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SNL2002 CHAPTER E-14.2

**ENVIRONMENTAL PROTECTION ACT**

Amended:

2004 cL-3.1 s28; 2006 c12; 2006 c32; 2013 c16 s25

**CHAPTER E-14.2**

**AN ACT RESPECTING ENVIRONMENTAL PROTECTION**

*(Assented to May 22, 2002 )*

*Analysis*

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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 *Environmental Protection Act*.

[2002 cE-14.2 s1](#)

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**Definitions**

2. In this Act

- (a) "activity" means an activity or part of an activity as defined and prescribed by regulation;
- (b) "adverse effect" means an effect that impairs or damages the environment and includes an adverse effect to the health of humans;
- (c) "air" means air not enclosed in a building, structure, machine, chimney, stack, flue, tank, pipe or other human made structure;
- (d) "analyst" means a person appointed as an analyst under section 122;
- (e) "approval", unless the context indicates otherwise, means an approval issued under this Act in accordance with Part XI and the regulations with respect to an activity and includes an amended, varied, qualified or renewed approval and terms and conditions that the minister may apply to an approval and to an amended, varied, qualified or renewed approval;
- (f) "compliance agreement" means an agreement made as permitted by this Act in accordance with section 105;
- (g) "compost" means the treatment of waste and organic matter by aerobic decomposition and microbial action to produce a stable, inert material;
- (h) "contaminant" means, unless otherwise defined in the regulations, a substance that

causes or may cause an adverse effect;

- (i) "contaminated site" means a site designated as a contaminated site by the minister under section 26;
- (j) "court", unless the context indicates otherwise, means the Provincial Court of Newfoundland and Labrador ;
- (k) "dangerous goods" means an organism, substance or thing designated as being dangerous goods under the regulations;
- (l) "department", unless the context indicates otherwise, means the department presided over by the minister;
- (m) "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,
  - (v) a solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from the activities of humans, or
  - (vi) a part or a combination of those things referred to in subparagraphs (i) to (v) and the interrelationships between 2 or more of them;
- (n) "environmental audit" means an independent assessment of
  - (i) a person's compliance with this Act and approvals issued under this Act,
  - (ii) a person's environmental plans, policies, practices, controls and records, and
  - (iii) the extent to which a person's environmental plans, policies, practices and controls have been implemented;
- (o) "environmental effect" means a change in the present or future environment that would result from an undertaking;
- (p) "environmental site assessment" means an independent assessment of a site or the operations on a site to
  - (i) determine whether the environment is or may be subjected to a contaminant,
  - (ii) determine whether the environment is or may be subjected to the release of a substance in contravention of this Act,
  - (iii) establish the extent and severity of an adverse effect,
  - (iv) identify the causes of an adverse effect and identify anything that may cause an adverse effect in the future,
  - (v) identify ways to repair, mitigate or remedy an adverse effect to the environment resulting from a release of a substance, including a contaminant, and
  - (vi) identify ways to prevent and mitigate future releases of substances, adverse effects and contamination;
- (q) "handle" includes use, storage, distribution, treatment, removal, reduction, manufacture,

transport, generation, processing, packaging, re-processing, recycling, selling, offer for sale, disposal of, import into and export from the province;

(r) "inspector" means an inspector appointed under section 89;

(s) "land" includes enclosed land, surface land, land covered by water, subsoil, matter beneath the subsoil or a combination of these;

(t) "minister", unless the context indicates otherwise, means the minister appointed under the *Executive Council Act* to administer this Act;

(u) "municipality" means the cities of Corner Brook , Mount Pearl and St. John's and a municipality as defined in the *Municipalities Act, 1999* ;

(v) "package" means a material or item that is used to protect, contain or prepare for transportation a commodity or product and may also be a material or item that is physically attached to a product or its container for the purpose of marketing the product or communicating information about the product;

(w) "person" includes an association of persons, a municipality and the government of the province;

(x) "person responsible" means

(i) the owner of a substance or thing,

(ii) the owner or occupier of land on which an adverse effect has occurred or may occur,

(iii) the owner or operator of an undertaking,

(iv) a previous owner of a substance or thing,

(v) a person who handles or has or has 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);

(y) "person responsible for the contaminated site" means

(i) a person responsible for a substance that is over, in, on or under the contaminated site,

(ii) another person whom the minister considers to be responsible for causing or contributing to the release of a substance into the environment,

(iii) the owner, occupier or operator of the contaminated site,

(iv) a previous owner, occupier or operator of the contaminated site who was the owner, occupier or operator at a time when the substance was released over, in, on or under the contaminated site,

(v) a successor, assignee, executor, administrator, receiver, receiver-manager or trustee of a person referred to in subparagraphs (i) to (iv), or

(vi) a person who acts as the principal or agent of a person referred to in paragraphs (i) to (v);

- (z) "pest icide" includes
  - (i) an insecticide, avicide, rodenticide and fungicide, that is, a substance or mixture of substances used for the destruction or control of insects, birds, rodents, fungi or other pests and micro-organisms,
  - (ii) an herbicide, that is, a substance or mixture of substances used for the destruction or control of vegetation, a defoliant, plant growth regulator, plant desiccant or substance used for soil sterilization, and
  - (iii) a substance or mixture of substances intended for use as a pest control product under the *Pest Control Products Act* (Canada );
- (aa) "plant growth regulator" means a substance or mixture of substances that, through physiological action, accelerates or alters the behaviour of a plant, but does not include a plant nutrient, a trace element, plant inoculant or a soil amendment;
- (bb) "recovery" means the process of obtaining and reutilizing material or energy from solid, liquid or gaseous waste;
- (cc) "recycle" means a process by which a post use material is collected with the intent of processing that material to transform it into another material or substance or for another use;
- (dd) "rehabilitation" includes
  - (i) the conducting of an investigation to determine the concentration and distribution of a substance,
  - (ii) restoring to a former condition,
  - (iii) the removal of equipment or a building or other structure or appurtenance,
  - (iv) the removal of a contaminant from land or water,
  - (v) the stabilization, contouring, maintenance, conditioning or reconstruction of land,
  - (vi) the restoration of habitat, populations and the socio-economic integrity of valued ecosystem components, and
  - (vii) another procedure, operation or requirement of this Act;
- (ee) "release", except in Part X, means to spill, discharge, dispose of, spray, inject, inoculate, abandon, deposit, leak, seep, pour, emit, empty, throw, dump, place, drain, pump or exhaust;
- (ff) "reuse" means the direct reapplication of a product, material, substance or item for the same or a different purpose, in its original form;
- (gg) "sewage" means residential, municipal, commercial or industrial water borne and solid wastes and storm water runoff that would, if left untreated, cause an adverse effect;
- (hh) "sewage works" means works for or incidental to the collection transmission, treatment and disposal of sewage or a part of those sewage works;
  - (ii) "storage" and "storing" means the holding of a substance for a temporary period at the end of which it is intended to be processed, used, transported, treated or disposed of;
- (jj) "substance" means
  - (i) matter that may become dispersed in the environment,



- (ii) matter that is capable of becoming transformed in the environment into matter referred to in subparagraph (i),
- (iii) heat, radiation or another form of energy,
- (iv) an odour or a thing that causes an odour or which may be transformed to produce or cause an odour,
- (v) an organism, whether or not it is living, and
- (vi) a combination of things referred to in subparagraphs (i) to (v);
- (kk) "sustainable development" means meeting the needs of present generations without compromising the ability of future generations to meet their needs;
- (ll) "treat" means to apply a method, technique or process, including neutralization, stabilization, filtration and settling that is designed to change the physical, chemical or biological concentration, character or composition of a substance;
- (mm) "undertaking" includes an enterprise, activity, project, structure, work or proposal and a modification, abandonment, demolition, decommissioning, rehabilitation and an extension of them that may, in the opinion of the minister, have a significant environmental effect;
- (nn) "waste" includes rubbish, offal, slime, tailings, effluent, sludge, sewage, garbage, refuse, scrap, litter or other substances or waste products that would or could cause an adverse effect;
- (oo) "waste dangerous goods" means a substance designated as waste dangerous goods by regulation;
- (pp) "waste management system" means a system for the collection, transportation, handling, storage, treatment, utilization, diversion, recycling, reuse, recovery, reduction or disposal of waste;
- (qq) "water" includes a surface or subterranean source of fresh or salt water within the jurisdiction of the province, whether or not that source usually contains liquid or frozen water, 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, wetland, canal and other flowing or standing water and land at any time covered by water;
- (rr) "waterworks" means a public, commercial or industrial works for the collection, production, treatment, storage, supply and distribution of water or a part of those works; and
- (ss) "works" includes all property, buildings, erections, plant, machinery, installations, materials, dams, canals, devices, fittings, apparatus, appliances and equipment.

[2002 cE-14.2 s2](#)

## PART I APPLICATION

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### **Crown bound**

**3.** (1) This Act is binding upon the Crown, its corporations, agents, administrators, servants, employees and agencies.

(2) In this section "Crown" means the Crown in right of the province and in so far as the legislative competence of the province extends, includes the Crown in right of Canada .

[2002 cE-14.2 s3](#)

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### **Conflict with another Act**

4. (1) Where there is a conflict between this Act and another Act, this Act prevails.
- (2) A licence, permit, approval or other authorization issued under another enactment does not constitute an approval under this Act, unless otherwise stated in the regulations.
- (3) A provision of another Act or of a regulation or by-law of a municipality is not in conflict with this Act by reason only that it imposes a restriction or requires a condition for the protection of the environment in excess of that required by this Act.
- (4) Nothing in this Act affects or impairs the validity of a regulation or by-law of a municipality or an authorization issued by a municipality relating to matters dealt with in this Act unless the regulation, by-law or authorization is in conflict or inconsistent with this Act.
- (5) Notwithstanding subsections (1) to (4), 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.

[2002 cE-14.2 s4; 2004 cL-3.1 s28](#)

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### **Terms added to approvals, licences etc.**

4.1 Where, under this Act, the minister issues an approval, licence or other authorization the minister may add to that approval, licence or other authorization terms and conditions that the holder of the approval, licence or authorization 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 s28](#)

## **PART II ENVIRONMENTAL EDUCATION AND RESEARCH**

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### **Research**

5. (1) For the purpose of fostering an understanding of and responsibility for the environment the minister may
- (a) compile information and undertake research related to the environment, environmental education and sustainable development;
  - (b) provide a person with access to environmental information in the control of the department;
  - (c) convene conferences and conduct seminars and educational and training programs relating to the environment and sustainable development;
  - (d) maintain a library consisting of publications and other information relating to environmental matters;

- (e) develop, publish and distribute educational material with respect to the environment and sustainable development; and
- (f) assist and support the government of the province or other persons in designing, producing and delivering throughout the province, educational programs pertaining to sustainable development and other information.

(2) The minister may contribute to, sponsor or undertake research that he or she considers necessary to achieve the purpose of this Act and may enter into agreements with respect to that research and development.

[2002 cE-14.2 s5](#)

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### **Boards and committees**

6. The minister may establish and appoint members to those boards, committees and councils that are necessary or desirable to help and advise him or her in carrying out this Act or a Part of this Act.

[2002 cE-14.2 s6](#)

## **PART III RELEASE OF SUBSTANCES**

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### **Prohibition**

7. (1) A person shall not release or permit the release of a substance into the environment in an amount, concentration or level or at a rate of release that in the opinion of the minister causes or may cause an adverse effect, unless authorized under this Act or an approval issued under this Act.

(2) A person shall not release or permit the release of a substance into the environment in an amount, concentration or level or at a rate of release exceeding that expressly authorized under this Act or an approval issued under this Act.

[2002 cE-14.2 s7](#)

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### **Report of release**

8. (1) A person responsible for the release of a substance into the environment that has caused, is causing or may cause an adverse effect shall, as soon as that person knows or ought to know of the release, report it to

- (a) the department or other appropriate agency at its emergency telephone number or as required by the department or agency;
- (b) the owner of the substance if the person reporting knows or is readily able to ascertain the identity of the owner;
- (c) the person having care, management or control of the substance if the person reporting knows or is readily able to ascertain the identity of that person; and
- (d) another person who the person reporting knows or ought to know may be directly affected by the release.

(2) A person responsible for a release of a substance into the environment that is in excess of an amount, concentration, level or rate of release expressly authorized under this Act or an

approval issued under this Act, shall immediately, as soon as that person knows or ought to know of the release, report it as required under this Act or an approval to the persons identified in paragraphs (1)(a) to (d).

[2002 cE-14.2 s8](#)

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### **Remedial measures**

**9.** A person responsible for the release of a substance shall, at that person's own cost, and as soon as that person knows or ought to have known of the release of a substance into the environment that has caused, is causing or may cause an adverse effect,

- (a) take all reasonable measures to
  - (i) prevent, reduce and remedy the adverse effects of the substance, and
  - (ii) remove or otherwise dispose of the substance in a manner that minimizes adverse effects;
- (b) take other measures required by an inspector or the department; and
- (c) rehabilitate the environment to a standard that the department may adopt or require.

[2002 cE-14.2 s9](#)

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### **Voluntary reporting**

**10.** (1) A person may provide the department with detailed information that the person has obtained through an environmental audit or an environmental site assessment about that person's non-compliance with this Act or an approval.

- (2) Where information is provided to the department under subsection (1), the minister may
  - (a) negotiate and enter into a compliance agreement with that person to address an adverse effect to the environment or another circumstance arising from the non-compliance; or
  - (b) issue an order under Part XIII.

[2002 cE-14.2 s10](#)

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### **Department emergency measures**

**11.** (1) Where an inspector is of the opinion that a release of a substance into the environment may cause, is causing, has caused or may have caused an environmental emergency, the inspector may take those emergency measures that the inspector considers necessary to prevent, reduce and remedy the adverse effect and the emergency.

(2) Subsection (1) applies whether or not the substance release is or was expressly authorized by and is or was in compliance with this Act or an approval issued under this Act.

[2002 cE-14.2 s11](#)

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### **Classification of releases of substances**

**12.** The minister may

- (a) classify or allow the release of substances for the purposes of this Part;
- (b) determine the concentration, amount, level and rate of release of a substance into the environment; and
- (c) determine the manner in which a report of a release of a substance is to be made and the contents of the report.

[2002 cE-14.2 s12](#)

## **PART IV WASTE DISPOSAL AND LITTER**

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### **Restrictions, guidelines and recyclable content**

#### **13. The minister may**

- (a) establish restrictions and prohibitions on waste management systems;
- (b) determine minimum content requirements for recycled and recyclable materials in specific substances or products and establish restrictions on the production or sale of products that cannot be reused or recycled;
- (c) develop codes and guidelines for the use and content of recyclable materials in the manufacture of new substances or products; and
- (d) require that waste management plans be submitted to the department.

[2002 cE-14.2 s13](#)

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### **Litter and waste**

**14. (1)** The minister shall, in accordance with the regulations, encourage the prevention and reduction of litter with respect to

- (a) waste disposal practices at construction sites, commercial and service outlets and other places where litter is or may accumulate;
- (b) requiring organizers of public and private events to have available and maintain at the sites of the events an adequate number of receptacles for recyclable materials, litter and waste disposal;
- (c) regulating or prohibiting activities that result or may result in the unlawful disposal of litter or waste including the placement of flyers on utility poles, vehicles, buildings, structures or other things;
- (d) regulating the disposal of waste on land and on, in or under water and ice; and
- (e) generally providing for matters that will prevent or reduce litter.

(2) The minister may designate a material that is to be banned, reduced, composted, recycled or restricted in use.

(3) A person shall not sell or use a material designated under subsection (2) except as permitted by the minister.

[2002 cE-14.2 s14](#)

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### **Waste disposal sites**

**15.** The minister may establish standards and requirements for waste disposal sites and waste management systems in the province.

[2002 cE-14.2 s15](#)

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### **Prohibition**

**16.** A person shall not

- (a) release waste upon land whether or not that land is developed or covered by water or release waste in a building or structure unless that waste is disposed of in a receptacle or container placed or located specifically for the purposes of collection of that waste and in accordance with this or another Act of the province; or
- (b) use facilities or equipment for the collection, handling, treatment, transportation, storing, processing, use and disposal of waste that is not part of a waste disposal site or a waste management system for which an approval is issued.

[2002 cE-14.2 s16](#)

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### **Prohibition**

**17.** (1) A person who is the owner of a motor vehicle in the province and any other person shall not abandon that motor vehicle in the province.

(2) For the purpose of this section, a motor vehicle shall be considered to be abandoned where that vehicle has been left unattended without lawful authority and appears to be abandoned by reason of its age, appearance, mechanical condition or lack of identification plates.

(3) For the purpose of this section, in the absence of evidence to the contrary, a person who is the last registered owner of an abandoned motor vehicle shall be considered to have been the owner of that motor vehicle at the time of its abandonment.

(4) For the purpose of subsection (3), a certificate issued by the Registrar of Motor Vehicles appointed under section 4 of the *Highway Traffic Act*, signed by him or her and stating that a person is the last registered owner of a motor vehicle is, in the absence of evidence to the contrary, proof of the fact so certified without proof of the signature or official character of the person appearing to have signed the certificate.

(5) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of not less than \$1,000 and not more than \$5,000, or to a term of imprisonment of not more than 6 months or to both a fine and imprisonment.

(6) Where a person has been convicted under subsection (5), the court shall order that

- (a) the person remove the abandoned motor vehicle as directed by the minister; or
- (b) the person pay to the minister, the cost of the removal of the abandoned motor vehicle,

and the court shall order that

- (c) the person's driver's licence is suspended for 6 months or until the abandoned motor vehicle has been removed or until payment has been made under paragraph (b), whichever is lesser.

(7) Where an order to suspend a person's driver's licence is made under paragraph (6)(c), sections 60 and 61 of the *Highway Traffic Act* apply, with the necessary changes, to the court which made that order.

(8) Section 7 of the *Provincial Offences Act* shall not apply in relation to an offence under this section.

(9) An information or complaint under subsection (1) may be made on or before a date 10 years from the date when the matter of the information or complaint arose or 10 years after September 1, 1993, whichever date is later.

[2002 cE-14.2 s17](#)

## **PART V WASTE MANAGEMENT**

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### **Definitions**

**18.** In this Part

- (a) "board" means the Multi-Materials Stewardship Board continued under section 19;
- (b) "reduction" means the elimination of packaging or reduction of the weight, volume or toxicity of packaging or an item;
- (c) "waste management" means the collection, transportation, handling, storage, treatment, utilization, diversion, recycling, reuse, recovery, reduction and disposal of waste material;
- (d) "waste management program" means a program containing provisions or requirements for waste management, and includes related research; and
- (e) "waste material" means
  - (i) refuse, garbage, rubbish, litter, scrap and discarded material, including tailings, effluent, sludge, sewage, offal, and machinery, and a product, vehicle or other item that is dumped, discarded, abandoned or otherwise disposed of,
  - (ii) a material or thing that may be a danger to the health of human beings, animals, wildlife or fish, or is of unsightly appearance, and
  - (iii) a substance designated as waste material in the regulations.

[2002 cE-14.2 s18](#)

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### **Board continued**

**19.** (1) The Multi-Materials Stewardship Board continued under section 4 of the *Waste Management Act* is continued as a corporation.

(2) The board is an agent of the Crown.

(3) The board shall support and promote the protection, enhancement and wise use of the environment through waste management programs.

[2002 cE-14.2 s19](#)

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**Waste management program**

**20.** (1) The board may submit a proposal for a waste management program to the minister.

(2) In accordance with a written request by the minister, the board shall submit a proposal for a waste management program to the minister.

(3) Subject to the approval of the Lieutenant-Governor in Council, the minister may

- (a) approve all or part of a waste management program;
- (b) approve an amendment to a waste management program;
- (c) impose conditions on a waste management program;
- (d) direct the board to implement and operate a waste management program;
- (e) direct the board to include a provision or requirement in a waste management program;  
and
- (f) cancel a waste management program.

(4) The minister may reject all or part of a waste management program.

(5) The board shall not implement or operate a waste management program except in accordance with the approval of the minister.

(6) The minister may implement and operate a waste management program approved by the Lieutenant-Governor in Council.

(7) A program for waste management operated under the authority of the board at the time this Act comes into force is considered to be a waste management program approved under this section.

[2002 cE-14.2 s20](#)

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**Authority of minister**

**21.** The minister may

- (a) undertake or support and encourage research into waste management; and
- (b) require the board, a corporation, institution or government department or agency to collect and record data or other information on waste management, and to provide a report as required by the minister.

[2002 cE-14.2 s21](#)

**PART VI  
AIR QUALITY MANAGEMENT**

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**Air quality standards and controls**

**22.** The minister may

- (a) establish provincial ambient air quality standards or objectives necessary for the protection of the environment;



- (b) establish performance specifications, standards and methods for air quality testing and monitoring;
- (c) maintain inventories and establish reporting requirements for emissions of air contaminants;
- (d) establish air emission standards for odour, toxic, and common and nuisance air contaminants;
- (e) establish performance specifications for vehicles, equipment, operations and facilities emissions;
- (f) test, monitor and regulate the release of substances into the air;
- (g) establish performance standards and specifications for wood burning stoves and furnaces and other stationary combustion sources;
- (h) adopt overall provincial emission caps, production goals and product manufacturing, sale and use restrictions with respect to air quality issues of regional or global significance;
- (i) conduct or require air quality and meteorological studies and compliance monitoring programs;
- (j) establish regional air quality management programs to address the combined effects of multiple sources of air contaminants;
- (k) enter into agreements respecting air quality management issues;
- (l) prepare model by-laws and otherwise cooperate with municipalities to promote improved air quality; and
- (m) establish requirements with respect to the design, operation or maintenance of equipment, devices or services that may emit or limit the issuance of contaminants into the air and require alterations to them where they are not functioning in the manner that the minister considers to be appropriate.

[2002 cE-14.2 s22](#)

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### **Air quality management areas**

**23.** (1) The minister may establish air quality management areas in the province.

(2) The minister may develop an air quality management plan for an area established under subsection (1) and may, in accordance with the regulations, establish for that area an air quality advisory committee which may investigate air quality issues and make recommendations to the minister with respect to air quality management plans and programs for that area.

(3) An air quality management plan may consider and apply to the combined effects of air contaminants that originate from more than one source.

[2002 cE-14.2 s23](#)

## **PART VII CONTAMINATED SITES**

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### **Application**

**24.** This Part applies regardless of when a substance became present in, on, over or under a contaminated site.

[2002 cE-14.2 s24](#)

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### **Agreements**

**25.** The minister may enter into compliance agreements and other agreements and establish programs and other measures that he or she considers necessary to

- (a) restore and secure a contaminated site and the environment affected by a contaminated site;
- (b) pay the costs of restoring and securing a contaminated site and the environment affected by a contaminated site; and
- (c) impose levies and establish a fund for the purposes of paragraphs (a) and (b),

whether or not a person responsible for a contaminated site cannot be identified or is unable to pay for those costs.

[2002 cE-14.2 s25](#)

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### **Contaminated sites**

**26.** (1) Where the minister is of the opinion that a substance that may cause, is causing or has caused an adverse effect is present in an area of the environment, the minister may designate that area of the environment as a contaminated site.

(2) The minister shall establish standards, criteria or guidelines with respect to contaminated sites before making a designation under subsection (1).

(3) This section applies notwithstanding that

- (a) an administrative or enforcement remedy has been pursued under this Act or under another law with respect to the contaminated site;
- (b) the substance was released in accordance with this or another Act or law;
- (c) the release of the substance was not prohibited under this Act;
- (d) the substance originated from a source other than the contaminated site; and
- (e) there are 2 or more owners of the area or a part of the area that is a contaminated site.

(4) The minister may cancel the designation of a contaminated site made under this section.

[2002 cE-14.2 s26](#)

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### **Notice of determination**

**27.** (1) The minister shall

- (a) give notice, in writing, of a preliminary determination of a designation of a contaminated site, make a final determination on whether or not the site is contaminated and give notice, in writing, together with reasons, of the final determination to

- (i) a person responsible for the contaminated site that the minister considers appropriate,
  - (ii) an owner of real property directly affected by the designation, and
  - (iii) a municipality where the contaminated site is located; and
- (b) give notice to a person referred to in paragraph (a) respecting the cancellation of a designation as a contaminated site.

(2) A person, owner or municipality referred to in paragraph (1)(a) shall be provided with an opportunity to comment on the preliminary determination referred to in that paragraph before a final determination is made.

[2002 cE-14.2 s27](#)

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### **Remedial plan**

**28.** (1) A person responsible for a contaminated site

- (a) shall submit to the minister an environmental site assessment and a remedial action plan with respect to the contaminated site; and
- (b) may enter into an agreement with the minister or with another person responsible for the contaminated site or with both the minister and the other person, providing for the remedial action to be taken with respect to the contaminated site and providing for the apportionment of the costs of taking that action.

(2) The minister may issue an approval for a plan submitted under subsection (1) or may reject that plan.

[2002 cE-14.2 s28](#)

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### **Rehabilitation of site**

**29.** The minister may

- (a) determine the manner in which the contaminated site must be rehabilitated or managed and establish a time within which that rehabilitation is to occur;
- (b) issue standards and criteria to be used in determining whether rehabilitation and management have been completed in a satisfactory manner;
- (c) enter into agreements respecting the liability of secured creditors, receivers, receiver managers, trustees in bankruptcy, executors, administrators, mortgagees in possession and other persons;
- (d) determine persons or classes of persons who are responsible for the rehabilitation of a contaminated site; and
- (e) establish programs and enter into compliance agreements and other agreements to rehabilitate or manage a contaminated site or prevent the creation of a contaminated site.

[2002 cE-14.2 s29](#)

## **PART VIII DANGEROUS GOODS**

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### Handling of dangerous goods

**30.** Unless authorized under this Part or the regulations, a person who handles dangerous goods or waste dangerous goods shall do so in a manner that ensures that the dangerous goods or waste dangerous goods do not cause an adverse effect.

[2002 cE-14.2 s30](#)

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### Dangerous and waste dangerous goods

**31.** (1) The minister may

- (a) stipulate the quantity or concentration of dangerous and waste dangerous goods that may be released into the environment, either alone or in combination with another substance from any source;
- (b) stipulate the manner and conditions under which dangerous goods and waste dangerous goods may be released into the environment, either alone or in combination with another substance;
- (c) establish procedures with respect to the sampling, analysis, tests, measurements or monitoring of dangerous goods and waste dangerous goods and the submission of the results to the minister; and
- (d) establish procedures requiring and respecting the submission of samples of dangerous goods and waste dangerous goods to the minister.

(2) The minister may direct a person responsible for dangerous goods and waste dangerous goods to

- (a) take specified precautions regarding their handling;
- (b) handle them in accordance with specified terms and conditions;
- (c) remove them from a specified location;
- (d) take them to a specified location;
- (e) take specified precautions with respect to the treatment or decontamination of a place affected by them;
- (f) take specified precautions with respect to the future use of a place affected by them;
- (g) undertake, with respect to them, investigations, tests, surveys or other actions, and report the results to the minister;
- (h) ensure that persons involved in handling dangerous goods, waste dangerous goods and other environmentally hazardous substances are properly trained;
- (i) take specified precautions with respect to their storage;
- (j) construct storage facilities in accordance with standards, codes, guidelines, requirements, restrictions and policies that the minister may specify;
- (k) make the necessary arrangements for treating, processing and disposing of the dangerous goods or waste dangerous goods within the time specified by the minister; and
- (l) prepare and submit to the minister a written contingency plan respecting their handling.

[2002 cE-14.2 s31](#)

## **PART IX PESTICIDES**

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### **Definitions**

#### **32. In this Part**

- (a) "licence" means a licence issued under section 33; and
- (b) "sell" includes keep for sale, expose for sale, offer for sale or advertise for sale, and "sale" has a corresponding meaning.

[2002 cE-14.2 s32](#)[Back to Top](#)

### **Pesticide licences**

#### **33. (1) A person shall not supply, sell, distribute or keep for distribution a pesticide unless**

- (a) the person has a valid licence of a class prescribed by regulation for that purpose; or
- (b) the pesticide or the person is exempted under the regulations from the requirement for the pesticide to be sold by a licensed person.

#### **(2) A person shall not store, use or apply a pesticide unless**

- (a) the person has a valid licence of a class prescribed by regulation for that purpose and except under the conditions for storing, use or application prescribed for the pesticide; or
- (b) unless the pesticide or the person is exempted under the regulations.

(3) An application for a licence referred to in subsection (1) or (2) shall be made to the minister in the form that he or she requires and shall be accompanied by the required fee and upon receipt of an application the minister, or the person designated by the minister, may issue a licence to the applicant.

(4) The minister, or a person designated by the minister, may issue different classes of licences as prescribed by regulation.

#### **(5) The minister may**

- (a) suspend or cancel a licence; or
- (b) refuse to renew a licence

where the holder of it or an applicant for it has contravened this Part or the regulations.

[2002 cE-14.2 s33](#)[Back to Top](#)

### **Insurance required**

**34. (1)** The minister, or a person designated by the minister, shall not issue a licence under this Part unless a person applying for it produces evidence satisfactory to the minister that the person has a valid and existing liability insurance policy of a type and in an amount required by regulation.

(2) Where the insurance policy of a person who has been issued a licence under this Part is revoked, cancelled or terminated before the expiration of the licence, that licence shall be considered to be cancelled.

[2002 cE-14.2 s34](#)

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### Unlicensed assistants

**35.** (1) A person who holds a licence to apply a pesticide for agricultural or greenhouse applications may employ unlicensed assistants to provide help in carrying out the activities for which that person has been licensed under this Part.

(2) A licence holder is responsible for the activities of an unlicensed assistant in connection with the use, storing, application or sale of pesticides.

(3) An unlicensed assistant shall comply with the safety measures required under this Part and regulations made with respect to pesticides.

[2002 cE-14.2 s35](#)

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### Sale to unlicensed person

**36.** Where a pesticide requires a licence for its storage, use or application, a person shall not supply, sell, offer for sale or distribute that pesticide to a person who does not have a licence.

[2002 cE-14.2 s36](#)

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### Containment of pesticide

**37.** (1) A person shall not have possession of or keep a pesticide in a container other than

- (a) the container in which the pesticide was originally stored for sale after its manufacture;  
or
- (b) a container that is of a type customarily used or approved for that purpose by the manufacturer and which bears a label that complies with the requirements of the *Pest Control Products Act* (Canada ).

(2) Subsection (1) does not apply to the storing or keeping of pesticides in holding tanks or spray tanks approved by the minister for that purpose where the pesticide is being stored or kept for use or application.

(3) Notwithstanding subsection (1), where a pesticide is sold or otherwise supplied in bulk and is not contained in a package, information or a warning respecting its handling or use, that would have been required to be stated on the label had the pesticide been in a package, shall be supplied in writing at the time of delivery by the vendor or other supplier to the person to whom the pesticide is delivered.

[2002 cE-14.2 s37](#)

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### Storing, etc. of pesticide

**38.** A person who keeps, stores or transports a pesticide shall do so in a manner that ensures that the

- (a) pesticide does not come into contact with, or contaminate food or drink of humans, animals or plants; and
- (b) special precautions or warnings on the label of a pesticide package are strictly adhered to.

[2002 cE-14.2 s38](#)

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### **Use of pesticide**

**39.** A person shall not use or handle a pesticide

- (a) in a manner or quantity other than that required for its proper use or handling as prescribed by regulation; or
- (b) in the absence of a regulation, in a manner other than that prescribed by the manufacturer.

[2002 cE-14.2 s39](#)

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### **Disposal of pesticide**

**40.** A person shall not

- (a) dispose of a pesticide; or
- (b) bury, decontaminate, burn or otherwise dispose of a container that has been used to hold a pesticide,

except at a site and in a manner that is

- (c) prescribed by regulation; or
- (d) in the absence of regulations, as recommended by the manufacturer of the pesticide.

[2002 cE-14.2 s40](#)

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### **Washing, etc. of container**

**41.** A person shall not

- (a) wash or submerge in a body of water an apparatus, equipment or container used in the holding or application of a pesticide; and
- (b) allow a pesticide or water used to clean an apparatus, equipment or container used to hold or apply a pesticide to enter a body of water.

[2002 cE-14.2 s41](#)

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### **Disposal of contaminated matter**

**42.** Where a crop, food, feed, animal, plant, water, produce, product or other matter is shown, upon inspection or analysis, to be contaminated by a pesticide, the minister may, by order,

- (a) prohibit or restrict the sale, handling, use or distribution of the crop, food, feed, animal, plant, water, produce, product or other matter permanently or for the length of time that the minister considers necessary; or
- (b) destroy or make harmless the crop, food, feed, animal, plant, water, produce, product or other matter.

[2002 cE-14.2 s42](#)

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### **No compensation**

**43.** A person shall not be entitled to compensation from the government of the province for a loss or damage arising from an order made under section 42.

[2002 cE-14.2 s43](#)

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### **Prohibition, etc. of sale of pesticides**

**44.** The minister may, by order, prohibit or restrict the sale, distribution or use of a pesticide in the province, or a part of the province specified in the order, for those periods and at those times that may be considered necessary or advisable.

[2002 cE-14.2 s44](#)

## **PART X ENVIRONMENTAL ASSESSMENT**

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### **Definitions**

**45.** In this Part

- (a) "board" means an environmental assessment board appointed under section 63;
- (b) "class environmental assessment" means a planning process applied to common classes of undertakings where the environmental effects are generally known and are recurrent;
- (c) "committee" means an assessment committee appointed under section 52;
- (d) "environmental assessment" means a process by which the environmental effect of an undertaking is predicted and evaluated before the undertaking has begun or occurred;
- (e) "environmental impact statement" means a report that presents the results of an environmental assessment;
- (f) "environmental preview report" means a report presenting the results of an investigation based on readily available information that supplements the information provided by a proponent upon registration of an undertaking and which is necessary to assist the minister in making a determination as to whether or not an environmental impact statement is required;
- (g) "guidelines" means guidelines prepared by a committee under section 53;
- (h) "proponent" means a person who
  - (i) carries out or proposes to carry out an undertaking, or



- (ii) is the owner or person having charge, control or management of an undertaking;  
and
- (i) "release" means the release of an undertaking under section 51, 54, 67 or 72 from the further application of the environmental assessment requirements of this Part.

[2002 cE-14.2 s45](#)

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### **Purpose**

**46.** The purpose of this Part is to

- (a) protect the environment and quality of life of the people of the province; and
- (b) facilitate the wise management of the natural resources of the province,

through the institution of environmental assessment procedures before and after the commencement of an undertaking that may be potentially damaging to the environment.

[2002 cE-14.2 s46](#)

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### **Application**

**47.** (1) This Part and regulations made with respect to this Part apply to all undertakings carried out in the province, unless it is an undertaking or a class of undertaking exempted under this Act.

(2) An undertaking to which this Part applies may be designated by regulation.

(3) An undertaking of the government of the province of a type specified in the regulations shall be registered under section 49.

[2002 cE-14.2 s47](#)

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### **Prohibition**

**48.** A person shall not proceed with an undertaking unless that undertaking has been exempted or released under this Act.

[2002 cE-14.2 s48](#)

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### **Registration**

**49.** (1) A proponent shall, in the form and with the content prescribed by the minister and before proceeding with the final design of an undertaking, notify the minister of the proposed undertaking and that notification shall be considered to be a registration of the undertaking under this Act.

(2) A proponent shall pay the required fee with respect to the registration of an undertaking.

[2002 cE-14.2 s49](#)

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### **Undertaking not to proceed**

**50.** (1) The minister shall examine the information provided by the proponent under section 49 to determine if the undertaking is contrary to law or to a policy that the Lieutenant-Governor in Council has declared to be the policy of the government of the province.

(2) The minister shall notify the Lieutenant-Governor in Council of his or her determination under subsection (1) that the undertaking is contrary to law or a policy that the Lieutenant-Governor in Council has declared to be the policy of the government of the province and the Lieutenant-Governor in Council may direct that the undertaking not proceed.

(3) The minister shall, in writing, notify the proponent of a direction under subsection (2), within the time period required by regulation.

[2002 cE-14.2 s50](#)

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### **Determination**

**51.** (1) Where, following an examination by the minister under subsection 50(1), the Lieutenant-Governor in Council does not give a direction under subsection 50(2), the minister, using criteria prescribed by regulation, shall determine whether

- (a) an environmental preview report is required;
- (b) an environmental impact statement is required; or
- (c) the undertaking may be released.

(2) The minister shall notify a proponent of an undertaking of his or her determination under subsection (1) within the time period required by regulation.

[2002 cE-14.2 s51](#)

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### **Assessment committees**

**52.** (1) The minister shall appoint an assessment committee for the purpose of advising him or her on scientific and technical matters related to an undertaking that requires an environmental preview report or an environmental impact statement under subsection 51(1).

(2) The minister shall appoint to a committee at least one representative from each department of government that has an interest in the undertaking.

(3) The chairperson of a committee shall be an employee of the department.

(4) A committee may provide the consultation and assistance necessary for the purpose of section 62.

[2002 cE-14.2 s52](#)

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### **Guidelines**

**53.** (1) A committee is responsible for and shall prepare guidelines for the consideration of the minister with respect to the

- (a) environmental preview report; or
- (b) environmental impact statement,

required for the undertaking for which the committee was appointed.

(2) The minister shall approve guidelines prepared under subsection (1) before they are provided to the proponent.

[2002 cE-14.2 s53](#)

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### **Environmental preview report**

**54.** (1) Where, under section 51, the minister notifies a proponent that an environmental preview report is required, the minister shall provide the proponent with the guidelines needed to prepare the environmental preview report.

(2) The proponent shall, in accordance with the guidelines, prepare and submit to the minister an environmental preview report within the time period required by regulation.

(3) Upon receiving an environmental preview report, the minister shall

- (a) require that the proponent provide copies of the environmental preview report to the minister who shall make those copies available to all interested persons; and
- (b) examine the report and determine if the environmental preview report complies with this Act and the guidelines,

and shall, in writing, advise the proponent of his or her determination under paragraph (b).

(4) Where, in the opinion of the minister, an environmental preview report is deficient, the minister may require the proponent to do one or more of the following:

- (a) conduct further work;
- (b) amend the environmental preview report; and
- (c) revise and submit another environmental preview report or amendment to that report,

within the time period required by regulation.

(5) Where, in the opinion of the minister, the environmental preview report complies with this Act and the guidelines and requires no further work, he or she shall determine whether

- (a) an environmental impact statement is required; or
- (b) the undertaking may be released.

(6) The minister shall notify the proponent of his or her determination under subsection (5) within the time period required by regulation.

(7) A proponent is not required to provide an environmental preview report where the proponent elects to proceed directly with the preparation of an environmental impact statement.

[2002 cE-14.2 s54](#)

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### **Environmental impact statement required**

**55.** (1) Where the minister determines that an environmental impact statement is required under paragraph 51(1)(b) or subsection 54(5) or the proponent elects to proceed with the preparation of an environmental impact statement under subsection 54(7), the minister shall provide the proponent of the undertaking with guidelines and the proponent shall, in accordance with those guidelines, carry

out the environmental assessment necessary for the preparation of an environmental impact statement.

(2) An environmental impact statement shall be completed and submitted to the minister within the time period required by regulation.

[2002 cE-14.2 s55](#)

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### **Release**

**56.** Where, under section 51 or 54, the minister notifies a proponent that an undertaking is released, the proponent may proceed with the undertaking subject to

- (a) another Act or regulation of the province or of Canada ;
- (b) a municipal regulation, by-law or requirement; and
- (c) the terms and conditions that the minister may, in his or her discretion, establish.

[2002 cE-14.2 s56](#)

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### **Environmental impact statement**

**57.** An environmental impact statement shall be prepared in accordance with the guidelines, and shall include,

- (a) a description of the undertaking;
- (b) the rationale for the undertaking;
- (c) the alternative methods of carrying out the undertaking, and the alternatives to the undertaking;
- (d) a description of the
  - (i) present environment that will be affected or that might reasonably be expected to be affected, directly or indirectly, by the undertaking, and
  - (ii) predicted future condition of the environment that might reasonably be expected to occur within the expected life span of the undertaking, if the undertaking was not approved;
- (e) a description of
  - (i) the effects that would be caused, or that might reasonably be expected to be caused, to the environment by the undertaking with respect to the descriptions provided under paragraph (d), and
  - (ii) the actions necessary, or that may reasonably be expected to be necessary, to prevent, change, mitigate or remedy the effects upon or the effects that might reasonably be expected upon the environment by the undertaking;
- (f) an evaluation of the advantages and disadvantages to the environment of the undertaking, the alternative methods of carrying out the undertaking and the alternatives to the undertaking;
- (g) a proposed set of control or remedial measures designed to minimize any or all significant harmful effects identified under paragraph (e);

- (h) a proposed program of study designed to monitor all substances and harmful effects that would be produced by the undertaking; and
- (i) a proposed program of public information as required under section 58.

[2002 cE-14.2 s57](#)

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### **Proponent to meet public**

**58.** (1) During the preparation of an environmental impact statement, the proponent shall provide an opportunity for interested members of the public to meet with the proponent at a place adjacent to or in the geographical area of the undertaking, or as the minister may determine, in order to

- (a) provide information concerning the undertaking to the people whose environment may be affected by the undertaking; and
- (b) record and respond to the concerns of the local community regarding the environmental effects of the undertaking.

(2) The procedure for public contact and involvement with the proponent shall be as required by the minister and by regulation.

[2002 cE-14.2 s58](#)

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### **Public interest**

**59.** (1) Where guidelines have been prepared under paragraph 53(1)(b), and before they have been approved under subsection 53(2), the minister shall request that interested persons review those guidelines and submit written comments to the minister with respect to the guidelines.

(2) At any time during an environmental assessment of an undertaking, the minister may request that interested persons submit written comments with respect to the environmental effects of that undertaking.

(3) The minister may forward written comments submitted to him or her under subsection (2) to the proponent who shall respond to those comments.

[2002 cE-14.2 s59](#)

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### **Statement received**

**60.** (1) Upon receiving the environmental impact statement submitted under section 55, the minister shall

- (a) require that the proponent provide copies of the environmental impact statement to the minister who shall make those copies available to all interested persons; and
- (b) examine the statement and determine whether or not it complies with this Part and the guidelines.

(2) The minister shall, in writing, advise the proponent of his or her determination under paragraph (1)(b).

[2002 cE-14.2 s60](#)

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**Statement deficient**

**61.** Where, in the opinion of the minister, an environmental impact statement is deficient, the minister may require the proponent to

- (a) conduct further work;
- (b) amend the environmental impact statement; or
- (c) revise and submit another environmental impact statement or amendment to that statement,

within the time period required by regulation.

[2002 cE-14.2 s61](#)

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**Consultation**

**62.** The minister shall, in the course of granting an approval or making a determination under section 50, 51, 53, 54 or 60 make every reasonable effort to consult with and obtain the opinions of all other ministers of the Crown whose departments may have an interest in an undertaking that may be subject to an environmental assessment.

[2002 cE-14.2 s62](#)

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**Board**

**63.** (1) Where the minister believes there is a strong public interest in an undertaking for which an environmental impact statement is required, the Lieutenant-Governor in Council may, on the advice of the minister, order public hearings and appoint an environmental assessment board for the purpose of conducting public hearings relating to the environmental assessment of the undertaking.

(2) The Lieutenant-Governor in Council shall appoint to a board not fewer than 2 nor more than 5 persons.

(3) A person appointed under subsection (2) shall not be employed in the public service of the province or of Canada .

(4) The Lieutenant-Governor in Council shall designate from among the members of each board a chairperson who shall not be a resident of the geographical area of the undertaking.

(5) At least 1/3 of the members of each board shall be residents of the geographical area of the undertaking.

(6) Members of each board shall receive remuneration and be reimbursed for expenses in the manner that the Lieutenant-Governor in Council may establish.

[2002 cE-14.2 s63](#)

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**Public hearing**

**64.** (1) A public hearing ordered under subsection 63(1) shall be conducted for the purpose of

- (a) examining the contents of the environmental impact statement that has been prepared for an undertaking; and

- (b) exchanging information between the proponent and the public.
- (2) A public hearing ordered under subsection 63(1) shall be held within or adjacent to the geographical area of the undertaking and wherever the minister considers appropriate.
- (3) The minister and the proponent shall be represented at a public hearing of a board.
- (4) At a public hearing a board shall
  - (a) record comments and questions of persons present regarding the content of the environmental impact statement prepared for an undertaking; and
  - (b) provide, where possible, answers to questions from the persons present.
- (5) A public hearing of a board shall be conducted in the manner prescribed by the regulations.

[2002 cE-14.2 s64](#)

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### **Report of hearing**

**65.** The chairperson of a board shall, within the time period required by regulation, submit to the minister a written report containing the

- (a) proceedings of a public hearing;
- (b) recommendations made at a public hearing; and
- (c) recommendations of the board.

[2002 cE-14.2 s65](#)

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### **Report delivered**

**66.** (1) Upon receiving a report submitted under section 65, the minister shall submit copies of the report to the Lieutenant-Governor in Council.

(2) The minister shall, within the time period required by regulation, after receiving the report submitted under section 65, make a copy of the report available to interested persons.

(3) The manner of distribution of a report to interested persons under subsection (2) shall be in the discretion of the minister.

[2002 cE-14.2 s66](#)

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### **Release**

**67.** (1) Where a public hearing has not been ordered under subsection 63(1) and, in the opinion of the minister, an environmental impact statement has been completed and complies with this Part and the guidelines, the minister shall recommend to the Lieutenant-Governor in Council that the undertaking

- (a) be released subject to terms and conditions; or
- (b) not be permitted to proceed.

(2) Where a report has been delivered to the Lieutenant-Governor in Council under subsection 66(1) and, in the opinion of the minister, an environmental impact statement has been completed and complies with this Part and the guidelines, the minister shall recommend to the Lieutenant-Governor in Council that the undertaking

(a) be released subject to terms and conditions; or

(b) not be permitted to proceed.

(3) Upon receipt of a recommendation under subsection (1) or (2), the Lieutenant-Governor in Council may

(a) release the undertaking subject to terms and conditions that the Lieutenant-Governor in Council may specify; or

(b) direct that the undertaking not proceed.

(4) Notwithstanding subsection (1), (2) or (3), or another section of this Part, and subject to the approval of the Lieutenant-Governor in Council, the minister may halt further environmental assessment of an undertaking and direct that the undertaking not proceed where he or she is of the opinion that an unacceptable environmental effect is indicated.

(5) Notwithstanding subsection (1), (2) or (3), or another section of this Part, the Lieutenant-Governor in Council may halt further environmental assessment of an undertaking and direct that the undertaking not proceed where the Lieutenant-Governor in Council is of the opinion that it is in the public interest to halt the assessment and give that direction.

[2002 cE-14.2 s67](#)

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### **Authorization**

**68.** (1) A licence, permit, approval or other document of authorization issued under another Act pertaining to an undertaking shall not be issued until the undertaking has been exempted or released under this Part.

(2) This Part does not exempt a proponent of an undertaking from the requirements imposed upon an undertaking by

(a) another Act or regulation of the province or of Canada ; or

(b) a municipal regulation, by-law or requirement.

[2002 cE-14.2 s68](#)

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### **Monitoring**

**69.** Where an undertaking has been exempted or released under this Part, the minister may require the proponent to carry out environmental monitoring and rehabilitation studies and programs in order to determine the effectiveness of mitigation measures, compliance with terms and conditions applicable to the release and to restore the affected environment to ecologically and socially acceptable levels.

[2002 cE-14.2 s69](#)

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### **Exemption**



**70.** Where the minister is of the opinion that it is in the public interest, having regard to the purpose of this Part and weighing the purpose of this Part against the injury, damage or interference that might be caused a person or property by the application of this Part to an undertaking, the minister, with the approval of the Lieutenant-Governor in Council, may by order

- (a) exempt an undertaking or a proponent of an undertaking from the application of this Part or the regulations or a matter provided for in this Part, subject to the terms and conditions that the minister may impose;
- (b) suspend or revoke an exemption referred to in paragraph (a); or
- (c) alter or revoke a term or condition of an exemption referred to in paragraph (a).

[2002 cE-14.2 s70](#)

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### **Non disclosure**

**71.** Where the minister is of the opinion that the disclosure of certain documents or matters is not in the public interest, the minister may make the provision for the protection of the public interest that he or she considers necessary and may decline to disclose those documents or matters.

[2002 cE-14.2 s71](#)

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### **Agreements**

**72.** (1) Notwithstanding section 47, the minister may, with the approval of the Lieutenant-Governor in Council, enter into an agreement with the government of another province or territory, of Canada , or with a combination of them, with respect to an environmental assessment of an undertaking.

(2) Notwithstanding section 47, the minister may, with the approval of the Lieutenant-Governor in Council, enter into an agreement with the government of another province or territory, of Canada , or with a combination of them, with respect to the conduct of environmental assessments in accordance with a uniformly applied process.

(3) Where an agreement is entered into under this section, this Part, a provision of this Part or regulations made with respect to this Part shall apply in accordance with the agreement only and the process established by that agreement shall be considered to satisfy the requirements of this Part or regulations made with respect to this Part.

(4) The Lieutenant-Governor in Council may

- (a) release an undertaking that is the subject of an agreement made under this section subject to terms and conditions that the Lieutenant-Governor in Council considers necessary; or
- (b) direct that the undertaking not proceed.

(5) Where an agreement is entered into under this section, an undertaking that is subject to that agreement shall not proceed unless the Lieutenant-Governor in Council has released that undertaking.

[2002 cE-14.2 s72](#)

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### **Joint review panel**

**73.** (1) The Lieutenant-Governor in Council may establish a review panel jointly with the government of another province or territory, of Canada, or with a combination of them, to carry out an environmental assessment in accordance with an agreement made under section 72.

(2) The proponent shall pay the costs incurred by the Crown with respect to the conduct of an environmental assessment of an undertaking carried out in accordance with an agreement made under section 72 and under a review panel established under subsection (1).

[2002 cE-14.2 s73](#)

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### **Costs**

**74.** (1) A proponent of an undertaking having a projected capital cost greater than an amount that may be set by regulation shall pay the fees that the minister may set to offset the costs incurred by the Crown with respect to the conduct of an environmental assessment in connection with the undertaking.

(2) Notwithstanding subsection (1), where a fee does not cover the costs incurred by the Crown, the proponent shall pay those costs owed to the Crown with respect to the environmental assessment of the proponent's undertaking that the minister may require.

(3) Where a proponent does not pay the fees referred to in subsection (1) or the costs referred to in subsection (2), the minister may direct that an environmental assessment cease until the minister notifies the proponent that the assessment may proceed.

(4) For the purpose of this section and section 73, "costs" includes the cost and expense of consultants, lodging, meals, salaries, remuneration and travel incurred by the government of the province, and by a board or committee, with respect to the conduct of an environmental assessment of an undertaking.

[2002 cE-14.2 s74](#)

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### **Notice of registrations and decisions**

**75.** The minister shall issue a notice of the registration of an undertaking and of a decision, direction or determination with respect to an environmental assessment under this Part within the time period required by regulation.

[2002 cE-14.2 s75](#)

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### **Power included**

**76.** (1) The power to release an undertaking under this Part includes a power to amend that release in the same manner in which the original release was made.

(2) The power to exempt or release an undertaking under this Part subject to terms and conditions includes the power to require, as a term or condition, the posting of a bond or another form of security by the proponent of that undertaking.

[2002 cE-14.2 s76](#)

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### **Reclamation order**

**77.** Where a person is convicted of an offence under subsection 114(2), in addition to another

penalty that may be imposed under section 115, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order directing the offender to

- (a) take the action the court considers necessary to remedy or prevent an environmental effect that results or may result from the act that constituted the offence; and
- (b) post a bond or other form of security acceptable to the court or pay money into court in an amount that will ensure compliance with an order made under this section.

[2002 cE-14.2 s77](#)

## **PART XI APPROVALS**

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### **Approvals**

**78.** (1) A person shall not commence or continue an activity that requires an approval under this Act unless that person holds the appropriate approval.

(2) An activity that requires an approval shall be listed in the regulations.

(3) Notwithstanding subsection (2), the minister may require that an approval be issued for an activity not listed in the regulations before that activity may proceed.

(4) The minister may authorize an official, officer or employee of the department or the Department of Government Services to issue, vary, amend or revoke approvals under this Part.

[2002 cE-14.2 s78; 2006 c12 s1](#)

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### **Refusal if not in public interest**

**79.** (1) Where the minister is of the opinion that a proposed activity should not proceed because it is not in the public interest having regard to the purpose of this Act, the minister shall not issue an approval with respect to the proposed activity.

(2) Notice of the minister's decision not to issue an approval, together with reasons, shall be given in writing to the person who proposes to do an activity.

(3) When deciding if a proposed activity should proceed, the minister shall consider whether or not

- (a) the proposed activity contravenes a policy of the government of the province;
- (b) the location of the proposed activity is unacceptable; and
- (c) there would be adverse effects from the proposed activity.

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

[2002 cE-14.2 s79](#)

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### **Application**

**80.** (1) An application for an approval shall be made to the minister and accompanied by

information that the minister may require.

(2) The minister may require an applicant for an approval to submit additional information that he or she considers necessary.

(3) Where the minister considers an application to be incomplete, the application shall not be processed until the required information is submitted.

(4) The minister may require, as part of an application for an approval, that an applicant first obtain

(a) a provincial or municipal approval, permit or other authorization; and

(b) an approval, permit or other authorization required under an Act of Canada,

at the time of making the application under this Part.

(5) The minister may require an applicant for an approval to submit a plan for public consultation and notification.

(6) Where a person applies for an approval to establish or alter a waste disposal site or a waste management system, a notice of that application shall be published as required under section 403.9 of the *Municipalities Act, 1999*.

[2002 cE-14.2 s80](#)

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### **Acknowledgement of application**

**81.** Not more than 60 days after receiving a completed application a decision shall be made with respect to that application unless the minister otherwise notifies the applicant, in writing, not more than 30 days after he or she has received the completed application.

[2002 cE-14.2 s81](#)

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### **No change in activity**

**82.** (1) A person shall not change an activity that is the subject of an approval unless an approval or an amendment to an approval authorizing the change is issued by the minister.

(2) A person who wishes to change an activity under subsection (1) shall apply to the minister for an approval or amendment referred to in that subsection.

(3) Subsection (1) does not apply to adjustments, repairs, replacements or maintenance made in the normal course of operations which do not cause an adverse effect.

[2002 cE-14.2 s82](#)

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### **Refusal to issue and conditions on approval**

**83.** (1) The minister may

(a) issue or refuse to issue an approval;

(b) issue an approval subject to terms and conditions that the minister considers appropriate; and

(c) require rehabilitation plans, release and pollution prevention plans, implementation

schedules, security and public information consultations and plans from an approval holder.

(2) In environmentally sensitive areas, the terms and conditions of an approval may be more stringent, but may not be less stringent, than applicable terms and conditions provided in the regulations and policies, guidelines or standards prescribed or adopted by the department.

(3) The minister may establish a fixed time period for which an approval will be valid.

(4) Terms and conditions that the minister considers to be appropriate may include a requirement for educational and training programs for persons seeking the approval and their employees.

[2002 cE-14.2 s83](#)

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### **Security**

**84.** (1) A person who wishes to obtain an approval to carry out an activity shall provide financial or other security with respect to the activity in accordance with the regulations.

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

[2002 cE-14.2 s84](#)

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### **Amendment of approval**

**85.** (1) An approval holder may apply to the minister for an amendment and the minister may amend a term or condition of, add a term or condition to, or delete a term or condition from an approval, 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 an approval if

(i) in the opinion of the minister an adverse effect that was not reasonably foreseeable at the time the approval 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 approval holder;

(b) cancel or suspend an approval

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

(ii) where new, relevant or corrected information with respect to an adverse effect that actually results or may result from an activity to which the approval relates 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 approval; and

(c) correct a typographical error in an approval.

(3) The minister shall give notice in writing, together with reasons, to the approval 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 an approval under paragraph (2)(a) or (b) give notice, in writing, together with reasons, of the amendment, cancellation or suspension to the approval holder.

[2002 cE-14.2 s85](#)

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#### **Prohibition re: approval transfer**

**86.** (1) A person shall not transfer, sell, lease, assign or otherwise dispose of an approval without the written consent of the minister.

(2) A consent under subsection (1) 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.

[2002 cE-14.2 s86](#)

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#### **New information**

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

[2002 cE-14.2 s87](#)

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#### **Variation of approval**

**88.** (1) An approval holder or a person acting on behalf of an approval holder may apply to the minister to temporarily vary a term or condition of an approval.

(2) The minister may vary an approval for a fixed period of time if he or she considers that the proposed variation is not likely to cause an adverse effect and shall advise the approval holder of the decision.

(3) The minister may

- (a) impose a term or condition that he or she considers appropriate with respect to a variation of an approval;
- (b) specify requirements as to the manner in which the activity to which the approval variation relates be carried out or operated; or
- (c) amend a term or condition of, add a term or condition to, or delete a term or condition from the varied approval.

(4) A variation of an approval is in effect only for the period fixed by the minister and, notwithstanding a provision of this Act, during that period, the terms and conditions of the approval or the requirements of the regulations that are not varied by the minister apply to the activity.

[2002 cE-14.2 s88](#)

## **PART XII INSPECTION AND INVESTIGATION**

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### **Inspectors and duties of employees**

**89.** (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 be of the same effect as if they were performed or exercised by the minister.

[2002 cE-14.2 s89](#)

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### **Inspector: powers and immunities**

**90.** 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 cE-14.2 s90](#)

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### **Formal request for investigation**

**91.** (1) A person may, at any reasonable time, report a concern regarding the enforcement of this Act to the department, and the department may take the action with respect to that report considered necessary in the circumstances.

(2) Notwithstanding subsection (1) and sections 94, 95 and 96, where a person has a reasonable belief that a person has contravened or is contravening this Act and the regulations, that person may request that the department investigate the alleged contravention.

(3) A request made under subsection (2) shall be accompanied by an affidavit of the person making the request made under oath or affirmation

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

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

[2006 c12 s2](#)

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### **Process on investigation request**

**92.** (1) Where the minister receives 2 or more requests to investigate the same matter under section 91, the minister shall investigate the matter to determine the facts of the alleged contravention.

(2) Not more than 90 days after the receipt of the second request required under subsection (1), the minister shall report to the persons who made the request on the progress of the investigation and action proposed to be taken in respect of the alleged contravention.

(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.

(5) Nothing in this section prohibits or constrains the powers of inspectors or other persons to carry out investigations under sections 94, 95, or 96.

[2002 cE-14.2 s92; 2006 c12 s3](#)

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### Condition of approval

**93.** It is a condition of every approval that the holder shall immediately, on request, permit inspectors to carry out inspections authorized under this Act of a place, other than a dwelling place, to which the approval or varied approval relates.

[2002 cE-14.2 s93](#)

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### Powers of inspectors

**94.** (1) An inspector may, at reasonable times, enter upon waste disposal and waste management sites, business premises, a building or property of an approval holder, proponent of an undertaking or a licence holder under Part IX, that is not a dwelling place, where it is reasonably necessary to determine compliance with this Act, and may

(a) ascertain that the operations, activities or undertaking of the approval holder, proponent or licence holder comply with this Act or an approval, varied approval, exemption or release conditions or licence issued under this Act;

(b) ascertain the extent to which a substance 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 environment may be rehabilitated;

(d) inspect all plans, specifications, drawings, books, records, reports, registers, analyses, data and documents relating to the operation or activity located there;

(e) inspect a place in or from which the inspector has reasonable grounds to believe a substance is being, has been or may be released into the environment;

(f) inspect waterworks and investigate the source of a water supply;

(g) inspect sewage works and the location of effluent and sewage discharge;

(h) require a person having the care, management or control of the thing or substance to detain the thing at the place where it is found or remove the thing from the place where it is found and give a receipt for it;



- (i) for the purpose of analysis, take from the business premises, building or property samples of substances in a volume or quantity which, in the opinion of the inspector, is sufficient to permit an analysis of the substance to determine its nature, composition, source or compliance with this Act, an approval, varied approval or licence or with the terms of an undertaking or environmental assessment under this Act; and
- (j) analyze or test a substance on the premises, building or property,

and the approval holder, proponent of an undertaking or licence holder or a person in charge of that building, business premises or property shall produce for inspection the plans, specifications, drawings, books, records, reports, registers substances, analyses, data and documents relating to the approval, amended or varied approval, licence, undertaking, operation or activity 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 other purpose than to determine compliance with this Act.

[2002 cE-14.2 s94](#)

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### Search and seizure

**95.** (1) Where an inspector believes on reasonable grounds that a person is contravening or has contravened this Act or a term or condition of an approval, varied approval, licence, environmental assessment of an undertaking approved, issued, released or carried out under this Act, the inspector may, with a warrant issued under subsection (2), enter commercial or private premises or property or a vehicle in the province and

- (a) search and inspect the property and things located there;
- (b) examine the contents of the commercial or private premises, property or vehicle;
- (c) inspect and make copies of books of account, records, reports, registers, financial statements, correspondence, plans, specifications, drawings, analysis, data or other documents that may give evidence of a contravention of this Act or a term or condition of an approval, varied approval, environmental assessment or an undertaking exempted or released under this Act;
- (d) 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 an approval, varied approval, environmental assessment or an undertaking exempted or released under this Act;
- (e) seize and take away the things referred to in paragraph (c) and shall, upon the request of the owner of them, make copies of them and shall return the things seized to that owner as soon as possible;
- (f) take samples of substances in a volume or quantity which, in the opinion of the inspector is sufficient to permit an analysis of the substance to determine its nature, composition, source or compliance with this Act, an approval, varied approval or the terms and conditions of an undertaking exempted or released under this Act; 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 commercial or private premises or property anything that will give evidence with respect to a contravention of this Act or an approval, varied approval, licence, or the terms and conditions of an undertaking exempted or released under this Act, may issue a warrant authorizing the inspector named in the warrant to enter 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 an approval, varied approval, licence, terms and conditions of an undertaking exempted or released under this Act, subject to the conditions that may be specified in the warrant.

(3) The owner or person in charge of the 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.

[2002 cE-14.2 s95](#)

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### **Additional persons**

**96.** 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 them to be necessary to enable them to carry out those duties and exercise those powers.

[2002 cE-14.2 s96](#)

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### **Prohibition**

**97.** (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 an approval, varied approval, licence, or an undertaking exempted or released under this Act.

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

[2002 cE-14.2 s97](#)

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### **Action prohibition**

**98.** (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, a member of a board or committee 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 cE-14.2 s98](#)

### **PART XIII ORDERS**

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#### **Order**

**99.** (1) Where the minister believes on reasonable grounds that a person responsible has contravened or will contravene this Act or the terms or conditions of an agreement, approval, amended or varied approval, licence or an undertaking exempted or released under this Act, the minister may, whether or not that person has been charged or convicted in respect of the contravention, issue an order, in writing, requiring a person at that person's own expense, to

- (a) stop or shut down an activity or an undertaking immediately, permanently, or for a specified time, where, with respect to that activity or undertaking, there has been a contravention of this Act, the regulations or a term or condition applicable to that activity or undertaking;
- (b) do all things and take all steps that are necessary to control, manage, eliminate, remedy or prevent an adverse effect or an environmental effect and to comply with this Act, the regulations or terms or conditions applicable to an approval, activity or undertaking 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 the release into the environment of a substance;
- (e) shut down or make a change to waterworks and to a source of water supply in accordance with directions set out in the order;
- (f) shut down, alter or add to sewage works in accordance with directions set out in the order; and
- (g) where that person is using, handling, storing, applying or disposing of dangerous goods, waste dangerous goods or pesticides, notwithstanding anything contained in an approval or licence, take the action specified in the order to manage, eliminate, remedy or prevent contamination or other adverse effects by those substances,

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, that person shall comply with the order.

(2) In environmentally sensitive areas, an order under subsection (1) may impose terms and conditions in excess of requirements provided under this Act and policies, guidelines, approval or 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 person's own expense, to
  - (i) maintain records on a relevant matter and report periodically to the minister or a

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 the measure, order or a portion of the measure or order must occur.

(4) Where a stop order is issued under this section, the inspector, minister or other employee 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 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 or the Department of Government Services to issue, amend, vary, revoke and give reasons for an order under this section.

(6) Where, before the coming into force of subsection (5), the minister delegated authority to an official, officer or employee of the Department of Government Services to make an order under this section, that order is valid as if it had been made after the coming into force of subsection (5).

[2002 cE-14.2 s99; 2006 c12 s4](#)

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#### **Amendment or revocation of order**

**100.** (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 cE-14.2 s100](#)

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#### **Effects of order**

**101.** (1) An order made under this Part may deal with more than one substance and may be directed to one or more persons.

(2) An order under this Part remains in effect until revoked by the minister.

(2.1) An order made under this Part remains in effect during an appeal by the person who is subject to the order until a decision is made with respect to that appeal.

(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 cE-14.2 s101](#); [2006 c12 s5](#)

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### **Compliance**

**102.** (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 of 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 or service of that order cannot be carried out, 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 the 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 that certificate is filed, it is of the same effect and all proceedings may be taken on the certificate, 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 and expenses 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 cE-14.2 s102](#); [2013 c16 s25](#)

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### **Joint and individual liability**

**103.** (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 102(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 a contaminated site, 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 accumulation or the continued release of a substance on becoming aware of the presence of the substance in, on, over or under the contaminated site.

(5) Where 2 or more persons are liable to pay compensation by way of damages, costs, expenses or charges under this Part, 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 cE-14.2 s103](#)

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## Insurance

**104.** (1) Where a person to whom an order is issued under this Part is insured under an insurance policy that provides for coverage for a cost, expense, loss, damage or charge, 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 in accordance with costs, expenses or charges recoverable under section 102.

(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 cE-14.2 s104](#)

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## Compliance agreements

**105.** (1) Where the minister may enter into a compliance agreement under this Act, and where he

or she has reason to believe that a person is or will be in contravention of this Act, or the terms and conditions of an approval, and the minister has information which would have him or her believe that,

- (a) the contravention is beyond the control of the person; and
- (b) the contravention is not likely to cause short or long term health problems to persons or environmental damage beyond the assimilative capacity of the immediate environment; and
- (c) failure to enter into a compliance agreement would result in serious economic hardship to the person without benefit to others or the environment,

and the minister is of the opinion that a compliance agreement is in the public interest and within the purpose of this Act, the minister may, in the form that he or she requires, enter into a written compliance agreement with the person and that agreement shall contain the terms and conditions required by this section and the minister.

(2) A compliance agreement made under this section shall be for a fixed period of time that the minister considers to be reasonable.

(3) A compliance agreement made under this section may

- (a) require that monitoring data collected as required by a term of that agreement or under this Act or the terms and conditions of an approval issued under this Act, be provided to the department as required by the minister;
- (b) contain a term whereby the person entering the compliance agreement agrees to refrain from engaging in specified actions that caused the alleged contravention of this Act or of an approval;
- (c) contain a term requiring a person to develop and implement a pollution prevention plan acceptable to the minister;
- (d) specify persons to be compensated for damages to public property;
- (e) require that financial security be made or compensation, in whole or in part, be paid to the Crown for the cost of remedial or preventive action taken by or caused to be taken by the minister as a result of a contravention;
- (f) establish the liability of secured creditors, receivers, receiver managers, trustees in bankruptcy, executors, administrators and others;
- (g) require that the Crown be compensated, in whole or in part, for the cost of investigations related to a contravention;
- (h) require that pollution control devices be upgraded;
- (i) require that an activity that caused a contravention be carried out in a specified manner;
- (j) require that a person comply with other terms and conditions that the minister considers appropriate; and
- (k) require that a notice of the terms and conditions of the compliance agreement be published in the *Gazette* .

(4) The minister may, with the written consent of other parties to the compliance agreement, amend a term or condition of, add a term or condition to or delete a term or condition from that agreement.

(5) A compliance agreement is in force only for the time period indicated in the compliance agreement and, notwithstanding that agreement, during that time

- (a) the terms and conditions set out in the compliance agreement; or

- (b) this Act and the terms and conditions of an approval that are not varied by the compliance agreement,

apply to the activity that is the subject of the compliance agreement.

(6) A person who adheres to a compliance agreement shall not be charged with an offence under this Act with respect to a contravention of this Act that is the subject of that agreement but evidence of the contravention may be introduced as evidence in subsequent court proceedings.

(7) A compliance agreement made under this section shall not prohibit the minister and the department from exercising powers under this Act that comply with or are outside the substance of the compliance agreement.

(8) Where a person does not adhere to a compliance agreement made under this section or has not complied with the compliance agreement within the time specified in that agreement, that agreement shall be considered to not be in force.

(9) Notwithstanding subsection (8), the minister and a person who is a party to a compliance agreement may, as a term of that agreement, agree to an alternative form of dispute resolution where a term or condition of that agreement is in dispute, provided that the alternative resolution method shall occur and be completed within the time during which that agreement is in effect, and

- (a) where a resolution of the matter occurs within the required time, the terms of that resolution shall be incorporated into the compliance agreement; and
- (b) where a resolution of the matter does not occur within the required time, the compliance agreement shall be considered not to be in force.

[2002 cE-14.2 s105](#)

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### **Administrative penalties**

**106.** (1) Where the minister is of the opinion that a person has committed, as specified by regulation, a contravention of this Act for which an administrative penalty applies, the minister or a person authorized by the minister may, in writing, notify that person that he or she is to pay to the government of the province an administrative penalty in the amount set out in the notice for each day or part of a day the contravention occurs or continues to occur.

(2) A person who pays an administrative penalty with respect to a contravention may not be charged with an offence under this Act with respect to that contravention.

(3) Where a person fails to pay an administrative penalty in accordance with a notification under subsection (1), the government of the province may recover the amount owing in respect of the penalty as a debt owed to the Crown.

(4) For the purpose of this section, an administrative penalty is a monetary penalty imposed in accordance with the regulations for a contravention of this Act.

[2002 cE-14.2 s106](#)

## **PART XIV APPEALS AND REMEDIES**

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### **Appeal to minister**

**107.** (1) A person to whom subsection 108(1) does not apply, 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.

[2002 cE-14.2 s107](#)

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### **Appeal to Trial Division**

**108.** (1) A proponent of an undertaking or another person aggrieved by an order made under section 99 with respect to a matter arising under Part X may, within 30 days from the date of the order, appeal against the order to a judge of the Trial Division by filing a notice of appeal with the court and by serving a copy of the notice of appeal on the minister or deputy minister.

(2) A person aggrieved by an order or decision of the minister under this Act respecting the

(a) terms or conditions of an approval;

(b) amendment, addition or deletion of terms and conditions of an approval; and

(c) cancellation of an approval,

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.

(3) 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 appellant's solicitor.

(4) 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 14 days before the hearing, serve upon the minister or deputy minister a written notice of the day appointed for the hearing.

(5) 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.

(6) Where an appellant does not comply with subsection (4) the notice of appeal shall be considered void and the decision being appealed shall be considered to be final.

(7) 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 circumstances.

(8) 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.

(9) 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.

(10) An appeal may only 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.

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

[2002 cE-14.2 s108; 2013 c16 s25](#)

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### **Civil remedy**

**109.** 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 cE-14.2 s109](#)

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### **Evidence of damage**

**110.** Where a person is convicted of an offence under this Act, the conviction is evidence of negligence and a person who suffers loss or damage as a result of the conduct that constituted the offence may, in a court of competent jurisdiction, sue for loss or damages suffered as a result of the conduct which constituted the offence.

[2002 cE-14.2 s110](#)

## **PART XV REGULATIONS**

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### **Regulations**

**111.** (1) The Lieutenant-Governor in Council may make regulations

- (a) defining a word that is not already defined in this Act for the purpose of this Act;
- (b) respecting releases of substances, environmental rehabilitation funds and levies, remediation, terms for the rehabilitation of the environment, allocation of liability and compliance and other agreements made under this Act;
- (c) respecting environmental audits and environmental site assessments;
- (d) adopting a code or standards of an agency or government of another province, or of Canada ;
- (e) respecting environmentally sensitive areas;
- (f) respecting the burning of waste and respecting waste disposal practices at construction sites, commercial and service outlets, public and private events, public areas and the placement of flyers on utility poles, vehicles, structures and generally respecting all things which may result in the unlawful disposal of litter;
- (g) respecting emergency measures, the training of persons to respond to emergencies that relate to environmental emergencies and hazards;
- (h) respecting the establishment of standards and requirements for waste separation, management and disposal programs, waste management, the implementation and operation of waste management programs, waste facilities, waste disposal systems, waste

management agencies and sites, recycling, including the recycling of dangerous goods and their treatment when not recyclable and designating substances as waste;

- (i) respecting the Multi-Material Stewardship Board continued under section 19;
- (j) respecting the restricting, prohibiting or enabling of the use or sale of products that may be composted;
- (k) respecting the payment of a deposit for the recycling of oil and tires, on a package or container or a class of packaging or container and requiring the development of packaging waste reduction and prevention plans and respecting the establishment and management of a waste management trust fund and the disbursement of money from that fund ;
- (l) prohibiting or restricting the manufacture, composition, formulation, sale, use or disposal of a substance that may directly or indirectly have the potential by way of biological, chemical or physical means to release substances into the environment and which may have an adverse effect;
- (m) providing for the issuing of approvals to persons dealing with ozone depleting substances and vehicles, machinery or equipment containing those substances and respecting ozone depleting substances and their replacement substances;
- (n) respecting the installation of systems or devices and procedures to limit the concentration or quantity of emissions into the atmosphere, either alone or in combination with another substance and requiring the submission of information related to the release of substances into the atmosphere and establishing standards and objectives relating to ambient air quality and governing or prohibiting practices or activities that may emit contaminants into the atmosphere;
- (o) respecting air quality management areas, air quality advisory committees and air quality plans and programs;
- (p) respecting motor vehicle and engines emissions and equipment and fuel of motor vehicles and requiring the inspection, maintenance and repair of motor vehicles, engines and equipment attached to motor vehicles for the purpose of limiting the emission of air contaminants, to promote fuel efficiency and requiring new motor vehicles be sold in the province with emission control warranties;
- (q) respecting the quality, characteristics and composition of fuels sold for use in the province and restricting the use, type and quality of fuel used in specified engines, equipment and motor vehicles;
- (r) respecting the designation of assessment and rehabilitation criteria for contaminated sites and for the cleanup of those sites and determining responsibility for contaminated sites and the duties and rights of vendors, purchasers or other persons with respect to property which may be contaminated;
- (s) respecting waste effluents and methods of treatment for those effluents;
- (t) respecting and designating substances as dangerous goods and waste dangerous goods, classifying dangerous goods and waste dangerous goods, establishing permissible concentrations upon release of those goods into the environment, the quantity or concentration which may be handled, the purpose for which they or a product containing them may be handled, regulating or prohibiting the handling, sale or distribution of them, and containers holding those goods and respecting signs, labelling or other public notification on those containers;
- (u) respecting the submission to the minister of information, including manifests relating to dangerous goods, waste dangerous goods or pesticides and requiring manufacturers, distributors or sellers to recall products or materials containing dangerous goods, waste dangerous goods or pesticides;
- (v) respecting the use, operation and cleaning of vehicles, aircraft, vessels, machinery, equipment and containers used in connection with the handling of dangerous goods, waste

dangerous goods or pesticides;

- (w) respecting pesticide licences and classes of those licences for the purposes of Part IX, the terms and conditions applicable to licences, providing for the suspension, cancellation and reinstatement of those licences including the implementation and requirements for a demerit point system for those licences and exempting a person or class of persons from the application of Part IX or regulations made with respect to pesticides;
- (x) prescribing or restricting the manner in which a pesticide or material mixed or treated with a pesticide may be prohibited, restricted, used, stored, transported, packaged, handled, sold, distributed and applied including methods of application in public and private dwellings, residences, buildings and other places;
- (y) prescribing the manner in which and sites at which pesticides and their containers may be disposed;
- (z) prescribing the reports, returns, statements, books, accounts and records to be kept by persons to whom this Act applies, the manner in which the books, accounts and records are to be kept and prescribing periods of preservation of those books, returns, statements, accounts and records;
- (aa) respecting insurance policies required under this Act;
- (bb) defining the word "activity" for the purposes of this Act and regulations and designating activities, a class of activities and operations for which an approval is required, and specifying the kind of approval required, the manner in which those activities and operations can be carried out, the length of time for which they are valid and establishing exemptions from the requirements of an approval;
- (cc) respecting and prohibiting the manufacture, sale or use of equipment, devices or services designed or provided for a purpose under this Act;
- (dd) designating undertakings and classes of undertakings to which this Act applies;
- (ee) prescribing the manner of preparation and submission of and information contained in registrations, environmental preview reports, and environmental impact statements;
- (ff) establishing criteria for the examination of undertakings in order to determine whether an environmental impact statement is required, an environmental preview report is required or the undertaking may be released;
- (gg) respecting the manner in which registrations, environmental preview reports and environmental impact statements and comments and responses to them are to be produced, submitted, reproduced, and disseminated, including electronic and other technological means and respecting component studies of environmental impact statements;
- (hh) prescribing time periods by which notices, submissions, orders, procedures, commencements of undertakings and other actions expire or are to be carried out and prescribing when reregistrations, extensions and agreements with respect to the time periods may apply;
- (ii) prescribing duties and qualifications of board and committee members and procedures with respect to boards, committees and public hearings under Part X;
- (jj) prescribing methods and procedures by which the members of the general public may be involved in environmental assessments and approvals and the manner in which the proponent or his or her agent shall meet with, provide information to, and record the opinions, concerns and questions of, interested persons;
- (kk) exempting a person, class of persons, undertaking or class of undertakings from this Act or a section of this Act;
- (ll) providing for the requirements, design and implementation of environmental monitoring

and rehabilitation programs in respect of undertakings;

- (mm) respecting the fees for offsetting costs under section 74, the posting of a bond or the provision of another form of security as a condition of a release of an undertaking under Part X and generally respecting the provision of financial and other security for the purposes of this Act;
- (nn) establishing an amount for the projected capital cost for the purposes of section 74;
- (oo) respecting class environmental assessments;
- (pp) respecting agreements, approvals, permits and orders made under this Act including the implementation of a demerit point system for approvals and permits issued under this Act;
- (qq) respecting partnership and other agreements that the minister may enter into with persons and organisations for the purpose of the implementation and administration of this Act or provisions of this Act;
- (rr) respecting the contravention of sections of this Act and agreements for which an administrative penalty may be imposed and the time and manner in which these penalties shall be imposed and collected;
- (rr.1) respecting ticketable offences and penalties for those offences;
- (ss) providing for the payment of remuneration and expenses to members of a board or committee established under this Act; and
- (tt) generally to carry out the purpose of this Act.

(2) Regulations made under subsection (1) with respect to Part V of this Act may be made with retroactive effect.

(3) Regulations made under section (1) may be stated to apply to a part or parts of the province only.

[2002 cE-14.2 s111; 2006 c32 s1](#)

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## **Fees and forms**

**112.** The minister may set fees and establish forms for the purpose and administration of this Act.

[2002 cE-14.2 s112](#)

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## **Service**

**113.** (1) A notice, order, approval 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, approval 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 of that corporate body in the province.

[2002 cE-14.2 s113](#)

## **PART XVI OFFENCE AND PENALTY**

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### **Offence**

**114.** (1) A person who

- (a) provides false or misleading information under a requirement under this Act or the regulations to provide information;
- (b) does not provide information as required under this Act or the regulations;
- (c) hinders or obstructs an inspector or another person who is exercising powers or carrying out duties under this Act or the regulations;
- (d) contravenes a term or a condition of a licence issued under Part IX;
- (e) contravenes a term or condition of an approval;
- (f) contravenes an order made under this Act or the regulations;
- (g) does not comply with a term or condition imposed under this Act or the regulations with respect to an undertaking; and
- (h) contravenes this Act or the regulations,

is guilty of an offence.

(2) A person who, with respect to Part X and regulations made with respect to Part X

- (a) provides false or misleading information in respect of a requirement to provide information;
- (b) does not provide information as required under this Act;
- (c) hinders or obstructs a person who is exercising powers or carrying out duties under this Act;
- (d) does not comply with an order or direction made under this Act or the regulations by the minister or the Lieutenant-Governor in Council;
- (e) does not comply with a term or condition imposed with respect to an undertaking; and
- (f) otherwise contravenes Part X or regulations made with respect to Part X,

is guilty of an offence.

(3) Each continuance for a day or a part of a day of an offence referred to in this section constitutes a separate offence.

[2002 cE-14.2 s114](#)[Back to Top](#)

### **Penalty**

**115.** (1) A person found guilty of an offence under subsection 114(1) or another Part of this Act other than subsection 114(2) is liable on summary conviction

- (a) in the case of a corporation, including a municipality,
    - (i) for a 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 municipality,
    - (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 a 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) A person convicted of an offence under subsection 114(2) is liable on summary conviction
- (a) in the case of a person who is not a corporation, to a fine of not less than \$1,000 and not more than \$50,000 or to imprisonment for a term not exceeding 6 months, or to both a fine and imprisonment; and
  - (b) in the case of a corporation, to a fine of not less than \$5,000 and not more than \$1,000,000.
- (3) A person who is convicted for a second or subsequent time for an offence under subsection 114(2) that is a violation of the same paragraph of subsection 114(2) is liable on summary conviction
- (a) in the case of a person who is not a corporation, to a fine of not less than \$3,000 and not more than \$50,000 or to imprisonment for a term not exceeding 6 months, or to both a fine and imprisonment; and
  - (b) in the case of a corporation, to a fine of not less than \$15,000 and not more than \$1,000,000.
- (4) Where a corporation commits an offence under section 114, a person who is an officer, director or agent of the corporation and who directed, authorized, assented to, acquiesced in or participated in that offence is liable, on summary conviction, to the punishments provided in paragraphs (2)(b) and (3)(b) and, in default of payment of the fines imposed under those paragraphs, the court may impose upon that person a term of imprisonment not exceeding 6 months.
- (5) Where a person is convicted of an offence under this Act and the court is satisfied that, as a result of the commission of that offence, monetary benefit accrued to the offender, the court may order the offender to pay, in addition to a fine under this section, a fine in an amount equal to the estimation of the court of the amount of those monetary benefits.
- (6) Where a person is convicted of an offence under this Act and that person fails to comply with an order of the court under subsection (5) or section 119, that person commits an offence and is liable on summary conviction to a penalty referred to in subsection (3).
- (7) Notwithstanding subsection (1), where, with respect to an offence under this Act or regulations made under this Act, other than under subsection 114(2), a complaint is laid and a summons issued by means of a ticket in accordance with the *Provincial Offences Act*, a person found guilty of that offence is liable on summary conviction to a fine that may be established by regulation.

[2002 cE-14.2 s115; 2006 c32 s2](#)

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### **Employer liability**

**116.** In a prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee or an agent of the accused, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the knowledge and consent of the accused.

[2002 cE-14.2 s116](#)

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### **Director liability**

**117.** An officer, director or agent of a corporation who directs, authorizes, assents to, acquiesces in or participates in the contravention of this Act is guilty of an offence and is liable on summary conviction to the punishment provided for the offence for that corporation, whether or not that corporation has been prosecuted or convicted.

[2002 cE-14.2 s117](#)

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### **Trustees**

**118.** (1) Notwithstanding anything contained in this Act or another Act respecting the protection or rehabilitation of the environment, receivers, receiver managers, trustees, executors or administrators of a person responsible, and their agents and employees, are not responsible for the rehabilitation of a contaminated site beyond the value of the assets of the responsible persons, less the reasonable costs and fees of administration, in respect of an adverse effect that occurred

- (a) before the appointment of that receiver, receiver manager, executor, administrator or trustee; or
- (b) after appointment, except where the adverse effect occurred as a result of the failure of the receiver, receiver manager, trustee, executor or administrator to exercise due diligence.

(2) Subsection (1) does not apply to a person who had care, management or control, in whole or in part, of the site at the time the adverse effect occurred or imposed requirements upon a person regarding the manner of treatment, disposal or handling of a substance and the control or requirements, in whole or in part, which caused the site to become a contaminated site.

(3) Notwithstanding anything contained in this Act or another Act, a secured creditor is responsible for the rehabilitation at a contaminated site if

- (a) the secured creditor exercised care, management or control, in whole or in part, of the site or imposed requirements on a person regarding the manner of treatment, disposal or handling of a substance and the care, management, control or requirements, in whole or in part, which caused the site to become a contaminated site; or
- (b) the secured creditor becomes the registered owner of the real property at the contaminated site unless a compliance agreement or another agreement is entered into with the minister stating otherwise.

(4) Notwithstanding subsection (3), a secured creditor is not responsible for rehabilitation where it acts primarily to protect its security interest, including where the secured creditor

- (a) participates only in purely financial matters related to the site;
- (b) has the capacity or ability to influence an operation at the contaminated site in a way that would have the effect of causing or increasing contamination, but does not exercise that capacity or ability in a way as to cause or increase contamination;



- (c) imposes requirements on a person if the requirements do not have a reasonable probability of causing or increasing contamination at the site; or
- (d) appoints a person to inspect or investigate a contaminated site to determine future steps or actions that the secured creditor might take.

(5) Notwithstanding paragraph (3)(b), a secured creditor is not responsible for the rehabilitation of a contaminated site beyond the value of the assets the secured creditor is administering.

(6) Nothing in this section exempts a secured creditor, receiver, receiver manager, trustee, executor or administrator from a duty to report or make disclosure imposed by a provision of this Act.

[2002 cE-14.2 s118](#)

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### Further order

**119.** (1) 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 anything that may result in the continuation or repetition of the offence;
- (b) directing the offender to take the action the court considers appropriate to remedy or prevent an adverse effect that results or may result from the act or omission that constituted the offence;
- (c) directing the offender to publish in a required manner, and at the cost of the offender, the facts relating to the conviction;
- (d) directing the offender to notify a person, aggrieved or affected by the conduct of the offender, of the facts relating to the conviction, in the required manner, and at the cost of the offender;
- (e) 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;
- (f) on application to the court by the minister within 3 years after the date of conviction, directing the offender to submit to the minister information with respect to the conduct of the offender that the court considers appropriate in the circumstances;
- (g) directing the offender to compensate the Crown, in whole or in part, for the cost of a remedial or preventable action that was carried out by the government of the province and was made necessary by the act or omission that constituted the offence;
- (h) directing the offender to perform community service; and
- (i) requiring the offender to comply with other conditions the court considers appropriate in the circumstances for securing the good conduct of the offender and for preventing the offender from repeating the offence or committing another offence.

(2) Where a person contravenes an order under paragraph (1)(c), the minister may publish the facts in compliance with the order.

(3) Where the court makes an order under paragraph (1)(g) or the minister incurs publication costs under subsection (2), the costs may be recovered as a debt owed to the Crown.

(4) An order made under subsection (1) comes into force on the day on which it is made or

on another day specified in the order and continues in force for the period specified in the order.

[2002 cE-14.2 s119](#)

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### **Recovery in debt**

**120.** (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 costs, expenses or charges incurred in carrying out environmental emergency measures cleanup, investigations, monitoring and the direction of an activity, 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, "costs" includes the costs and expenses related to the salary, transportation, accommodation and meals of an inspector or employee of the government of the province while he or she is required to investigate, monitor, carry out or direct an activity or emergency measure.

[2002 cE-14.2 s120](#)

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### **Documentary evidence**

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

- (a) a notice, approval, licence, order, varied approval or consent;
- (b) a document stating that a person named in that document was or was not, at a specified time, the holder of an approval; and
- (c) a 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, approval, licence, order, varied approval 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 cE-14.2 s121](#)

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### **Analyst**

**122.** (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 analyzed or examined 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 cE-14.2 s122](#)

## **PART XVII TRANSITIONAL AND REPEAL**

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### **Transitional**

**123.** (1) An approval, authorization, certificate, permit, variance or order issued under the *Environment Act*, *Waste Management Act* or the *Waste Material Disposal Act* shall be considered to have been issued as an approval or order under this Act and shall continue in force until that approval, authorization, certificate, permit or variance would expire, be renewed or reissued under the Act under which it was first given or made, or 2 years after the coming into force of this Act, whichever occurs first.

(2) A licence or an exemption issued under the *Pesticides Control Act* shall be considered to have been issued under Part IX of this Act and regulations made with respect to Part IX and shall continue in force until that licence or exemption would have expired, been renewed or reissued under the *Pesticide Control Act*, or 2 years after the coming into force of this Act, whichever occurs first.

(3) An undertaking registered under the *Environmental Assessment Act* in force immediately before August 4, 2000 and under the *Environmental Assessment Act, 2000* immediately before the coming into force of this Act shall be considered to have been registered under part XI of this Act and that registration shall continue in force until the date on which that registration would have expired under the *Environmental Assessment Act*, the *Environmental Assessment Act, 2000*, or 3 years after the coming into force of the *Environmental Assessment Act, 2000*, whichever occurs first, and this Act shall, with the necessary changes, apply to that undertaking.

[2002 cE-14.2 s123](#)

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### **SNL1999 cM-24 Amdt.**

**124. (1) The *Municipalities Act, 1999* is amended by adding immediately after section 403 the following:**

## **PART XIII.1 WASTE DISPOSAL AREAS**

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### **Definitions**

#### **403.1** In this Part

(a) "area" means an area established as a waste material disposal area under this Part and,

with respect to

- (i) a committee, means the area for which a committee is appointed, and
- (ii) a franchise holder, means the area in respect of which that franchise holder has entered into an existing agreement under section 403.5;
- (b) "committee" means a waste material disposal committee appointed under section 403.4;
- (c) "council" includes the St. John's Municipal Council, the Corner Brook City Council, the Mount Pearl City Council and a council or local service district established under this Act;
- (d) "franchise holder" means a person to whom a right to hold a franchise under section 403.5 has been granted under an agreement entered into under that section;
- (e) "operator" means the person in occupation or having the charge, management or control of a waste disposal site or a waste management system;
- (f) "owner" means a person that owns or is responsible for the operation of a waste disposal site or waste management system;
- (g) "person" includes a council, firm, committee or franchise holder;
- (h) "waste disposal site" means real property and a building or structure upon or in which, waste material is deposited;
- (i) "waste management system" means facilities, equipment and operations for the management of waste, including the collection, handling, transportation, storing, processing, use and disposal of waste, and includes one or more waste disposal sites within a system; and
- (j) "waste material" means
  - (i) refuse, garbage, rubbish, litter, scrap and discarded material, including tailings, offal, machinery, products, vehicles and other articles which are dumped, discarded, abandoned or otherwise disposed of,
  - (ii) a material or thing that may be a danger to the health of human beings, animals, wild life or fish, or is of unsightly appearance, and
  - (iii) a substance designated as waste material under the *Environmental Protection Act*.

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### **Powers of minister**

**403.2** The powers, functions and duties of the minister under this Part are to

- (a) establish, construct, take over and operate, or manage those waste disposal sites and waste management systems that he or she may approve as being necessary or desirable to establish, construct, take over and operate, or manage in the public interest; and
- (b) make arrangements or enter into agreements with a department, agency, council, authority or commission to the extent that the minister may consider desirable to achieve maximum efficiency in the field of waste disposal and waste management.

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### **Minister may establish area**

**403.3** (1) The minister may by order establish an area in the province other than in a municipality or a local service district as a waste material disposal area and may establish rates to be charged for the

collection and disposal of waste material and those rates may differ for different areas and classes of waste material.

- (2) The minister may,
  - (a) amend an order to extend or reduce an area established under subsection (1);
  - (b) revoke an order and substitute another order for it, and

where an area is extended, this Act and those orders or regulations in force in the area immediately before the date of the extension apply to the extended area from that date.

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### **Appointment of committee**

**403.4** (1) On or after making an order under subsection 403.3(1), the minister may appoint a committee for the area in respect of which the order was made.

- (2) A committee shall consist of not fewer than 5 persons.
- (3) The members of a committee shall hold office for the period and upon the terms that the minister may prescribe.
- (4) A committee is a corporation.
- (5) A committee may with the approval of the minister appoint the officers, clerks and employees that may be necessary for the conduct of its business and may fix their remuneration.
- (6) A committee member shall not be an officer, clerk or employee referred to in subsection (5).

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### **Franchises**

**403.5** Instead of appointing a committee under section 403.4, the minister may, on or after making an order under subsection 403.3(1), enter into an agreement with a person granting to that person the exclusive right to be a franchise holder and to carry out the duties and exercise the powers set out in section 403.6.

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### **Duties and powers of committee**

**403.6** (1) A committee or a franchise holder shall

- (a) in accordance with the *Environmental Protection Act*,
  - (i) construct, operate and maintain waste disposal sites and waste management systems,
  - (ii) arrange for the collection at regular intervals of waste material from persons who reside in or have a business, industry or manufacturing operation in the area and who pay a rate established under section 403.3,
  - (iii) arrange for the disposing of waste material in waste disposal sites, and
  - (iv) take those measures that the committee or the franchise holder considers necessary, or that may be required under the *Environmental Protection Act*, to prevent waste material in an area from becoming a nuisance to the public, from having an unsightly appearance or from becoming a hazard to health;

- (b) collect the rates payable to the committee or franchise holder under this Part;
- (c) out of money collected by the committee, pay the salaries of persons appointed under section 403.4 and other expenses incurred in carrying out the committee's operations;
- (d) take those measures that the committee or the franchise holder considers necessary to prevent persons from entering a part of a waste management site for the purpose of removing waste material from it;
- (e) annually submit to the minister
  - (i) an audited balance sheet and audited statement of receipts and disbursements, together with the auditor's report on them, and
  - (ii) a report on the operation of the committee or the franchise holder; and
- (f) carry out those orders that the minister may consider necessary.

(2) A committee or a franchise holder may, subject to subsection (3), make those arrangements for services that the committee or the franchise holder considers appropriate with businesses, industry or manufacturing operations in its area and with those other persons engaged in commercial or industrial enterprises in the area with respect to the disposal of waste.

(3) A person who occupies residential premises in an area and businesses, industry or manufacturing operations shall pay to the committee or the franchise holder the rates fixed by the minister under section 403.3, and in this section, "residential premises" means premises that are occupied wholly or partly for residential purposes.

(4) A payment owed by a person under subsection (3) that has not been collected by a committee or a franchise holder may be assessed and collected by a subsequent committee or franchise holder succeeding the committee or franchise holder that originally billed the person.

(5) A payment owed by a person under subsection (3) or (4) is a debt due to the committee or the franchise holder and is recoverable with costs by civil action in a court but, failure to make those payments does not constitute an offence.

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### **Use of waste disposal site**

**403.7** (1) A waste disposal site within a waste management system in an area shall be used only for the disposing of waste material by a committee or a franchise holder or by another person with the permission of the committee or the franchise holder.

(2) Where there is a system of collection and rates for the collection of waste material in an area, residents of the area who are paying the rates may deposit material in a waste disposal site within the waste management system in the area by means of their own vehicles, at a rate established under section 403.3.

(3) Notwithstanding subsection (2), a committee or franchise holder may, with respect to a waste disposal site, control

- (a) the time of access to the site;
- (b) the location within the site where waste material may be disposed of; and
- (c) substances that may be disposed of in accordance with the *Environmental Protection Act* and approvals issued under that Act.

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### **Binding requirements**

**403.8** A waste disposal site or waste management system shall be constructed, operated and maintained in accordance with the *Environmental Protection Act* and regulations and by-laws of a municipality, provided that those regulations and by-laws equal or exceed the requirements of the *Environmental Protection Act* .

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### Notice of proposal

**403.9** Before submitting an application for an approval for a waste disposal site or a waste management system or an alteration of them under the *Environmental Protection Act*, a person shall publish a notice of his or her proposal to make the application in a newspaper having general circulation in the locality where the waste disposal site or waste management system is or is to be located or used, once a week for 3 successive weeks.

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### Prohibition against removal of waste material

**403.10** A person shall not remove waste material from a waste disposal site unless that removal is

- (a) in accordance with the *Environmental Protection Act* ; and
- (b) in accordance with an approval issued for that site under the *Environmental Protection Act* ; and
- (c) with the prior written consent of the committee or franchise holder responsible for that site.

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### Transitional

**403.11** (1) A waste disposal area and a franchise agreement established under the *Waste Material Disposal Act* shall continue in force as if ordered, established or agreed upon under this Part.

(2) Notwithstanding subsection (1), an area and a franchise agreement is subject to the requirements of the *Environmental Protection Act*.

(3) A certificate issued under the *Waste Material Disposal Act* in force before the coming into force of this section continues in force for 2 years after the coming into force of this section, or the expiry of the certificate, whichever occurs first.

(4) A certificate shall, for the purposes of subsection (3) be considered to be an approval issued under the *Environmental Protection Act*.

### **(2) Paragraph 414(2)(pp) of the Act is repealed and the following substituted:**

(pp) respecting

- (i) subject to the *Environmental Protection Act* , the administration and management of waste disposal sites, and waste management systems,
- (ii) the storage and collection of solid waste,
- (iii) the prevention of littering, and
- (iv) the definitions of waste and litter;

[2002 cE-14.2 s124](#)

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## **Repeal**

### **125. The following Acts are repealed:**

- (a) *Environment Act* ;
- (b) *Environmental Assessment Act, 2000* ;
- (c) *Pesticides Control Act* ;
- (d) *Waste Management Act* ; and
- (e) *Waste Material Disposal Act* .

[2002 cE-14.2 s125](#)

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