of, wetlands where, in the ministers opinion, there may be an impact upon the hydrology of that wetland or its recreational, aesthetic or other natural functions and uses.

[2002 cW-4.01 s30](#)

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Streamflow stations and data collection

31. (1) The minister may order a licensee or other person to install, operate and maintain streamflow gauging stations, and other gauges at one or more locations in the rivers, streams, lakes, ponds and other bodies of water supplying water to the licensee or other person and to monitor water quality on the locations, at the frequencies and for the parameters that the minister considers necessary to secure a complete or partial survey of the sources of the water supply.

(2) A licensee shall collect data and information and maintain records relating to the diversion and use of water as the minister may require.

(3) The minister may require a person, government department, Crown corporation or agent to

- (a) collect data and information on the quantity, quality and use or possible future use of water;
- (b) establish, operate and maintain measuring devices for collecting that data; and
- (c) pay the cost of installation, operation and maintenance of those devices.

[2002 cW-4.01 s31](#)

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Agreements

32. The minister may enter into agreements with the government of another province or territory of Canada and of Canada to investigate, develop and regulate water resource management, and the minister may carry out those acts, transactions and things that are necessary to implement an agreement entered into under this section.

[2002 cW-4.01 s32](#)

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Flood risk areas

33. (1) The minister may designate flood risk areas and, where applicable, floodways by delineating them on the flood risk maps in natural flood prone areas of the province.

(2) The minister may, by order, regulate land development in the designated flood risk areas and, where applicable, floodways, in consultation with municipal authorities and departments of the government.

(3) The minister may establish a flood forecast centre for the development and operation of flood forecasting and flood warning systems to minimize flood damage in flood prone communities.

(4) The minister may, for the purpose of reducing potential flood damage, require the construction of flood control measures including flood proofing to protect properties proposed to be developed in designated flood risk areas.

[2002 cW-4.01 s33](#)

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Flood control areas

34. In addition to the areas designated under subsection 33(2), the minister may, where he or she considers it necessary, and in consultation with other departments of the government of the province and municipal authorities, designate as a flood control area all or a portion of the area adjacent to or surrounding a body of water or coastal waters which are subject to periodic flooding in order to

- (a) protect life, health and the public interest;
- (b) eliminate and prevent uses, developments, actions and practices that may increase flood levels and damage;
- (c) minimize public expenditure associated with floods;
- (d) protect purchasers and owners of property; or
- (e) ensure that the use of those areas is compatible with flood hazard,

and the powers in section 33 may be exercised in respect of those flood control areas.

[2002 cW-4.01 s34](#)

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Technical assistance

35. (1) During the flooding of an area, whether or not that area is designated as a flood control area, the minister may provide technical assistance and advice on all matters relating to the implementation of remedial measures to alleviate the impact of flooding and a person, department or agency shall not take an action which is not consistent with the advice of the minister.

(2) Notwithstanding subsection (1), where, because of a flood or flood potential, an emergency is declared under the *Emergency Services Act*, the minister shall co-ordinate efforts with the minister responsible for that Act.

[2002 cW-4.01 s35](#); [2008 cE-9.1 s28](#); [2016 c45 s15](#)

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Approval of sewage works

36. (1) A person shall, before the construction of sewage works or the extension of or a change in existing sewage works, submit to the minister the plans, specifications and an engineers report of the sewage works to be undertaken and the location of the discharge of the effluent, together with other information that the minister may require, and the sewage works shall not be undertaken or proceeded with until the person has been granted a permit under this Act for the proposed works.

(2) Where a person undertakes or proceeds with the construction, extension or a change of the sewage works referred to in subsection (1) without first obtaining the permit referred to in that subsection, the minister may order an investigation of the works and the location of the discharge of effluent and may order changes to be made in the works or in the location of the discharge of effluent that the minister considers necessary, and the investigation and changes shall be made at the expense of the person or municipal authority.

(3) The minister may, after considering the plans, specifications, report and other information that he or she may require under subsection (1), and after considering the regulations relating to qualities, properties and treatment of sewage, or standards for effluent release, grant a permit for the construction of the proposed works, subject to those terms and conditions that the minister considers necessary.

(4) Where, in the opinion of the minister, it is in the public interest to do so, the minister shall refuse to grant a permit under subsection (3).

(5) Where, upon receiving information that,

(a) sewage requires sewage works; or

(b) existing sewage works require alteration,

the minister may direct alterations or additions that he or she considers necessary at the expense of the person operating those works, and in a manner and within a time that the minister considers necessary.

(6) This section does not apply to a septic system that does not exceed a sewage flow of 4546 litres per day.

[2002 cW-4.01 s36](#)

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Approval of waterworks

37. (1) A person shall, before the construction of waterworks, or the extension of or change to existing waterworks, submit to the minister the plans, specifications and an engineers report of the water supply and the works to be undertaken, together with other information that the minister may require, and the waterworks shall not be undertaken or proceeded with until the person has been granted a permit under this Act for the proposed waterworks.

(2) Where a person undertakes or proceeds with the establishment of waterworks, or the extension of or change in an existing waterworks, without first obtaining the permit referred to in subsection (1), the minister may direct that an investigation of the waterworks and the source of water supply be carried out, and may direct those changes to be made in the waterworks or in the source of water supply, that the minister considers necessary, and the investigation and changes shall be made at the expense of the person.

(3) The minister may, after considering the engineers report and other information that he or she may require under subsection (1), and after considering the regulations relating to waterworks, grant a permit for the construction, alteration or addition to the proposed waterworks, subject to those terms and conditions that the minister considers necessary.

(4) Where, in the opinion of the minister, it is in the public interest to do so, the minister shall refuse to grant a permit under this section, or shall grant a permit on those terms and conditions that the minister considers necessary.

(5) Where, in the opinion of the minister, an adverse effect has occurred or may occur to water, water is or may be in an unwholesome condition, or an existing waterworks requires

alteration, the minister may direct the person operating the waterworks to alter or make additions to the waterworks, and in the manner and within a time that the minister considers necessary.

(6) The costs of carrying out an alteration or addition that is directed under subsection (5) shall be paid as directed by the minister.

[2002 cW-4.01 s37](#)

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Maintenance

38. (1) All waterworks in the province shall at all times be maintained, kept in repair and operated in a manner and with those facilities that the minister may direct.

(2) All sewage works in the province shall at all times be maintained, kept in repair and operated in a manner and with those facilities that may be directed by the minister.

[2002 cW-4.01 s38](#)

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Protection of public water supplies

39. (1) The minister may, by regulation, designate an area surrounding a present or potential source of public water supply as a public water supply area, and shall give notice of that area by publication in the *Gazette*, or as otherwise required under this Act.

(2) A person operating a waterworks and using or intending to use water from that source shall protect that source of public water supply in accordance with this Act.

(3) Notwithstanding subsection (2), the minister may do those things that he or she considers to be necessary to protect a public water supply from adverse effects.

(4) In the area defined under subsection (1), a person shall not

(a) place, deposit, discharge or allow to remain in that area material of a kind that might impair the quality of the water;

(b) fish, bathe, boat, swim or wash in, or otherwise impair the quality of the water; or

(c) use or divert water that may unduly diminish the amount of water available in that area as a public water supply.

(5) Notwithstanding subsection (4), where the minister is satisfied that the nature and size of a public water supply area is sufficiently large to preclude an adverse effect by a person, the minister may define and prescribe by regulation a section of the public water supply area to be used by persons for fishing, boating, swimming, washing or another activity.

(6) The minister shall regulate resource development and other activities to be undertaken in an area established under subsection (1) that, in the ministers opinion, may impair the quality of water, and those activities shall not be undertaken without first obtaining authorization from the minister.

(7) In this section "public water supply" includes a groundwater supply.

[2002 cW-4.01 s39](#)

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Correction of adverse effects

40. Where it appears likely that an undertaking, works, practice or activity may lead to an adverse effect on water that is or may reasonably be expected to be used for drinking or domestic purposes, the minister may, in writing, order the person responsible to carry out water quality analysis and take the action that the minister considers necessary to prevent that adverse effect.

[2002 cW-4.01 s40](#)

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Testing of water

41. (1) The minister may require and direct the owner, operator or other person responsible for an undertaking to carry out those tests on water emitted from, surrounding or connected with that undertaking that the minister considers necessary.

(2) Where the minister requires and directs that an owner, operator or person responsible carry out tests under subsection (1), that owner, operator or person responsible shall carry out the required tests and shall, in writing, report the results of those tests to the minister within the time that the minister may direct.

(3) The minister may, as a result of a report submitted under subsection (2), direct an owner, operator or person responsible to take the action that he or she considers necessary to remedy an adverse effect revealed by that report.

(4) The minister may direct the time and manner in which a direction made under this section is to occur.

[2002 cW-4.01 s41](#)

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Property detrimentally affected

42. (1) Where a public water supply area is established under subsection 39(1) and it detrimentally affects the owner of property, that owner is entitled to receive compensation for that injury from the person who operated the waterworks, and the compensation may be decided between the parties.

(2) In the case of a dispute between parties as to whether a property is detrimentally affected or the amount of compensation to be paid, the matter shall be decided under the *Arbitration Act*.

[2002 cW-4.01 s42](#)

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Maintenance and inspection of dams

43. (1) The owner, operator or licensee of a dam or other structure shall, at all times, maintain the dam or other structure in good repair.

(2) The owner, operator or licensee with respect to a dam or other similar structure impounding or conveying water shall, in accordance with the regulations,

- (a) conduct periodic inspections of the dam or other structure to ensure structural stability;
- (b) submit a report to the minister on the results of the inspections; and
- (c) comply with the recommendations contained in the inspection report.

[2002 cW-4.01 s43](#)

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Safety of works

44. (1) Where conditions exist that may reasonably be anticipated to be hazardous to a dam or other similar structure, or to property down-stream, an owner, operator or licensee shall immediately notify the minister and take all necessary actions to minimize or eliminate those hazardous conditions.

(2) Where the minister considers it necessary for public safety, to prevent injury or damage to persons or property or to comply with this Act, the minister may direct the owner or operator of a dam or other structure to

- (a) arrange a safety inspection of that dam or other structure in the time specified in the order or as may be prescribed by regulation; and
- (b) submit the inspection report to the minister along with drawings, specifications, geotechnical, geological and other data and information that the minister considers necessary.

(3) The minister may, within the time that the minister may specify, direct the owner or operator of a dam or other structure to repair, improve, change, alter, replace or remove all or a part of a dam or other structure as he or she considers necessary for the safety of the dam or other structure, for public safety or to prevent injury or damage to persons or property.

(4) The minister, or an officer or other person authorized by the minister, shall have free access to lands on which the dam or other structure is located.

(5) Where, in compliance with the direction referred to in subsection (3), it is proposed to repair, improve, reconstruct or remove the dam or other structure, the proposed works shall not be proceeded with until a permit is obtained from the minister.

[2002 cW-4.01 s44](#)

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Water flow level

45. Where, after the coming into force of this Act, a dam or other structure is constructed on a body of water and the minister considers it necessary, he or she may direct an owner or operator of that dam or other structure to take those steps that are necessary to raise or lower the level or maintain the flow or level of the water in a body of water.

[2002 cW-4.01 s45](#)

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Impounded water

46. Where water is impounded for water power or waterworks development, the minister may direct the person responsible for that impounding to

- (a) clear timber, scrub, slash or debris that is or was flooded; and
- (b) remove the timber, scrub, slash or debris that has escaped from the flooded land to a lake, river, pond, stream or other body of water,

within the time and in the manner specified by the minister.

[2002 cW-4.01 s46](#)

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Reservoir development area

47. The minister may, by regulation, designate all or a portion of the area adjacent to or surrounding a reservoir as a reservoir development area where he or she considers that designation necessary for the efficient and safe operation of the reservoir, for the regulation of land use activities and to minimize an adverse effect.

[2002 cW-4.01 s47](#)

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Permit

48. (1) A person may apply to the minister for a permit to carry out an undertaking that under this Act or the regulations requires a permit and the minister may issue that permit in accordance with this Act.

(2) A person shall not, without obtaining a permit required under subsection (1), carry out an undertaking for which a permit is required under this Act or regulations.

(3) An application made under subsection (1) shall be in the required form and accompanied by the required fee, and an undertaking or works shall not be proceeded with until the minister has issued the permit.

(4) The minister, after considering the information required under subsection (3) and

- (a) the potential adverse effects of the proposed undertaking upon the environment and surface and groundwater conditions in the area in relation to the present and future water uses;
- (b) the effectiveness, purposes and benefits of the proposed undertaking to be authorized under subsection (1);
- (c) if the proposed undertaking contravenes a policy of the government of the province;
- (d) if the location of the proposed undertaking is unacceptable; and
- (e) if there would be adverse effects to water from the proposed undertaking,

may grant a permit for the undertaking, subject to those terms and conditions that the minister considers necessary.

(5) Where a person undertakes the construction, extension or change of an undertaking without first having obtained a permit, the minister may direct an investigation of the undertaking and the alterations, additions, removal from or changes to the undertaking that the minister considers necessary to be made by and at the expense of the person responsible for the unauthorized undertaking.

(6) The minister may refuse to issue a permit to a person with respect to an undertaking referred to in this section where the person has not deposited with the minister security that the minister may require.

(7) Where the minister is of the opinion that a proposed undertaking should not proceed, the minister shall not issue the permit with respect to the proposed undertaking.

(8) The minister shall, in writing, notify a person of his or her decision not to issue a permit.

(9) An action or proceeding, including an action or a proceeding for compensation or damages, does not lie against the Crown for or in respect of an amendment, cancellation, abrogation, refusal or denial of a right or privilege under this section or in respect of a statement made or undertaking given, whether orally or in writing, that a person may have acted on to his or her detriment.

[2002 cW-4.01 s48](#)

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Amendment and transfer of permit

49. (1) A permit holder may apply to the minister for an amendment of a permit and upon receipt of that application the minister may amend a term or condition of, add a term or condition to, or delete a term or condition from, the permit, if the minister considers it appropriate to do so.

(2) The minister may

(a) amend a term or condition of, add a term or condition to, or delete a term or condition from, a permit if,

(i) in the opinion of the minister, an adverse effect that was not reasonably foreseeable at the time the permit was issued has occurred or may occur,

(ii) the term or condition relates to a monitoring or reporting requirement, or

(iii) the purpose of the amendment, addition or deletion is to address matters related to a temporary suspension of the activity of the permit holder;

(b) cancel or suspend a permit

(i) where the minister believes on reasonable and probable grounds that there has been or may be a breach or default of the permit, or

(ii) where new or corrected information with respect to an adverse effect has been brought to the attention of the minister, or

(iii) for a failure to pay a penalty imposed under this Act with respect to the activity governed by the permit; or

(c) correct a typographical error in a permit.

(3) The minister shall give notice in writing, together with reasons, to the permit holder at least 30 days in advance of making an amendment, addition or deletion under paragraph (2)(a).

(4) The minister shall, immediately upon amending, cancelling or suspending a permit under paragraphs (2)(a) or (b), give notice, in writing, together with reasons, of the amendment, cancellation or suspension to the permit holder.

(5) A person shall not transfer, sell, lease, assign or otherwise dispose of a permit without the written consent of the minister.

(6) A consent under subsection (5) shall be given not more than 60 days after receiving an application or request for a consent unless the minister notifies the applicant otherwise, in writing, within 15 days of his or her receipt of that application or request.

(7) For the purpose of this section and sections 48, 50 and 51, a permit includes a permit granted under section 36 or 37.

[2002 cW-4.01 s49](#)

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New information

50. Where new and relevant information respecting adverse effects that actually result or may result from an activity to which a permit relates comes to the attention of the permit holder after the issuance of the permit, that permit holder shall immediately submit that information to the minister.

[2002 cW-4.01 s50](#)

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Emergency

51. (1) The minister may, under conditions that he or she considers to constitute an emergency, in all or a specified area of the province and for a specified period of time, by order,

- (a) suspend a permit; or
- (b) designate the purposes for which the permit may be used.

(2) Notwithstanding a right to or a permit for the use of water that may be held under this Act, the minister may determine those conditions under which an emergency shall be considered to exist for which a person or a group of persons that the minister may establish may use or divert water for the purpose of combating that emergency.

[2002 cW-4.01 s51](#)

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Exceptions to permit

52. The minister may, without issuing a permit, approve the diversion or alteration of a body of water, on terms and conditions that he or she considers advisable, where that diversion or alteration is required for the length of time and under terms that the minister may prescribe by regulation.

[2002 cW-4.01 s52](#)

PART III WELL DRILLING

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Definitions

53. (1) In this Part

- (a) "drill" and "drilled" mean, in relation to a well, the construction by drilling, boring and washing, or by another method by which a well may be constructed;
- (b) "groundwater", notwithstanding paragraph 2(1)(i), means water that exists beneath the land surface;
- (c) "licence", notwithstanding paragraph 2(l), means a licence issued under this Part;
- (d) "licensee", notwithstanding paragraph 2(m) means a person who holds a licence under this Part;
- (e) "non-domestic well" means a drilled well intended to supply water for use at a building other than a single family dwelling;
- (f) "well" means an artificial opening in the ground from which water is obtained or that is made for the purpose of exploring for or obtaining water; and
- (g) "well driller" means a person who holds a licence issued under this Part.

(2) In this Part, a reference to this Part shall include a reference to regulations made with respect to a matter under this Part.

[2002 cW-4.01 s53](#)

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Application of Part

54. This Part applies to all sources of groundwater and all wells drilled in the province.

[2002 cW-4.01 s54](#)

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Prohibition

55. A person shall not

- (a) for gain or reward
 - (i) contract to drill a well, or
 - (ii) drill, alter or repair a well for another person;
- (b) carry on the business of well drilling; or
- (c) hold himself or herself out as a well driller,

unless that person holds a licence.

[2002 cW-4.01 s55](#)

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Licence

56. The minister or a person authorized by him or her for that purpose may, upon application in the required form and payment of the required fee, issue a licence to a person authorizing that person to carry on the business of well drilling.

[2002 cW-4.01 s56](#)

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Expiry of licence

57. Unless sooner suspended or cancelled, a licence expires on December 31 following the date of its issue.

[2002 cW-4.01 s57](#)

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Permit for construction of a non-domestic well

58. (1) Where a well is intended to supply water for non-domestic purposes, the well owner shall apply to the minister in the required form for a well construction permit.

(2) The minister may issue a permit to a person who applies under subsection (1) on those terms and conditions that the minister considers to be appropriate.

(3) A permit holder shall submit to the minister a report on the well to which the permit applies in the required form and not later than one month after the completion of the well.

[2002 cW-4.01 s58](#)

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Duties of well driller

59. A well driller shall

- (a) within one month after the completion of the drilling of a well make a report to the minister in the required form;
- (b) permit an inspector, at a reasonable time, to examine and inspect his or her records and equipment and a well drilling operation being carried on by the well driller;
- (c) test as required by regulation, the yield of wells drilled by him or her;
- (d) within one month of drilling a well, collect water samples and arrange for the testing of the water quality of those samples at an accredited laboratory and as required by regulation; and

- (e) keep and provide the records, returns, test data, geological and other information and specimens that are prescribed by the minister and as required by regulation.

[2002 cW-4.01 s59](#)

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Well interference

60. (1) The minister may establish and determine the rate at which groundwater is to be withdrawn from a well in order to

- (a) minimize a risk of lowering the water table, which might consequently reduce the yield of nearby wells;
- (b) avoid salt water intrusion into groundwater in coastal areas or near a source of pollution;
- (c) maintain a balance between recharge and discharge rates of an aquifer and to minimize the risk of a permanent lowering of the static water level; and
- (d) avoid other adverse effects.

(2) The owner of a well shall comply with rates of water withdrawal established under subsection (1).

[2002 cW-4.01 s60](#)

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Protection of a well field

61. (1) The minister may define and establish a protection zone around a groundwater well used for non-domestic purposes in order to protect that well field from pollution and a municipal authority or person operating works or using water from that well source shall

- (a) give notice of the protection zone by publication or otherwise in a manner approved by the minister; and
- (b) protect the well field as the minister may require.

(2) In a protection zone established under subsection (1), a person shall not

- (a) place, deposit or allow to remain in that area, material which might impair the quality of the groundwater; and
- (b) conduct development activity unless the person obtains the approval of the minister before commencing that activity.

(3) A person may apply to the minister to carry out development activity in a protection zone referred to in paragraph (2)(b), and the minister may, after assessing the possible impact of the proposed development on groundwater quality, approve that activity on terms and conditions that the minister considers necessary.

[2002 cW-4.01 s61](#)

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Groundwater studies

62. The minister may order studies, monitoring and investigations for the purpose of collecting data and information on the availability of groundwater, sustainable rates of water withdrawal, spacing of wells, quality of household water supplies, pumping test methods, hydrogeological mapping, groundwater flow systems, groundwater quality and other matters that the minister considers necessary in the interest of the conservation, development, control, improvement and proper utilization of groundwater resources.

[2002 cW-4.01 s62](#)

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Production of licence

63. A well driller shall carry his or her licence and show it on request to an inspector or a person who has cause under this Act to ask for it.

[2002 cW-4.01 s63](#)

PART IV REGULATIONS

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Regulations

64. The Lieutenant-Governor in Council may make regulations

- (a) defining an expression or term used in this Act and not defined in this Act ;
- (b) respecting the leasing and licensing of water power and of water for the purpose of generating water power and thermal power and the rentals to be paid for those leases and licences;
- (c) respecting economic measures that may be established for the purposes of section 29;
- (d) respecting the activities, undertakings or water, sewage or other works for which a person is required to obtain a licence or permit under the Act and respecting the use or diversion of water for short term and non recurrent purposes, the approval of the purposes and payment for that use or diversion;
- (e) respecting the application for, provision of and renewal of licences, permits and rentals, and the provision of a demerit point system and security with respect to licences and permits;
- (f) relating to or providing for the suspension, cancellation and reinstatement of well drilling licences;
- (g) respecting the qualifications of well drillers, and respecting the reports, returns, geological and other information or specifications that may be required to be kept and provided under Part III;
- (h) respecting the construction, alteration and repair of wells, and respecting the closing and plugging of dry or abandoned wells;
- (i) respecting the location and spacing of wells in relation to buildings or sanitary facilities on the same or adjoining premises;

- (j) respecting the methods of drilling wells and precautions and measures to be taken during well drilling and development operations;
- (k) respecting the method and requirements to be observed in testing well yield, and respecting the control and use of the flow of water from a well during and after drilling operations;
- (l) respecting the proper identification of well drilling machines;
- (m) respecting water control areas;
- (n) respecting the prevention of adverse effects to groundwater;
- (o) prescribing powers and duties of inspectors and other officials appointed under this Act;
- (p) exempting from a Part of this Act a person or class of persons;
- (q) respecting the protection, conservation, development and control of groundwater resources;
- (r) respecting the storage, pondage, carriage, alteration, diversion and use of water and a body of water for domestic, municipal, agricultural, industrial, institutional, commercial, water power, thermal power, recreational or other purposes;
- (s) respecting fees, incentives, royalties and subsidies to be applied to water resources, the time for paying for them and generally to give effect to the imposition and collection of those fees, incentives, royalties and subsidies on water resources;
- (t) respecting the service of notice and other documents and respecting notice and other time periods required under this Act;
- (u) providing for the terms, conditions and purposes upon and for which licences and permits may be required, issued, refused, renewed, suspended, amended, transferred or revoked, and generally respecting licences and permits under this Act including the duties of licensees and permit holders;
- (v) respecting the information and particulars to be set out in applications and plans relating to licences, permits or other requirements of this Act;
- (w) respecting the duties of inspectors and inspections and investigations carried out under this Act;
- (x) respecting the maintenance of minimum flow and water levels in bodies of water;
- (y) respecting the units of measurement of water and the method or type of method or instrument for measuring water;
- (z) respecting buffer zones adjacent to bodies of water, their width and the activities, undertakings, works and structures which may be carried out or constructed within buffer zones, and respecting the issuance of permits for those in a buffer zone;
- (aa) respecting the Registry of Water Rights, registrations to be registered there and information to be filed and maintained by the Registrar of Water Rights in that registry;
- (bb) respecting the movement of logs, timber and other forest products over or down a body of water or through or over a dam or other work constructed under the authority of this Act or another Act;

- (cc) respecting the construction of fishways;
- (dd) respecting the designation of public water supply areas and reservoir development areas and activities restricted and permitted in those areas, and respecting the protection of and regulation and control of water flow in those areas;
- (ee) prescribing the type and manner of protection of public water supplies and the types of activities permissible in a public water supply area;
- (ff) respecting the allocation of unappropriated water;
- (gg) respecting those things which the minister may do respecting structures, devices, contrivances or things laid, placed, built or erected by licensees and permit holders, and respecting the structural safety of works;
- (hh) prescribing a method or system for the classification of rivers, streams, lakes or other waters in all or a part of the province;
- (ii) respecting the removal of water from the province, and respecting the issuance of licences for that removal;
- (jj) requiring and prescribing returns, accounts, records and statements to be made by licensees, permit holders and other persons, the information to be given in those returns, accounts, records and statements, by whom and at what time they shall be made;
- (kk) respecting flood risk and flood control areas, including the studies, investigations and designations of these areas, and the control and prohibition of development in those areas;
- (ll) establishing standards for water quality in the province and the requirements of persons, industries and institutions with respect to the maintenance of those standards, and respecting the inspection, testing and analysis of water, and the notification of the department of testing and analysis results from a body of water, waterworks, reservoir, well and other water supply by persons, institutions, industries, commercial facilities and well drillers with respect to water intended for domestic, municipal, industrial, institutional, agricultural, recreational, commercial, water power and thermal power purposes;
- (mm) respecting a substance or activity that may impair water quality, and respecting the adoption, with or without modification, of published codes, rules or standards relating to water quality, and providing for the development of water quality objectives;
- (nn) respecting the addition of substances to water intended for domestic and other uses for the purpose of ensuring required standards of water quality;
- (oo) respecting the qualities and properties of, and prohibiting or restricting the discharge of stormwater, sewage and waste effluents into, bodies of water;
- (pp) respecting the cleanup of water and bodies of water by persons responsible for an adverse effect to that water or body of water;
- (qq) respecting the conditions upon which the works, lands and properties held in respect of an undertaking may be taken over upon the expiration of the term of an agreement, licence or upon the termination for non-compliance with the covenants, terms or conditions contained in the agreement or licence, or for another reason;
- (rr) respecting the erection or placing of structures of any kind upon the ice of a body of water, including providing for the removal of those structures erected or placed contrary to this Act;

- (ss) respecting the establishment of a system and rules governing, controlling or permitting an amount of discharge, deposit, drainage or release of a substance within set guidelines;
- (tt) respecting the use of and modification to wetlands, shorelines and floodplains;
- (uu) respecting the operation of machinery on the bed of a body of water, and respecting the removal of sand, ground, rock or other material from a body of water, and respecting the removal of vegetation from the bed or bank of a body of water;
- (vv) respecting the drainage of peat lands for the mining of peat for commercial or industrial purposes, and respecting the drainage of wetlands for any purpose;
- (ww) under this section to apply to the whole of the province or may restrict their application to specified areas of the province and may limit them as to time or otherwise;
- (xx) respecting the disposal of works forfeited to the Crown under this Act; and
- (yy) generally to give effect to the purposes of this Act.

[2002 cW-4.01 s64](#)

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Fees and forms

65. (1) The minister may set fees and prescribe forms for the purposes and administration of this Act.

(2) Where in this Act a reference is made to a "required form", that form is as required by the minister under subsection (1) and includes the information that the minister may require to accompany that form.

[2002 cW-4.01 s65](#)

PART V INSPECTION

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Inspectors and duties of employees

66. (1) The minister may designate persons or a class of persons as inspectors for the purposes of this Act or a Part of this Act.

(2) For the purpose of this Act, a member of the Royal Newfoundland Constabulary or of the Royal Canadian Mounted Police shall be considered to have been designated under subsection (1).

(3) The minister may, in writing, authorize a person employed in the department, or a person or class of persons appointed or designated under subsection (1), to perform and exercise those duties and powers conferred by this Act upon the minister that may, in the opinion of the minister, be conveniently performed or exercised by that person, and the performance or exercise of those duties or powers by that authorized person or class of persons shall have the same effect as if they were performed or exercised by the minister.

[2002 cW-4.01 s66](#)

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Inspector immunity

67. An inspector, in carrying out duties under this Act, has and may exercise in the province all the powers, authorities and immunities of a peace officer as defined in the *Criminal Code* (Canada).

[2002 cW-4.01 s67](#)

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Application for investigation

68. (1) Where 2 or more persons believe that another person is contravening or has contravened this Act, they may jointly request that the department investigate the alleged contravention.

(2) A request made under subsection (1) shall be accompanied by an affidavit made under oath or affirmation by the persons making the request and

- (a) stating the name and address of the persons making the request;
- (b) stating the nature of the alleged contravention and the name of each person alleged to be involved in its commission; and
- (c) containing a concise statement of the evidence supporting the allegations.

(3) A person who intentionally provides false information under subsection (1) or (2) is guilty of an offence.

[2002 cW-4.01 s68](#)

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Investigation process

69. (1) Upon receipt of a request under section 68, the minister shall investigate the matter to determine the facts of the alleged contravention.

(2) Not more than 90 days after receipt of a request under section 68, the minister shall report to the persons who made the request of the progress of the investigation and action proposed to be taken in respect of the alleged contravention, but information shall not be disclosed if that disclosure would be contrary to the *Freedom of Information Act*.

(3) The minister may discontinue an investigation if he or she is of the opinion that the alleged contravention does not require further investigation.

- (4) Where an investigation is discontinued, the minister shall
 - (a) prepare a statement in writing stating the reasons for its discontinuance; and
 - (b) send a copy of the statement to the persons who made the request and the person believed to be responsible for the alleged contravention.

[2002 cW-4.01 s69](#)

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Conditions of licences and permits

70. It is a condition of every licence and permit issued under this Act that the holder shall immediately, on request, allow inspectors to carry out inspections authorized under this Act, of a place, other than a dwelling place, to which the licence or permit relates.

[2002 cW-4.01 s70](#)

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Powers of inspectors

71. (1) An inspector may, at reasonable times, enter upon works, business premises, a building or property of a licensee or permit holder, that is not a dwelling place, where it is reasonably necessary to determine compliance with this Act, and may

- (a) determine that the use or undertaking of the licensee or permit holder complies with this Act or terms or conditions of a licence or permit issued under this or another Act or law;
- (b) determine the extent to which a use or undertaking may cause, is causing or has caused an adverse effect, and the cause of an adverse effect;
- (c) determine the manner in which an adverse effect may be prevented, eliminated, reduced or ameliorated, and determine how the water resource and environment may be rehabilitated;
- (d) inspect all plans, specifications, drawings, books, records, reports, registers, analyses, data and documents relating to the use or undertaking located there;
- (e) inspect a place that the inspector has reasonable grounds to believe is affecting a body of water;
- (f) inspect waterworks and sewage works and investigate the source of a water supply;
- (g) issue tickets for offences under this Act in accordance with the *Provincial Offences Act* ;
- (h) require a person having the care, management or control of a thing or substance to detain the thing or substance at the place where it is found, or may remove it from the place where it is found and give a receipt for it;
- (i) on any occasion, and for the purpose of analysis, take from the works, business premises, building or property, samples of water and other substances in a volume or quantity which, in the opinion of the inspector, is sufficient to permit an analysis of the water or substance to determine its content, nature, composition, source or compliance with this Act or the terms and conditions of a licence or permit issued under this Act; and
- (j) analyze or test a substance on the premises, building or property,

and the licensee, permit holder or a person in charge of the works, business premises or property shall produce for inspection the plans, specifications, drawings, books, records, reports, registers, substances, analyses, data and other documents relating to the use, undertaking licence or permit that the inspector may require.

(2) The production of instructions in writing signed by the minister or an officer of the department authorized by the minister is sufficient evidence of the authority of the inspector.

(3) Information and samples gathered during inspections under subsection (1) shall be used for no purpose other than to determine compliance with this Act.

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Search and seizure

72. (1) Where an inspector believes on reasonable grounds that a person is contravening or has contravened this Act or a term or condition of a licence or permit issued under this Act, the inspector may, with a warrant issued under subsection (2), enter works, a commercial or private premises or property or a vehicle in the province and

- (a) do all those things referred to in subsection 71(1);
- (b) search and inspect the works, property and things located there;
- (c) examine the contents of the works, commercial or private premises, property or vehicle;
- (d) inspect and make copies of books of account, records, reports, registers, financial statements, correspondence, plans, specifications, drawings, analyses, data or other documents that may give evidence of a contravention of this Act or a term or condition of a licence or permit issued under this Act;
- (e) seize, take away and hold a thing that would give evidence that there has been a contravention of this Act or of a term or condition of a licence or permit issued under this Act;
- (f) seize and take away those things referred to in paragraph (d) and shall, upon the request of the owner of them, make copies of them and those things shall be returned to that owner as soon as possible; and
- (g) make those inquiries that the inspector considers necessary to determine if there has been a contravention of this Act.

(2) A provincial court judge, who is satisfied upon oath or affirmation that there are reasonable grounds for believing that there is in a works, commercial or private premises or property anything that will give evidence with respect to a contravention of this Act or the terms and conditions of a licence or permit issued under this Act, may issue a warrant authorizing the inspector named in the warrant to enter the works or the commercial or private premises or property, search and inspect the property and things located there and search for and seize anything that will provide evidence with respect to a contravention of this Act or the terms and conditions of a licence or permit issued under this Act, subject to the conditions that may be specified in the warrant.

(3) The owner or person in charge of the works, premises, property or vehicle referred to in this section and a person found there shall give an inspector reasonable help to enable the inspector to carry out his or her duties and functions under this section and shall provide the information that the inspector may reasonably require.

(4) Notwithstanding subsection (1), an inspector may exercise the power of search referred to in that subsection without a warrant issued under subsection (2) where the conditions for obtaining the warrant exist and by reason of exigent circumstances it would not be practical to obtain the warrant.

(5) For the purpose of subsection (4), exigent circumstances include circumstances in which the delay necessary to obtain the warrant would result in danger to human life or safety, the loss or destruction of evidence or long term or irreversible destruction to the environment.

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Additional persons

73. An inspector or other person, in carrying out duties or exercising powers under this Act, may be accompanied by one or more persons considered by him or her to be necessary to enable him or her to carry out those duties and exercise those powers.

[2002 cW-4.01 s73](#)

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Prohibition

74. (1) An employer shall not

- (a) dismiss or threaten to dismiss an employee;
- (b) discipline or suspend an employee;
- (c) impose a penalty upon an employee; or
- (d) intimidate or coerce an employee,

who refuses to carry out an action which is contrary to this Act or because the employee has reported or proposes to report to a person an act or omission that contravenes, or that the employee has reasonable grounds to believe may contravene, this Act or a term or condition of a licence or permit issued under this Act.

(2) An employee who intentionally provides false or misleading information under subsection (1) is guilty of an offence.

[2002 cW-4.01 s74](#)

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Action prohibition

75. (1) An inspector, officer or employee of the department, a member of a board or committee established under this Act or other person authorized under this Act is not personally liable in an action or a proceeding for or in respect of an act or thing done or omitted by him or her in good faith in the exercise or purported exercise of his or her duties or powers under this Act, or for costs in connection with an action or proceeding.

(2) Notwithstanding subsection 5(4) of the *Proceedings Against the Crown Act*, the liability of the Crown in respect of anything done or omitted to be done by an inspector, officer or an employee of the department or other person in the performance of his or her duties under this Act or the regulations is the same as if subsection (1) were not in force.

[2002 cW-4.01 s75](#)

PART VI ORDERS AND OTHER REMEDIES

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Order

76. (1) Where the minister believes on reasonable grounds that a person has not carried out a directive of the minister, an inspector or other official of the department made under this Act, or has contravened or will contravene this Act or the terms or conditions of a licence or permit issued under this Act, or where the minister considers it necessary for the health and safety of the public, the minister may, whether or not that person has been charged or convicted in respect of the failure to carry out the directive or the contravention, issue an order, in writing, requiring that person at that persons own expense, to

- (a) stop or shut down a use or undertaking immediately, permanently or for a specified time where, with respect to that use or undertaking, there has been a contravention of this Act, the regulations or a term or condition applicable to a licence or permit issued with respect to that use or undertaking;
- (b) do all things and take all steps that are necessary to control, manage, eliminate, remedy or prevent an adverse effect and to comply with this Act, a directive made under this Act, the regulations or terms or conditions applicable to a licence or permit issued under this Act, in accordance with directions set out in the order;
- (c) post a bond or other form of security acceptable to the minister or pay money to the Crown in an amount that the minister considers will ensure compliance with an order made under this section;
- (d) install, remove, replace or alter equipment, a tank, container or thing designed to control, contain, reduce or eliminate an adverse effect to water;
- (e) order the treatment of water by chlorinating, boiling or other means that the minister considers necessary;
- (f) shut down or make a change to waterworks and to a source of water supply in accordance with directions set out in the order; and
- (g) shut down, alter or add to sewage works in accordance with directions set out in the order,

and there shall be served on the person responsible a copy of the order and a statement showing the reasons for the making of the order and upon receipt of the copy and statement, the person shall comply with that order.

(2) In an environmentally sensitive area, and for the protection of the public, an order under subsection (1) may impose terms and conditions in excess of requirements provided under this Act and policies, guidelines and standards prescribed or adopted by the department.

(3) In addition to other requirements that may be included in an order issued under this Part, an order may contain provisions

- (a) requiring a person, at that persons own expense, to
 - (i) maintain records on a relevant matter and report periodically to the minister, or person appointed by the minister,
 - (ii) hire an expert to prepare a report for submission to the minister, or a person appointed by the minister,
 - (iii) submit to the minister, or a person appointed by the minister, a proposal, plan or information specified by the minister setting out an action to be taken by the person,
 - (iv) prepare and submit a contingency plan,

- (v) undertake tests, investigations, surveys and other action, and report results of these to the minister, and
 - (vi) take another measure that the minister considers necessary to facilitate compliance with the order or to protect or restore the environment;
 - (b) establishing the manner, method, or procedures to be used in carrying out the measures required by the order; and
 - (c) establishing a time within which a measure required by the order is to be commenced and the time within which compliance with the order must occur.
- (4) Where a stop order is issued under this section, the inspector, minister or other employee of the department shall, by written notice, not more than 48 hours after issuing that order, give to the person against whom the order is made reasons for it and, where applicable, shall immediately forward a copy of the stop order and the notice to the minister.
- (5) The minister may authorize an official, officer or employee of the department to issue, amend, vary, revoke and give reasons for an order under this section.
- (6) Notwithstanding that a section of this Act first requires that a directive be given, the minister may, where he or she considers it necessary in order to prevent an adverse effect, or for another reason that he or she considers to be appropriate, issue an order under this section ordering those things that would be in the required directive, and this Part shall apply to that order.

[2002 cW-4.01 s76](#)

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Amendment or revocation of order

- 77.** (1) The minister may, with respect to an order made under this Part,
- (a) amend a term or condition of, add a term or condition to, or delete a term or condition from, an order;
 - (b) revoke an order; and
 - (c) amend a typographical error in an order.
- (2) A copy of an order amended or revoked under subsection (1) shall be served as required by this Act on the person to whom the original order was directed and served.

[2002 cW-4.01 s77](#)

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Effects of order

- 78.** (1) An order made under this Part may deal with more than one use or undertaking and may be directed to one or more persons.
- (2) An order under this Part remains in effect until revoked by the minister.
- (3) An order issued under this Part is binding on the heirs, successors, executors, administrators, trustees, receivers, receiver managers and assigns of the person to whom it is directed.

(4) An order made under this Part may be issued against a person responsible regardless of whether or not the act or omission that resulted in the issuance of the order occurred before or after the coming into force of this Act.

[2002 cW-4.01 s78](#)

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Compliance **79.** (1) Where an order is served upon the person to whom it is directed, that person shall comply with the order immediately or, where a period for compliance is specified in the order, within the time period specified.

(2) Where a person to whom an order is directed does not comply with the order or part of the order, the minister may take whatever action he or she considers necessary to carry out the terms of the order.

(3) Where the minister

(a) takes an action under subsection (2) to carry out the terms of an order; or

(b) incurs costs, expenses or charges in order to investigate and monitor the compliance of a person with an order,

the reasonable costs, expenses or charges incurred by the minister in taking that action are recoverable by the minister from the person to whom the order was directed as a debt owed to the Crown, and the minister shall notify the person against whom the order is made of his or her determination of the amount of recoverable costs, expenses and charges.

(4) Where a person defaults in paying a debt owed to the Crown in accordance with subsection (3), the minister may issue a certificate stating the amount due and remaining unpaid to the Crown, and the name of the person by whom it is payable, and file the certificate with the Trial Division and, when filed, the certificate is of the same effect and all proceedings may be taken on it as if it were a judgment of that court for the recovery of the amount stated in the certificate against the person named in the certificate.

(5) Where a stop order is made under this Part, costs, expenses, loss of profit or other damages incurred by the proponent or person responsible for the stopped undertaking or activity, with respect to that undertaking or activity, shall not be recoverable from the Crown.

(6) For the purpose of subsection (3), reasonable costs, expenses or charges include costs incurred by the department in investigating and responding to a matter to which an order relates, or the failure to comply with an order, and costs and expenses for lodging, salaries, remuneration, transportation and meals incurred by the department in monitoring a person required to comply with an order, and in carrying out an action necessary to comply with an order.

[2002 cW-4.01 s79; 2013 c16 s25](#)

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Joint and individual liability

80. (1) Where an order under this Act is directed to more than one person, all persons named in the order are jointly and individually responsible for carrying out the terms of the order and are jointly and individually liable for payment of the reasonable costs, expenses or charges described in subsection 79(3).

(2) Subsection (1) does not apply to an order where the minister and the persons responsible have executed an agreement with respect to an apportionment of cost.

(3) Notwithstanding subsection (1), where an order is directed to a person who is acting in the capacity of executor, administrator, receiver, receiver manager, trustee or mortgagee in possession, in respect of an undertaking or works, the liability of that person is limited to the value of the assets the person is administering or in possession of, less reasonable costs and fees.

(4) The limitation of liability under subsection (3) does not apply if the executor, administrator, receiver, receiver manager, trustee or mortgagee in possession makes decisions or takes an action that contributes to a further adverse effect on becoming aware of that adverse effect.

(5) Where 2 or more persons are liable to pay compensation by way of damages, costs, expenses or charges under this Act, those persons are jointly and individually liable to the person suffering the loss or damage giving rise to that compensation.

(6) A right of contribution or indemnification under subsection (5) may be enforced by action in a court of competent jurisdiction.

[2002 cW-4.01 s80](#)

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Insurance

81. (1) Where a person is insured under an insurance policy that provides for coverage for a cost, expense, loss, damage or charge that may be incurred with respect to compliance with this Act, or an order that may be made under this Part, and the minister may recover that cost, expense, loss, damage or charge under subsection 79(3), the insurer shall, subject to the terms of the relevant policy, pay to the minister, on demand in writing, a cost, expense, loss, damage or charge incurred by the minister.

(2) The minister may enter into an agreement to share the proceeds of an insurance policy to which the minister is entitled under subsection (1), proportionally, or on another basis that the minister considers appropriate, with other persons who have incurred a cost, expense, loss, damage or charge in the circumstances described in subsection (1), and the insurer shall pay the proceeds in accordance with that agreement.

(3) Where an insurer has made a payment under subsection (1) or (2), the payment is considered to be a payment with respect to the cost, expense, loss, damage or charge resulting from the event for which coverage was in effect.

(4) Nothing in this section requires an insurer to pay to the minister or another person a sum or sums totalling in excess of the coverage limits of an insurance policy, or a sum or sums the insurer would otherwise not be obliged to pay under the policy.

(5) The minister may, without restricting the rights of the minister against the holder of the insurance policy, commence an action directly against the insurer for the purpose of enforcing the rights of the minister under this Act.

[2002 cW-4.01 s81](#)

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Licence and permit cancellation and repeal

82. (1) The minister may, upon the request of a person who holds a licence or permit under this Act, cancel that licence or permit.

(2) The minister may refuse to issue, and may cancel, alter or suspend a licence or permit issued or granted under this Act where

- (a) he or she is satisfied that the licence or permit holder will not exercise, or no longer exercises, rights granted under that licence or permit;
- (b) the licence or permit holder would not or does not comply with this Act, the regulations or terms or conditions of the licence or permit;
- (c) the applicant for or holder of the licence or permit made a false or misleading statement on an application, materials, information or a plan submitted under this Act in support of an application for the licence or permit;
- (d) a fee, charge, royalty or other consideration payable with respect to the licence or permit is not paid;
- (e) compensation owed under section 15, or an arbitration conducted under that section, is not paid;
- (f) the licence or permit holder has acted fraudulently with respect to the licence or permit;
- (g) the licence or permit holder fails to comply with an order of the minister made under this Act;
- (h) the licence or permit is issued in error or mistake; and
- (i) there has been a cancellation or termination of a licence or permit holders ownership of the land on which the water relating to the licence or permit is to be used.

(3) Where a licence or permit is cancelled under subsection (1) or (2), all rights granted under that licence or permit cease and the minister may issue a licence or permit for those rights to another person.

(4) Where the minister intends to cancel, alter or suspend a licence or permit under subsection (2), he or she shall serve notice, in the time and manner required by regulation, upon the licence or permit holder, stating

- (a) the intention to cancel, alter or suspend the licence or permit, together with reasons; and
- (b) that, if the licence or permit holder objects to the proposed action, that holder shall, within the period prescribed by regulation, deliver to the minister, written objections, together with reasons for the objections.

(5) Where the minister does not receive objections under subsection (4) within the period prescribed by regulation, the minister may order the cancellation, alteration or suspension of the licence or permit in accordance with subsection (2).

(6) Where objections under subsection (4) are received by the minister within the period prescribed by regulation, the minister shall investigate the matter and, after considering the results of the investigation and the objection, may order the reinstatement, cancellation, alteration or suspension of the licence or permit.

(7) Where a licence or permit is cancelled, altered or suspended under this section, the minister may make an order that he or she considers appropriate to alter, change, close, remove, destroy or otherwise make the whole or part of works to which the licence, or permit is related inoperable, and shall, in that order, state the time period during which the order is to be complied with.

(8) Where a licence or permit has been cancelled or suspended under this section, or where the whole or part of the rights held under a licence or permit are cancelled or suspended, the licence or permit holder is not relieved of liability for damage resulting from works constructed, operated or maintained by the licensee or permit holder from a defect, insufficiency or failure of the works.

[2002 cW-4.01 s82](#)

PART VII SECURITY, LEASES AND EXPROPRIATION

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Security

83. (1) A person who wishes to obtain a licence or permit to carry out an undertaking shall provide financial or other security with respect to the undertaking in accordance with the regulations.

(2) The minister may determine the manner in which, and the conditions under which, security that is deposited by a licence or permit holder may be forfeited or returned, in whole or in part.

[2002 cW-4.01 s83](#)

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Lease, etc. with municipal authority

84. The minister may enter into a lease or other agreement with a municipal authority to provide for the management or administration of land owned or controlled by the municipal authority where that land is to be used for a use or undertaking to which this Act applies.

[2002 cW-4.01 s84](#)

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Expropriation

85. Where property, or an interest in property, is required by the Crown, after the coming into force of this Act, for an undertaking, or is necessary for creating, protecting and developing water power or a body of water, the Lieutenant-Governor in Council, upon the recommendation of the minister, may direct the Minister of Works, Services and Transportation to acquire title to that property or interest by expropriation under the *Expropriation Act* .

[2002 cW-4.01 s85](#)

PART VIII APPEALS

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Appeal to minister

86. (1) A person who is aggrieved by a decision or an order made under this Act may appeal that decision or order to the minister by notice in writing, within 60 days of receipt of that decision or order, stating the reasons for the appeal.

(2) The minister shall notify the appellant, in writing, of his or her decision within 30 days of receipt of the notice of appeal.

(3) The minister may dismiss the appeal, allow the appeal or make another decision or order that may be made under this Act.

(4) A person who believes that his or her rights or interest would be prejudiced by the granting of a licence may, within the time established by regulation, file with the minister a statement of objection and his or her reasons for making that objection.

(5) The minister shall decide if an objection made under subsection (4) warrants a hearing and shall notify the person who makes the objection of his or her decision with respect to a hearing.

(6) Where the minister holds a hearing under subsection (5), the applicant for a licence and the person objecting to that application shall be notified of the time and place of the hearing, and shall be notified, in writing, of the ministers decision following the hearing.

[2002 cW-4.01 s85](#)

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Appeal to Trial Division

87. (1) A person aggrieved by a decision or order of the minister under this Act respecting the

- (a) terms or conditions of a licence or permit issued under the Act;
- (b) amendment, addition or deletion of terms and conditions of a licence or permit; and
- (c) cancellation of a licence or permit,

may, within 30 days of the order or the decision appeal, on a question of law or on a question of mixed law and fact, to the Trial Division and the decision of the Trial Division is final.

(2) Notwithstanding a rule or practice to the contrary, a notice of appeal shall

- (a) set out in detail the allegations of the appellant and the grounds upon which the order or decision is appealed against; and
- (b) be signed by the appellant or the appellants solicitor.

(3) An appellant shall, within 30 days after the service of the notice of appeal under this section, apply to a judge for the appointment of a day for the hearing of the appeal and shall, not fewer than 30 days before the hearing, serve upon the minister or deputy minister a written notice of the day appointed for the hearing.

(4) The minister shall produce before the judge hearing the appeal all papers and documents in his or her possession affecting the matter of the appeal.

(5) Where an appellant does not comply with subsection (3) the notice of appeal shall be considered void and the decision being appealed shall be considered to be final.

(6) The judge shall hear an appeal made under subsection (1) and the evidence brought forward by the appellant and the Crown in a summary manner and shall decide the matter of the appeal by

- (a) upholding, amending or revoking the order or decision; or

(b) making another order or decision that the judge considers proper in the circumstance.

(7) An appeal made under this section shall be dismissed by the Trial Division if the sole ground for relief established on the appeal is a defect in form or a technical irregularity.

(8) A judge may make an order as to costs for or against the appellant or the Crown and may fix the amount of those costs.

(9) An appeal may be taken from a decision of a judge of the Trial Division to the Court of Appeal on a point of law raised upon the hearing of the appeal by the judge of the Trial Division.

(10) The filing of an appeal under this section or section 86 shall not affect the order or decision appealed from and the order shall remain in force pending the outcome of the appeal.

[2002 cW-4.01 s87](#)

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Civil remedy

88. A civil remedy for an act or omission is not suspended or affected by reason only that the act or omission is an offence under this Act or gives rise to a remedy under this Act, and nothing in this Act shall be considered to repeal, reduce or remove a remedy available to a person under another Act of the province, at common law or under an Act of the government of Canada or of another province of Canada.

[2002 cW-4.01 s88](#)

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Service

89. (1) A notice, order or other document under this Act or the regulations is sufficiently given or served where delivered personally or sent by registered mail addressed to the person to whom delivery or service is to be made at the latest address appearing on the records of the department.

(2) Where a person to whom a notice, order or other document is to be given or served as described in subsection (1) is a corporate body, it shall be considered to be sufficiently given or served where

(a) delivered personally to a director or chief executive officer of that corporate body; or

(b) delivered personally or by registered mail to the registered office in the province of that corporate body.

[2002 cW-4.01 s89](#)

PART IX OFFENCE AND PENALTY

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Offence

90. (1) A person who contravenes this Act, an order made under this Act or a condition or term of a licence or permit issued under this Act is guilty of an offence.

(2) A person who wilfully or negligently puts, or allows to pass into, a well, spring or other source of water supply used by a person, a substance or thing that may cause an adverse effect to a water supply is guilty of an offence.

[2002 cW-4.01 s90](#)

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Penalty

91. (1) A person who is guilty of an offence under this Act, where a penalty is not otherwise provided for that offence, is liable on summary conviction

- (a) in the case of a corporation or a municipal authority,
 - (i) for the first conviction, to a fine of not less than \$1,000 and not more than \$1,000,000, and
 - (ii) for a subsequent conviction, to a fine of not less than \$4,000 and not more than \$1,000,000; and
- (b) in the case of a person who is not a corporation or a municipal authority,
 - (i) for a first conviction, to a fine of not less than \$500 and not more than \$10,000, or to a term of imprisonment of not more than 3 months, or to both the fine and imprisonment, and
 - (ii) for a subsequent conviction, to a fine of not less than \$1,000 and not more than \$10,000, or to a term of imprisonment of not more than 6 months, or to both a fine and imprisonment.

(2) Every continuance of an offence for a day or part of a day constitutes a separate offence.

(3) Where 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, monetary benefits accrued to the offender, the court may order the offender to pay, in addition to a fine under subsection (1), a fine in an amount equal to the amount of those monetary benefits.

(4) Where a person is convicted of an offence under this Act, in addition to another penalty that may be imposed under this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order

- (a) prohibiting the offender from doing a thing that may result in the continuation or repetition of the offence;
- (b) directing the offender to take the action that the court considers appropriate to remedy or prevent harm to water resources that results from the act or omission that constituted the offence;
- (c) requiring the offender to monitor the effectiveness of the remedial and preventive measures in a manner and for a period of time as decided by the court;
- (d) directing the offender to post a bond or pay money into court in an amount that will ensure compliance with an order made under this section;
- (e) directing the offender to compensate the minister, in whole or in part, for the cost of remedial or preventive action that was carried out by the minister, or caused by the

offender to be carried out by the minister, and was made necessary by the act or omission that constituted the offence; or

- (f) requiring the offender to comply with other conditions the court considers appropriate in the circumstances for securing the offenders good conduct and for preventing the offender from repeating the same offence or committing other offences.

[2002 cW-4.01 s91](#)

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Recovery in debt

92. (1) The government may recover as a debt owed to the Crown, as a result of a conviction for an offence under this Act, an amount imposed by way of a fine and costs and expenses of the government of the province incurred as a result of prosecuting that offence.

(2) The reasonable costs, expenses or charges incurred in carrying out cleanup measures, investigations, monitoring and the direction of a use or undertaking, in addition to another remedy which may be available under this Act, may be recovered by the government as a debt owed to the Crown from the person who is responsible for the need to take those emergency measures, investigations, monitoring or that direction.

(3) For the purpose of this section, reasonable costs, expenses or charges include the costs, expenses and charges of the lodging, salary, remuneration, transportation and meals of an inspector or employee of the government of the province and of a consultant necessary to analyze a substance, investigate, monitor, carry out or direct a use, undertaking or emergency measure.

[2002 cW-4.01 s92](#)

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Documentary evidence

93. (1) Where, under this Act, a proceeding is before a court, a

- (a) notice, licence, permit or order;
- (b) document stating that a person named in that document was or was not, at a specified time, the licence or permit holder; and
- (c) document setting out the day on which an inspector, employee or the minister became aware of the matter leading to the proceeding,

purporting to be signed by the person authorized to issue, make or give it is, in the absence of evidence to the contrary, evidence of the content of that notice, licence, permit, order or document without proof of the signature or official character of the person signing it.

(2) In an action, claim or proceeding under this Act, a document purporting to be signed by the minister setting out the amount of the cost, expense or charge is, in the absence of evidence to the contrary, proof

- (a) of the amount of the cost, expense or charge set out in the document; and
- (b) that the cost, expense or charge was made necessary or was caused by the activity or undertaking in contravention which led to the action, claim or proceeding.

[2002 cW-4.01 s93](#)

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Analyst

94. (1) The minister may appoint a person or a class of persons as an analyst or analysts for the purpose of the enforcement of this Act.

(2) An inspector may submit to an analyst, for analysis or examination, a substance or thing or a sample of a substance or thing taken or seized by the inspector under this Act.

(3) An analyst who has made an analysis or examination of a substance or thing or a sample of a substance or thing submitted under subsection (2) may issue a certificate or report setting out the results of that analysis or examination.

(4) A certificate purporting to be signed by an analyst and stating that a substance or thing or a sample of a substance or thing has been submitted to and analyzed or examined by that analyst and stating the results of the analysis is admissible in evidence in court and, in the absence of evidence to the contrary, is proof of the statements contained in the certificate without proof of the signature or the official character of the person appearing to have signed it.

(5) The minister may establish quality assurance programs and methods for sampling and analysis.

[2002 cW-4.01 s94](#)

PART X TRANSITIONAL, AMENDMENTS AND REPEAL

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Transitional

95. An approval, authorization, certificate, permit, variance or order issued under the *Environment Act* before the coming into force of this Act, where that approval, authorization, certificate, permit, variance or order relates to a matter to which this Act would apply, shall

- (a) be considered to have been issued as a licence, permit or order under this Act;
- (b) be subject to this Act; and
- (c) continue in force until that approval, authorization, certificate, permit, variance or order would have expired, or had to be renewed or reissued under the *Environment Act*, or 2 years after the coming into force of this Act, whichever occurs first.

[2002 cW-4.01 s95](#)

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RSNL1990 cC-15 Amdt.

96. Sections 180, 185 and 187 of the *City of Corner Brook Act* are amended by striking out the words "*Department of Environment and Lands Act* " and substituting the words "*Water Resources Act* ".

[2002 cW-4.01 s96](#)

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RSNL1990 cC-16 Amdt.

97. Sections 179, 185 and 187 of the *City of Mount Pearl Act* are amended by striking out the words "*Department of Environment and Lands Act* " and substituting the words "*Water Resources Act* ".

[2002 cW-4.01 s97](#)

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RSNL1990 cC-17 Amdt.

98. The *City of St. Johns Act* is amended by adding immediately after section 105 the following:

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Water resources

105.1 Where the council is empowered to make rules, regulations or by-laws respecting watershed protection and water management under this Act, the minimum levels or standards set out in the *Water Resources Act* and the regulations made under that Act shall apply.

[2002 cW-4.01 s98](#)

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RSNL1990 cE-19 Amdt.

99. Section 3 of the *Expropriation Act* is amended by adding immediately after paragraph (g) the following:

(g.1) the purposes of the *Water Resources Act* ;

[2002 cW-4.01 s99](#)

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RSNL1990 cH-16 Amdt.

100. The *Hydro Corporation Act* is amended by adding the following immediately after section 24 the following:

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Application of Water Resources Act

24.1 This Act is subject to the *Water Resources Act* .

[2002 cW-4.01 s100](#)

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RSNL1990 cM-12 Amdt.

101. Section 4 of the *Mineral Act* is amended by adding after subsection (2) the following:

(2.1) Notwithstanding subsection (1), this Act is subject to the *Water Resources Act* .

[2002 cW-4.01 s101](#)

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RSNL1990 cM-24 Amdt

102. (1) Subsections 156(1) and 161(1) of the *Municipalities Act, 1999* are amended by deleting the words "*Environment Act* " wherever they occur and substituting the words "*Water Resources Act* ".

(2) Sections 392 and 393 of the Act are amended by deleting the words "*Environment Act* " wherever they occur and substituting the words "*Water Resources Act* ".

[2002 cW-4.01 s102](#)

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Repeal

103. The following Acts are repealed:

- (a) the *Crown Lands Act* ;
- (b) the *Water Resources Protection Act* ; and
- (c) the *Well Drilling Act* .

[2002 cW-4.01 s103](#)