

# Environment Act

## CHAPTER 1 OF THE ACTS OF 1994-95

*as amended by*

1998, c. 18, s. 557; 1999 (2nd Sess.), c. 12, s. 76;  
2001, c. 6, s. 103; 2004, c. 3, ss. 20, 21; 2006, c. 2, s. 3;  
2006, c. 30; 2011, c. 61



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2011, c. 61

**An Act to Reform the  
Environmental Laws of the Province  
and to Encourage and Promote  
the Protection, Enhancement and  
Prudent Use of the Environment**

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(The table of contents is not part of the statute)

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**Short title**

1 This Act may be cited as the *Environment Act*. 1994-95, c. 1, s. 1.

## PART I

## INTRODUCTION

**Purpose of Act**

2 The purpose of this Act is to support and promote the protection, enhancement and prudent use of the environment while recognizing the following goals:

(a) maintaining environmental protection as essential to the integrity of ecosystems, human health and the socio-economic well-being of society;

(b) maintaining the principles of sustainable development, including

(i) the principle of ecological value, ensuring the maintenance and restoration of essential ecological processes and the preservation and prevention of loss of biological diversity,

(ii) the precautionary principle will be used in decision-making so that where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing measures to prevent environmental degradation,

(iii) the principle of pollution prevention and waste reduction as the foundation for long-term environmental protection, including

(A) the conservation and efficient use of resources,

(B) the promotion of the development and use of sustainable, scientific and technological innovations and management systems, and

(C) the importance of reducing, reusing, recycling and recovering the products of our society,

(iv) the principle of shared responsibility of all Nova Scotians to sustain the environment and the economy, both locally and globally, through individual and government actions,



- (v) the stewardship principle, which recognizes the responsibility of a producer for a product from the point of manufacturing to the point of final disposal,
  - (vi) the linkage between economic and environmental issues, recognizing that long-term economic prosperity depends upon sound environmental management and that effective environmental protection depends on a strong economy, and
  - (vii) the comprehensive integration of sustainable development principles in public policy making in the Province;
- (c) the polluter-pay principle confirming the responsibility of anyone who creates an adverse effect on the environment that is not *de minimis* to take remedial action and pay for the costs of that action;
- (d) taking remedial action and providing for rehabilitation to restore an adversely affected area to a beneficial use;
- (e) Government having a catalyst role in the areas of environmental education, environmental management, environmental emergencies, environmental research and the development of policies, standards, objectives and guidelines and other measures to protect the environment;
- (f) encouraging the development and use of environmental technologies, innovations and industries;
- (g) the Province being responsible for working co-operatively and building partnerships with other provinces, the Government of Canada, other governments and other persons respecting transboundary matters and the co-ordination of legislative and regulatory initiatives;
- (h) providing access to information and facilitating effective public participation in the formulation of decisions affecting the environment, including opportunities to participate in the review of legislation, regulations and policies and the provision of access to information affecting the environment;
- (i) providing a responsive, effective, fair, timely and efficient administrative and regulatory system;
- (j) promoting this Act primarily through non-regulatory means such as co-operation, communication, education, incentives and partnerships. 1994-95, c. 1, s. 2; 2006, c. 30, s. 1; 2011, c. 61, s. 1.

### Interpretation

3 In this Act,

- (a) "Act" includes, unless the context otherwise requires, the regulations made pursuant to this Act;
- (aa) "activity" means an activity or part of an activity prescribed by the regulations;
- (b) "administrator" means a person appointed by the Minister for the purpose of this Act, and includes an acting administrator;
- (c) "adverse effect" means an effect that impairs or damages the environment or changes the environment in a manner that negatively affects aspects of human health;
- (d) "air" means open air not enclosed in a building, structure, machine, chimney, stack, flue, tank or pipe;
- (e) "analyst" means a person appointed as an analyst by the Minister pursuant to this Act;
- (f) "approval" means an approval issued pursuant to this Act with respect to an activity;
- (g) *repealed 2011, c. 61, s. 2.*
- (h) "certificate of qualification" means
- (i) a certificate of qualification issued pursuant to this Act; or
- (ii) a certificate or other proof of qualification that is prescribed by the regulations as a certificate of qualification for the purpose of this Act;
- (i) "certificate of variance" means a certificate of variance issued pursuant to this Act;
- (j) "class environmental assessment" means a planning process used for types of undertakings that occur frequently and have a generally predictable range of environmental effects;
- (k) "contaminant" means, unless otherwise defined in the regulations, a substance that causes or may cause an adverse effect;
- (l) "contaminated site" means
- (i) unless otherwise defined by regulation, a site with concentrations of a contaminant or contaminants that exceed standards prescribed or adopted by the Minister that has caused, is causing or may cause an adverse effect, or
- (ii) a site designated as a contaminated site by the Minister pursuant to Section 87;
- (m) "Corps" means the Nova Scotia Youth Conservation Corps;
- (n) "dangerous goods" means a substance designated as such in the regulations or conforming with criteria set out in the regulations;

- (o) "Department" means the Department of Environment;
- (p) "designated material" includes a material prescribed as such in the regulations or conforming with criteria set out in the regulations;
- (pa) "designated organization" means an organization designated by the regulations for the purpose of issuing certificates of qualification;
- (pb) "directive" means a directive or instruction issued by an inspector pursuant to this Act or the regulations;
- (q) "document" includes a book, sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book of account, electronic device or any other device that stores or contains information;
- (r) "environment" means the components of the earth and includes
  - (i) air, land and water,
  - (ii) the layers of the atmosphere,
  - (iii) organic and inorganic matter and living organisms,
  - (iv) the interacting natural systems that include components referred to in subclauses (i) to (iii), and
  - (v) for the purpose of Part IV, the socio-economic, environmental health, cultural and other items referred to in the definition of environmental effect;
- (s) "environmental assessment" means a process by which the environmental effects of an undertaking are predicted and evaluated and a subsequent decision is made on the acceptability of the undertaking;
- (t) "environmental-assessment report" means a report that presents the results of an environmental assessment;
- (u) "environmental audit" means a process of independently obtaining and evaluating evidence about an environmental matter to determine the relationship between the environmental matter and the established standards and criteria;
- (v) "environmental effect" means, in respect of an undertaking,
  - (i) any change, whether negative or positive, that the undertaking may cause in the environment, including any effect on socio-economic conditions, on environmental health, physical and cultural heritage or on any structure, site or thing including those of historical, archaeological, paleontological or architectural significance, and
  - (ii) any change to the undertaking that may be caused by the environment,whether the change occurs inside or outside the Province;

- (w) "environmental-site assessment" means the process by which an assessor seeks to determine whether a particular property is or may be subject to contamination;
- (x) "focus report" means a report that presents the results of an environmental assessment of a limited range of adverse effects that may be caused by the undertaking;
- (y) "Fund" means the Resource Recovery Fund;
- (z) "Government" means Her Majesty in right of the Province;
- (aaa) "Government agency" means
- (i) a person who is an agent of the Government, or
  - (ii) an agency, commission, board or other body, some or all of whose members are appointed by an Act of the Legislature, the Governor in Council or a member of the Executive Council, or any combination thereof;
- (ab) "groundwater" means all water naturally occurring under the surface of the Province;
- (ac) "handle" includes use, store, distribute, treat, manufacture, transport, generate, process, package, re-process, recycle, sell, offer for sale, dispose of and import into the Province;
- (ad) "inspector" means any person who is appointed as an inspector by the Minister, and includes any municipal or town police officer and any member of the Royal Canadian Mounted Police;
- (ae) "land" means surface land, land covered by water, subsoil, matter beneath the subsoil or any combination or part thereof;
- (aea) "litter" means any material left or abandoned in a place other than a receptacle or place intended or approved for receiving such material;
- (af) "loss or damage" includes personal injury, loss of life, loss of use or enjoyment of property and pecuniary loss, including loss of income;
- (ag) "Minister" means the Minister of Environment;
- (ah) "municipality" means a city, an incorporated town, a municipality of a county or district or village commissioners;
- (aha) "notification" means a notice to the Minister that an activity designated in the regulations as requiring a notification is about to be commenced or is to continue beyond the period of time prescribed by the regulations;
- (ai) "peace officer" means a peace officer within the meaning of the *Criminal Code* (Canada);
- (aj) "person" includes an individual and a partnership and, for greater certainty, a corporation, municipality and any other entity, and, without restricting the generality of the foregoing, the Government, a Govern-

ment agency, and Her Majesty in right of Canada and a person acting on behalf of Her Majesty;

(ak) "person responsible" means

- (i) the owner of the substance or thing,
- (ii) the owner or occupier of land on which an adverse effect has occurred or may occur,
- (iii) a previous owner of the substance or thing,
- (iv) a person who has or has had care, management or control, including care, management and control during the generation, manufacture, treatment, sale, handling, distribution, use, storage, disposal, transportation, display or method of application of the substance or thing,
- (v) a successor, assignee, executor, administrator, receiver, receiver manager or trustee of a person referred to in subclauses (i) to (iv), or
- (vi) a person who acts as the principal or agent of a person referred to in subclauses (i) to (v);

(al) "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) any other person whom the Minister considers to be responsible for causing or contributing to the release of a substance into the environment,
- (iii) the owner or occupier of, or an operator on, the contaminated site,
- (iv) any previous owner, occupier or operator of the contaminated site who was the owner, occupier or operator at any 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 subclauses (i) to (iv), or
- (vi) a person who acts as the principal or agent of a person referred to in subclauses (i) to (v);

(am) "pesticide" or "pest control product" means

- (i) any substance that is intended, sold or represented for use in preventing, destroying, repelling or mitigating, directly or indirectly, any pest,

(ii) any substance that is a pest control product within the meaning of the *Pest Control Products Act* (Canada) or is intended for use as a pest control product,

(iii) any substance that is a plant growth regulator, a defoliant or a plant desiccant,

(iv) a fertilizer within the meaning of the *Fertilizers Act* (Canada) that contains a substance referred to in subclause (i), (ii) or (iii), or

(v) any other substance designated as a pesticide in the regulations,

but does not include a substance that is intended, sold or represented for use in potable water to prevent or destroy bacteria, parasites or viruses if the substance is not a pest control product within the meaning of the *Pest Control Products Act* (Canada);

(an) "place" includes any land, building, structure, machine, aircraft, vehicle or vessel;

(ao) "proponent" means a person who

(i) carries out or proposes to carry out an undertaking or activity, or

(ii) is the owner or person having care, management or control of an undertaking or activity;

(ap) "registered owner" with respect to real property, means an owner of real property whose interest is defined and whose name is specified in an instrument recorded in a registry of deeds or land registration office, and includes a person shown as tenant of real property on the last revised assessment roll;

(aq) "rehabilitation" includes

(i) the removal of equipment or a building or other structure or appurtenance,

(ii) the conducting of an investigation to determine the presence of a substance,

(iii) the removal of a contaminant from land or water,

(iv) the stabilization, contouring, maintenance, conditioning or reconstruction of the surface of land,

(v) any other procedure, operation or requirement in accordance with this Act;

(ar) "release" means to spill, discharge, dispose of, spray, inject, inoculate, abandon, deposit, leak, seep, pour, emit, empty, throw, dump, place, drain, pump or exhaust;

(ara) “review panel” means a panel established by the Minister pursuant to subsection 42(1);

(as) “Round Table” means an advisory committee established to advise the Department on issues referred to it by the Minister related to environmental sustainability;

(asa) “standard” means a standard, policy, code, guideline, protocol or other rule in relation to a designated activity that, by reason of its establishment or adoption by regulation or as a condition of an approval or certificate of qualification, becomes a mandatory requirement for participation in that designated activity;

(at) “storage” 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;

(au) “substance” means

(i) any solid, liquid or gas,

(ii) any sound, vibration, heat, radiation or another form of energy, or

(iii) any combination of any of the things referred to in sub-clauses (i) and (ii);

(av) “Supreme Court” means the Supreme Court of Nova Scotia;

(aw) “sustainable development” means development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs;

(ax) “treat” means to apply any method, technique or process, including neutralization and stabilization that is designed to change the physical, chemical or biological concentration, character or composition of a substance;

(ay) “Trust” means the Nova Scotia Environmental Trust;

(az) “undertaking” means an enterprise, activity, project, structure, work or proposal that, in the opinion of the Minister, causes or may cause an adverse effect or an environmental effect, and may include, in the opinion of the Minister, a policy, plan or program or a modification, extension, abandonment, demolition or rehabilitation, as the case may be, of an undertaking;

(ba) “waste” means a substance that would cause or tend to cause an adverse effect if added to the environment, and includes rubbish, slimes, tailings, fumes, smoke from mines or factories, other air emissions, or other industrial wastes, effluent, sludge, sewage, garbage, refuse, scrap, litter or other waste products of any kind;

(bb) “waste dangerous goods” means a substance designated as such in the regulations or conforming with criteria set out in the regulations;

(bc) "water resource" means all fresh and marine waters comprising all surface water, groundwater and coastal water;

(bd) "water works" means any public, commercial or industrial works for the collection, production, treatment, storage, supply or distribution of water;

(be) "watercourse" means

(i) the bed and shore of every river, stream, lake, creek, pond, spring, lagoon or other natural body of water, and the water therein, within the jurisdiction of the Province, whether it contains water or not, and

(ii) all groundwater;

(bf) "watershed" means the area drained by, or contributing to a stream, lake or other body of water;

(bg) "wetland" means land commonly referred to as a marsh, swamp, fen or bog that either periodically or permanently has a water table at, near or above the land's surface or that is saturated with water, and sustains aquatic processes as indicated by the presence of poorly drained soils, hydrophytic vegetation and biological activities adapted to wet conditions. 1994-95, c. 1, s. 3; 2001, c. 6, s. 103; 2006, c. 30, s. 2; 2011, c. 61, s. 2.

#### **Incorporation by reference in regulation**

**3A (1)** A regulation under this Act may adopt or incorporate in whole or in part or with modifications documents that set out standards relating to any matter in respect of which a regulation may be made under this Act.

**(2)** Where a standard is adopted or incorporated by regulation under this Act, the Minister shall make it publicly available. 2006, c. 30, s. 3; 2011, c. 61, s. 3.

#### **Act binds Provincial and federal Crown**

**4 (1)** This Act binds Her Majesty in right of the Province, Her Majesty's corporations, agents, administrators, servants and employees and Government agencies.

**(2)** This Act binds Her Majesty in right of Canada and Her Majesty's corporations, boards, commissions, agents, administrators, servants and employees.

**(3)** For greater certainty, the persons referred to in subsections (1) and (2) are subject to prosecution, a ministerial order and other remedies under this Act. 1994-95, c. 1, s. 4.



**Approvals authorized under other Acts**

**5** A licence, permit, approval or other authorization issued pursuant to any other enactment does not constitute an approval under this Act, unless otherwise stated in the regulations. 1994-95, c. 1, s. 5.

**Conflict**

**6 (1)** Where there is a conflict between this Act and any other enactment, this Act prevails.

**(2)** A provision of any other enactment 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 those required by this Act.

**(3)** Subject to subsections (4) and (5), nothing in this Act affects or impairs the validity of a by-law of a municipality relating to matters dealt with in this Act except in so far as the by-law is in conflict or inconsistent with this Act.

**(4)** A by-law or regulation of a municipality, or an authorization issued by a municipality is, to the extent that it is in conflict or inconsistent with this Act, suspended and of no effect.

**(5)** A by-law, regulation or authorization of a municipality is not in conflict or inconsistent with this Act by reason only that it imposes a restriction or requires a condition for the protection of the environment in excess of those required by this Act. 1994-95, c. 1, s. 6.

## PART II

## ADMINISTRATION

**Appointment of personnel**

**7** Such administrators and employees as are necessary for the administration of this Act shall be appointed in accordance with the *Civil Service Act*. 1994-95, c. 1, s. 7.

**Minister responsible for Act**

**8 (1)** The Minister is responsible for the general supervision and management of this Act.

**(2)** The Minister, for the purposes of the administration and enforcement of this Act, and after engaging in such public review as the Minister considers appropriate, shall

(a) promote sustainable development, including pollution prevention;

- (b) establish and administer policies, programs, guidelines, objectives and approval processes pertaining to the protection and stewardship of the environment;
- (c) consult with and co-ordinate activities with other departments, Government agencies, municipalities, governments and other persons;
- (d) develop policies and plans for the management of wastes;
- (e) control the handling of substances that may have an adverse effect;
- (f) promote the rehabilitation and restoration of degraded areas of the environment;
- (g) establish and assist demonstration programs that are consistent with the intent of this Act;
- (h) conduct economic analyses to determine the costs and benefits of proposed alterations of the environment and assess methods of offsetting the environmental costs associated with those alterations;
- (i) establish criteria to be applied by an administrator or a person to whom responsibility is delegated pursuant to this Act in making any decision under this Act;
- (j) implement policies and programs respecting environmental technologies, innovations and industries.
- (k) and (l) *repealed 2011, c. 61, s. 4.*

1994-95, c. 1, s. 8; 2004, c. 3, s. 20; 2011, c. 61, s. 4.

## Regulations

### 8A (1) The Minister may make regulations

- (a) establishing fees and the manner of payment in relation to anything done or required to be done pursuant to this Act or the regulations, including, but not limited to, fees and the manner of payment in relation to
  - (i) emission and effluent discharge levels,
  - (ii) the provision or filing of any information, documents, notifications, returns or reports,
  - (iii) the application for, or processing, issuance or renewal of, an approval or certificate,
  - (iv) any inspection or investigation,
  - (v) any services or material provided, and

- (vi) any other matter respecting the administration of this Act;
- (b) prescribing forms for the purpose of this Act;
- (c) establishing standards and designating the activities to which standards apply.

(2) A regulation establishing a standard may adopt or incorporate in whole or in part, or with modifications, a standard, policy, code, guideline, protocol or other rule of any government, organization or person as it reads at a particular time or as amended or replaced from time to time.

(3) Where a standard, policy, code, guideline, protocol or other rule is adopted as a standard or incorporated as part of a standard by a regulation made pursuant this Section, the Minister shall ensure that a copy of the standard, practice, code, guideline, objective, method or other rule is made publicly available.

(4) The exercise by the Minister of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*, 2011, c. 61, s. 5.

#### **Advisory committees, experts and Round Table**

9 (1) The Minister may appoint any person, establish advisory committees and retain experts to advise the Minister with respect to

- (a) the content and administration of this Act, including the review of the Act pursuant to Section 174;
- (b) any policy, program, standard or other matter under the administration of the Minister pursuant to this Act;
- (c) the review of any refusal to issue approvals or certificates of qualification under Part V or the review of any suspension or cancellation of an approval under Part V; or
- (d) any other matter referred by the Minister to the person, advisory committee or expert, as the case may be.

(2) The Minister may establish an advisory committee composed of representatives of the Department and the Mi'kmaq people to discuss environmental matters associated with the rights and interests of the Mi'kmaq people.

(3) The Round Table is deemed to be an advisory committee established pursuant to subsection (1), and the Minister may

- (a) appoint members to the Round Table; and
- (b) seek advice from the Round Table with respect to matters concerning issues of environmental sustainability and its linkage with economic and social prosperity.

(4) The Minister may

- (a) specify the functions that
  - (i) any person appointed, advisory committee established and expert retained pursuant to subsection (1), and
  - (ii) the Round Table

are to perform, including the seeking of input from the public and the manner and time period in which those functions are to be performed;

- (b) provide for the remuneration of and payment of expenses to
  - (i) witnesses,
  - (ii) members of advisory committees and the Round Table, and
  - (iii) any person appointed or expert retained pursuant to subsection (1);
- (c) provide for the issue of summonses requiring the attendance of witnesses, the production of documents and things and the payment of fees to witnesses.

**(5)** When reviewing candidates for appointment to an advisory committee or the Round Table, the Minister shall have regard to the candidate's particular knowledge, experience and interest in issues relevant to the tasks that the advisory committee or Round Table is being asked to perform. 2011, c. 61, s. 6.

**9A** *repealed 2011, c. 61, s. 6.*

### **Environmental registry**

**10 (1)** The Minister shall establish an environmental registry containing

- (a) approvals;
- (b) certificates of qualification;
- (c) certificates of variance;
- (d) orders, directives, appeals, decisions and hearings made under this Act;
- (e) notices of designation given pursuant to this Act;
- (f) notices of a charge or lien given pursuant to Section 132;
- (g) policies, programs, standards, guidelines, objectives and approval processes established under this Act;
- (h) convictions, penalties and other enforcement actions brought under this Act;

- (i) information or documents required by the regulations to be included in the registry;
- (j) annual reports; and
- (k) any other information or document considered appropriate by the Minister.

(2) All information under the control of the Department is accessible to the public, subject only to the *Freedom of Information and Protection of Privacy Act*.

(3) The Minister shall ensure public access to the information and documents contained in the environmental registry during business hours of the Department.

(4) Where the Minister, administrator or delegated agent makes a decision under Section 34, 35, 40, 52, 54 or 56, any person who asks for a reason for the decision shall, within thirty days, and subject to the *Freedom of Information and Protection of Privacy Act*, be furnished with a written statement of the decision, setting out the findings of fact upon which it is based and the reasons for the decision. 1994-95, c. 1, s. 10; 2006, c. 30, s. 6; 2011, c. 61, s. 7.

11 to 13      *repealed 2006, c. 30, s. 7.*

#### **Alternate dispute resolution**

14 (1) For the purpose of resolving a dispute, the Minister may refer a matter to a form of alternate dispute resolution, including but not limited to, conciliation, negotiation, mediation or arbitration.

(2) Where the Minister decides to use a form of alternate dispute resolution to resolve a dispute, the Minister, in consultation with the affected parties and using criteria prescribed or adopted by the Department, shall determine which form of dispute resolution is most appropriate to use to resolve the dispute.

(3) Any form of alternate dispute resolution used shall strive to achieve consensus to resolve procedural and substantive issues throughout the process.

(4) Where a form of alternate dispute resolution is being used to resolve a dispute, and where an independent party or neutral third party has been chosen to facilitate, mediate or arbitrate, at the conclusion of the process that person shall file a report with the Minister and with the parties whether or not the dispute was resolved.

(5) Without limiting the generality of subsections (1) to (4), a form of alternate dispute resolution may be used

- (a) in case of a dispute over a certificate of qualification or a certificate of variance;
- (b) in case of a dispute over an approval;
- (c) in case of a dispute under Part VIII respecting responsibility for rehabilitation of a contaminated site; or
- (d) generally, for conflict resolution. 1994-95, c. 1, s. 14.

**Economic instruments**

**15** The Minister may, in accordance with the regulations, establish programs for the research, development and use of economic instruments and market-based approaches for the management of the environment and for the purpose of achieving environmental quality objectives in a cost-effective manner, including, without limiting the generality of the foregoing,

- (a) tradable emission and effluent permits;
- (b) offsetting environmental costs and benefits;
- (c) user charges;
- (d) resource pricing and physical resource accounts;
- (e) deposit refund systems;
- (f) emission, effluent and waste-disposal fees;
- (g) product charges;
- (h) charges on inputs or materials;
- (i) tax incentives and tax differentiation;
- (j) subsidies, loans and grants. 1994-95, c. 1, s. 15.

**Reporting on state of the environment**

**16** The Minister shall report periodically to the people of the Province on the state of the environment in the Province. 1994-95, c. 1, s. 16.

**Delegation and consultation**

- 17 (1)** The Minister may, in writing, delegate to
- (a) any employee of the Government or a Government agency;
  - (b) any employee of the Government of Canada or an agency of that government;
  - (c) any employee of a municipality; or
  - (d) any person,

who has the qualifications and experience, any power or duty conferred or imposed on the Minister pursuant to this Act.

(2) Before making a delegation to a person pursuant to subsection (1), the Minister shall consult with and obtain the consent of the person or, where applicable, the employer of the person.

(3) Subsection (1) does not apply to the power or duty of the Minister under clause 8(2)(i) or Section 40.

(4) The Minister may revoke a delegation made pursuant to this Section. 1994-95, c. 1, s. 17; 2006, c. 30, s. 8.

#### **Transfer of administration and control**

**18 (1)** The Minister may, with the approval of the Governor in Council, transfer the administration and control of a provision of this Act, after appropriate consultation, to

- (a) another minister of the Government or a Government agency;
- (b) a municipality; or
- (c) any other person,

and may specify the terms and conditions under which and subject to which the transfer is made.

(2) The Minister may, with the approval of the Governor in Council, revoke a transfer of administration and control made pursuant to this Section. 1994-95, c. 1, s. 18.

#### **Agreements**

**19 (1)** Subject to subsection (2), the Minister may enter into agreements with any person relating to any matter pertaining to the environment.

(2) The Minister, with the approval of the Governor in Council, may enter into agreements with the Government of Canada with respect to the administration of this Act, the *Canadian Environmental Assessment Act*, the *Canadian Environmental Protection Act*, the *Fisheries Act* (Canada) or any other federal enactment for the purpose of protection of the environment. 1994-95, c. 1, s. 19.

#### **Purchase and disposition of real property**

**20** The Minister may, with the approval of the Governor in Council, purchase and dispose of any estate or interest in real property for the purpose of this Act. 1994-95, c. 1, s. 20.

#### **Appointment of administrator and inspectors**

**21 (1)** The Minister may appoint as an administrator a person who has the qualifications and experience to be an administrator for the purpose of all or part of this Act.

(2) The Minister may appoint as an inspector a person who has the qualifications and experience to be so appointed.

(3) Where a person appointed pursuant to subsection (2) is not an employee of the Department, the Minister, before making the appointment, shall consult with and obtain the consent of the person or, where applicable, the employer of the person.

(4) An appointment under subsection (2) may direct that the authority of the inspector be exercised subject to any terms and conditions that the Minister prescribes in the appointment, including limitations on the scope of the appointment. 1994-95, c. 1, s. 21.

#### **Identification card**

22 On entering any place, an inspector shall, on request, produce an identification card provided by the Department and provide reasons for the entry. 1994-95, c. 1, s. 22.

#### **Certification of laboratory and sampling**

23 (1) Before accepting results from any laboratory, the Minister may require proof of acceptable certification of the laboratory.

(2) The Minister may prescribe methods and procedures for sampling and analysis of the environment and any substance, discharge or emission into the environment. 1994-95, c. 1, s. 23.

#### **Service of documents**

24 (1) Where any notice, request, order, directive, direction or other document is required to be given in writing or served pursuant to this Act, it is deemed to be sufficiently given or served

(a) upon a copy being personally given to or served on the person to whom it is directed;

(b) upon a copy being sent by facsimile or by other electronic means to the person to whom it is directed and an acknowledgement of receipt being received;

(c) five days after a copy is sent by mail addressed to the person to whom it is directed at the last known address for that person; or

(d) in the case of a registered owner of real property, five days after a copy is sent by mail to the address for the registered owner shown on the last revised assessment roll.

(2) Where the person to be served is a corporation, service on a director, officer or recognized agent of the corporation in accordance with subsection (1), or service in accordance with the *Corporations Registration Act*, is deemed to be service on the corporation for the purpose of this Act.



(3) Where it is impractical for any reason to serve a document in the manner prescribed in subsection (1), an *ex parte* application may be made to a judge of the Supreme Court who may make an order for substituted service providing for such steps to be taken to bring the matter to the attention of the person to be served. 1994-95, c. 1, s. 24; 2011, c. 61, s. 8.

### Regulations

25 (1) The Governor in Council may make regulations

(a) respecting information or documentation to be filed in the environmental registry established pursuant to this Part;

(b) respecting the manner in which reports of persons, advisory committees and experts appointed or retained pursuant to subsection 9(1) are made public;

(c) regarding research, development and use of economic instruments and market-based approaches;

(d) respecting alternate dispute-resolution mechanisms;

(e) respecting the management, administration and membership of advisory committees and the Round Table, and any other matter related to their functioning;

(f) respecting state of environment reporting;

(fa) *repealed 2011, c. 61, s. 9.*

(g) defining terms not otherwise defined in this Act, or further clarifying defined terms;

(h) for the effective administration and enforcement of this Act, and, without restricting the generality of the foregoing, exempting a person or a class of persons, activities, matters or things from this Act;

(i) generally, respecting any matter necessary or advisable to effectively carry out the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 1994-95, c. 1, s. 25; 2004, c. 3, s. 21; 2006, c. 30, s. 9; 2011, c. 61, s. 9.

### Public review of regulations

26 Any new regulations or any substantive amendment to the regulations becomes law only after the regulations or amendments, as the case may be, have been subjected to such public review as the Minister considers appropriate. 1994-95, c. 1, s. 26.

## PART III

ENVIRONMENTAL EDUCATION  
AND RESEARCH**Education and research**

27 (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) subject to the *Freedom of Information and Protection of Privacy Act*, provide any 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;

(f) assist and support other ministers of the Government 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 the Minister considers necessary to achieve the purpose of this Act. 1994-95, c. 1, s. 27.

**Nova Scotia Environmental Trust**

28 (1) There is hereby established the Nova Scotia Environmental Trust for the purpose of funding programs for, or otherwise promoting, environmental research and management and conservation of the environment.

(2) The Minister may acquire, on behalf of the Trust, by agreement, gift, donation, bequest or devise or through any Governmental or private program any real or personal property for the purpose of the Trust.

(3) With the approval of the Governor in Council, the Minister may dispose of real property acquired by the Trust.

(4) The Minister shall administer the Trust.

(5) The Trust consists of

(a) property acquired pursuant to subsection (2) or money from the disposition of such property; and

(b) income accruing to the Trust.

(6) The Governor in Council may make regulations

(a) respecting the governance and distribution of the Trust, including the appointment of external directors or trustees;

(b) directing certain monies from fines be designated to the Trust;

(c) permitting settlements made relative to prosecutions under this Act to be directed to the Trust.

(7) The exercise by the Governor in Council of the authority contained in subsection (6) is regulations within the meaning of the *Regulations Act*, 1994-95, c. 1, s. 28; 2006, c. 30, s. 10.

#### **Nova Scotia Youth Conservation Corps**

**29** (1) There is hereby established the Nova Scotia Youth Conservation Corps.

(2) The purpose of the Corps is to

(a) promote youth involvement in environmental stewardship and commitment to the conservation and enhancement of the environment;

(b) provide youth with opportunities to participate in environmental projects, thereby providing Corps members with leadership skills and training and building community capacity in environmental management;

(c) provide summer and longer term employment, including relevant training and education, for youth; and

(d) facilitate and encourage movement of participants in the Corps program to private sector employment by linking the program with the private sector through co-operative work programs.  
1994-95, c. 1, s. 29; 2006, c. 30, s. 11; 2011, c. 61, s. 10.

#### **Regulations**

**30** (1) The Governor in Council may make regulations

(a) respecting any matter necessary or advisable for the administration of the Trust;

(b) respecting any matter necessary or advisable for the administration of the Corps.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 1994-95, c. 1, s. 30.

#### PART IV

#### ENVIRONMENTAL-ASSESSMENT PROCESS

##### **Application of Part**

**31 (1)** Subject to subsection (2), the environmental-assessment process under this Part applies with respect to an undertaking as determined by the Minister or as prescribed in the regulations.

(2) This Part does not apply to class environmental assessments as prescribed in the regulations. 1994-95, c. 1, s. 31; 2006, c. 30, s. 12.

##### **No work without approval**

**32 (1)** Until the Minister has notified the proponent in writing that an undertaking is approved, no person shall commence work on the undertaking.

(2) The Minister may impose conditions upon the approval of an undertaking and the proponent shall comply with the conditions if the undertaking proceeds. 1994-95, c. 1, s. 32.

##### **Registration of undertaking**

**33** Every proponent of an undertaking shall

(a) register the undertaking with the Minister in the time and manner prescribed by the regulations; and

(b) publish a notice of the undertaking containing the information prescribed by the regulations. 1994-95, c. 1, s. 33.

##### **Examination of information**

**34 (1)** After an undertaking is registered pursuant to Section 33, the Minister shall examine or cause to be examined the information that is provided respecting an undertaking and shall determine that

(a) additional information is required;

(b) a focus report is required;

(c) an environmental-assessment report is required;

(d) all or part of the undertaking may be referred to alternate dispute resolution;

(e) a focus report or an environmental-assessment report is not required, and the undertaking may proceed; or

(f) the undertaking is rejected because of the likelihood that it will cause adverse effects or environmental effects that cannot be mitigated.

(2) The Minister shall notify the proponent, in writing, of the decision pursuant to subsection (1), together with reasons for the decision, within the time period prescribed by the regulations.

(3) In case of a determination pursuant to clause (1)(a), (b), (c), (d) or (e), the registration of an undertaking is deemed to have been withdrawn if

(a) the Minister is not aware of any action taken by the proponent on the environmental assessment of the undertaking within the time period prescribed in the regulations;

(b) the Minister has notified the proponent when no action has been taken within the time period prescribed by the regulations; and

(c) the proponent has not given any reasonable explanation for the delay within the time period prescribed by the regulations.

(4) A proponent may withdraw the registration of an undertaking.

(5) At any stage during the environmental assessment process, where the Minister believes the proponent is not complying with this Act or the regulations, the Minister may suspend the environmental assessment process until such time as the Minister is satisfied the proponent is in compliance. 1994-95, c. 1, s. 34; 2006, c. 30, s. 13.

### **Focus report**

**35** (1) Where the Minister decides that a focus report is necessary pursuant to Section 34, an administrator shall provide the proponent with terms of reference for the preparation of the focus report.

(2) The proponent shall undertake the necessary study for the preparation of the focus report and submit the report to the Minister.

(3) Upon receiving the focus report, the Minister shall examine the report or cause it to be examined and shall determine that

(a) an environmental-assessment report is required;

(b) all or part of the undertaking may be referred to alternate dispute resolution;

(c) an environmental-assessment report is not required and the undertaking may proceed; or

(d) the undertaking is rejected because of the likelihood that it will cause adverse effects or environmental effects that cannot be mitigated.

(4) The Minister shall notify the proponent, in writing, of the decision pursuant to subsection (3), together with reasons for the decision, within the time period prescribed by the regulations. 1994-95, c. 1, s. 35.

#### **Terms of reference**

**36** Where the Minister decides that an environmental-assessment report is required, the Minister shall

- (a) prepare proposed terms of reference for the environmental assessment;
- (b) give the public and the proponent an opportunity to comment on the proposed terms of reference in the prescribed manner;
- (c) modify the terms of reference as the Minister considers appropriate; and
- (d) provide the proponent with the terms of reference. 1994-95, c. 1, s. 36; 2011, c. 61, s. 11.

#### **Examination of report**

**37 (1)** Upon receiving the environmental-assessment report, the Minister shall examine it or cause it to be examined to determine whether it adheres to the terms of reference.

(2) Where the environmental-assessment report is deficient in any respect, the Minister shall notify the proponent, in writing, and may require the proponent to conduct such further work or provide such further information as may be necessary to complete the report.

(3) Where the environmental-assessment report is acceptable, the Minister shall so notify the proponent, in writing. 1994-95, c. 1, s. 37; 2011, c. 61, s. 12.

#### **Duties and powers of Minister**

**38 (1)** Upon receiving an environmental-assessment report, and before approving or rejecting an undertaking pursuant to Section 40, the Minister

- (a) shall release the environmental-assessment report to interested persons and the public generally;
- (b) shall refer the environmental-assessment report to a review panel on Class II undertakings as defined in the regulations;
- (c) may refer the environmental-assessment report to a review panel on Class I undertakings as defined in the regulations;
- (d) may refer all or part of an undertaking to alternate dispute resolution;

(e) may give directions regarding the scope of a review to be conducted by a review panel or by alternate dispute resolution.

(2) On Class I undertakings not referred to a review panel or to alternate dispute resolution, the Minister may approve the undertaking, reject the undertaking or approve the undertaking with conditions.

(3) The Minister shall notify the proponent, in writing, of the decision pursuant to subsection (2), together with reasons for the decision, within the time period prescribed by the regulations. 1994-95, c. 1, s. 38; 2011, c. 61, s. 13.

#### **Hearing and recommendation by review panel**

39 (1) Upon receiving a referral from the Minister pursuant to Section 38, a review panel shall conduct a public hearing or review and submit a report and make a recommendation to the Minister to approve the undertaking, reject the undertaking or approve the undertaking with conditions.

(2) Upon receiving a recommendation from a review panel, the Minister shall approve the undertaking, reject the undertaking or approve the undertaking with conditions.

(3) The Minister shall notify the proponent, in writing, of the decision pursuant to subsection (2), together with reasons for the decision, within the time period prescribed by the regulations. 1994-95, c. 1, s. 39; 2011, c. 61, s. 14.

#### **Powers of Minister**

40 (1) Upon receiving information under Section 34, a focus report under Section 35, an environmental-assessment report under Section 38, a recommendation from a review panel under Section 39 or from a referral to alternate dispute resolution, the Minister may

- (a) approve the undertaking;
- (b) approve the undertaking, subject to any conditions the Minister deems appropriate; or
- (c) reject the undertaking.

(2) The Minister shall notify the proponent, in writing, of the decision pursuant to subsection (1), together with reasons for the decision, within the time period prescribed by the regulations. 1994-95, c. 1, s. 40; 2011, c. 61, s. 15.

#### **Requirements after approval**

41 Where approval for an undertaking has been given to a proponent pursuant to this Part, the Minister shall require the proponent to

- (a) carry out environmental monitoring and rehabilitation studies and programs in order to determine the effect of mitigation measures;
- (b) remediate the affected environment to a level acceptable to the Minister. 1994-95, c. 1, s. 41.

**Amendment of approval**

**41A (1)** The Minister may only amend a term or condition of an environmental assessment approval

- (a) upon the request of the approval holder, if the Minister considers it appropriate to do so;
- (b) if an adverse effect or an unacceptable environmental effect has occurred or may occur;
- (c) if the term or condition relates to
  - (i) a monitoring or reporting requirement, or
  - (ii) a standard; or
- (d) to correct a typographical error.

**(2)** The Minister shall give notice in writing, together with reasons, to the approval holder at least thirty days in advance of making an amendment pursuant to subsection (1). 2006, c. 30, s. 14.

**Transfer of approval**

**41B (1)** No person shall transfer, sell, lease, assign or otherwise dispose of an environmental assessment approval under this Part without the written consent of the Minister.

**(2)** The Minister may impose any terms or conditions that the Minister considers appropriate in respect of the transfer, assignment or other disposition of an environmental assessment approval.

**(3)** A consent pursuant to subsection (1) shall be given within sixty days of the receipt of an application or request, unless the Minister notifies the applicant otherwise, in writing, within ten days of receipt of the application or request. 2006, c. 30, s. 14.

**Review panels**

**42 (1)** The Minister may appoint persons to a review panel for the purpose of conducting a review of an environmental-assessment report and making a report and recommendation to the Minister with respect to the undertaking to which the environmental-assessment report relates.

**(2)** A review panel shall conduct public hearings or reviews and carry out the other functions assigned to the review panel by this Act or as may be prescribed by the regulations.

**(3)** A review panel consists of a Chair and such other members, not exceeding five, as are appointed by the Minister in accordance with the regulations.

**(4) and (5)** *repealed 2011, c. 61, s. 16.*



1994-95, c. 1, s. 42; 2011, c. 61, s. 16.

#### **Duties of review panel**

**43** A review panel shall

- (a) review an environmental-assessment report with respect to an undertaking referred to the review panel by the Minister in accordance with the directions of the Minister;
- (b) consult with the public in accordance with this Act; and
- (c) recommend to the Minister the approval or rejection of an undertaking, or conditions that ought to be imposed upon an undertaking if it proceeds.
- (d) *repealed 2011, c. 61, s. 17.*

1994-95, c. 1, s. 43; 2011, c. 61, s. 17.

#### **Public consultation**

**44 (1)** In reviewing an environmental-assessment report pursuant to Section 43, a review panel shall consult with the public by inviting written submissions from the public, by conducting a public hearing or review or in such other manner as determined by the review panel.

**(2)** A public hearing or review conducted pursuant to subsection (1) shall be conducted in accordance with the regulations.

**(3)** For the purpose of any public hearing or review conducted pursuant to subsection (1), a review panel may

- (a) administer oaths to witnesses and require the witnesses to give evidence under oath;
- (b) issue summonses requiring the attendance of witnesses and the production of documents and things;
- (c) pay witnesses summonsed to give evidence before the review panel. 1994-95, c. 1, s. 44; 2011, c. 61, s. 18.

#### **Municipal approvals**

**45** The Minister may require a proponent to obtain any municipal approval, permit or other authorization required at the time of registration pursuant to this Part before the Minister approves or rejects the undertaking. 1994-95, c. 1, s. 45.

#### **Other enactments**

**46** This Part does not exempt the proponent of any undertaking, whether or not the proponent has submitted an environmental-assessment report, from the requirements of any other enactment or other provision of this Act. 1994-95, c. 1, s. 46.

**Joint assessments**

**47 (1)** Where an undertaking is also subject to the environmental assessment or other review requirements of a municipality, Her Majesty in right of Canada, another province of Canada or another review process of the Government, the Minister may enter into an agreement with the other government, Government agency or municipality in order to

- (a) determine what aspects of the undertaking are governed by the laws of the respective governments;
- (b) provide for the carrying out of
  - (i) the environmental assessment in whole or in part for the purpose of this Part, or
  - (ii) the review of the undertaking under any enactment;
- (c) adopt for the purposes of the review
  - (i) all or part of the procedures for environmental assessment or other review,
  - (ii) reports and similar documents prepared by or under the authority of any enactment as part of the environmental assessment or other review;
- (d) determine what issues shall be addressed in the assessment or review; and
- (e) delegate the Minister's administrative responsibilities under this Part to the other government, Government agency or municipality, or accept the delegation of these responsibilities.

**(2)** Subject to subsection (3), the Minister, when negotiating an agreement pursuant to subsection (1), may vary the environmental-assessment administrative requirements of this Part.

**(3)** An agreement entered into pursuant to this Section shall stipulate time limitations for various stages of the assessment. 1994-95, c. 1, s. 47; 2006, c. 30, s. 15.

**Single hearing process**

**48** Notwithstanding any other enactment, where an undertaking is subject to a municipal hearing, or a hearing under another review process of the Government, the Minister may enter into an agreement with the other party to provide for a single hearing process for the undertaking and the issues to be addressed at the single hearing. 1994-95, c. 1, s. 48.

**Regulations**

**49 (1)** The Governor in Council may make regulations

- (a) designating an undertaking or any class of undertakings to which this Part applies;
- (b) prescribing when an undertaking shall be registered and the information to be provided in an environmental assessment registration document;
- (c) prescribing terms of reference to be contained in a notice respecting an undertaking;
- (d) prescribing terms of reference for the preparation of a focus report or an environmental-assessment report;
- (e) respecting public consultation during the environmental assessment process;
- (f) respecting the format of any report;
- (g) establishing criteria for the examination of proposed undertakings in order to determine whether an environmental-assessment report is required;
- (h) respecting the reference of any matter related to an environmental assessment of an undertaking or aspects of an undertaking to alternate dispute resolution;
- (i) respecting procedures for alternate dispute resolution;
- (j) prescribing periods of time within which the Minister or other persons must perform certain duties pursuant to this Part;
- (k) prescribing duties and procedures to be followed by a review panel;
- (l) respecting public hearings and reviews by a review panel;
- (m) respecting remuneration for members of a review panel and experts retained by a review panel;
- (n) exempting any person, class of persons, undertaking or class of undertakings from this Part;
- (o) respecting a time period during which a proponent can act upon the approval of an undertaking;
- (p) respecting the requirements, design and implementation of environmental monitoring and rehabilitation programs;
- (q) respecting class environmental assessments;
- (r) respecting assessments under other enactments carried out jointly with an environmental assessment under this Act;
- (ra) respecting the designation of undertakings for the purpose of class environmental assessments;

- (rb) respecting the amendment of environmental assessment registrations and the terms and conditions of such amendments;
- (rc) respecting the environmental assessment process;
- (s) generally, respecting any matter necessary or advisable to effectively carry out the intent and purpose of this Part.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 1994-95, c. 1, s. 49; 2006, c. 30, s. 16; 2011, c. 61, s. 19.

## PART V

### APPROVALS, NOTIFICATIONS, STANDARDS AND CERTIFICATES

#### Approvals

#### Prohibition

**50 (1)** No person shall knowingly commence or continue any activity designated by the regulations as requiring an approval unless that person holds the appropriate class of approval required for that activity.

(2) No person shall commence or continue any activity designated by the regulations as requiring an approval, unless that person holds the appropriate class of approval required for that activity. 1994-95, c. 1, s. 50; 2012, c. 61, s. 21.

#### Exception

**51** Nothing in Section 50 prohibits the commencement of work that, in the opinion of the Minister or according to the regulations, is work that is permitted to enable a proponent to comply with Part IV. 1994-95, c. 1, s. 51.

#### Decision not to approve proposed activity

**52 (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 may, at any time, decide that no approval be issued in respect of the proposed activity if notice is given to the proponent, together with reasons.

(2) When deciding, pursuant to subsection (1), whether a proposed activity should proceed, the Minister shall take into consideration such matters as whether the proposed activity contravenes a policy of the Government or the Department, whether the location of the proposed activity is unacceptable or whether adverse effects from the proposed activity are unacceptable. 1994-95, c. 1, s. 52.

**Application for approval**

**53 (1)** An application for an approval must be made in the manner prescribed by the regulations for the class of approval being sought by the applicant and must contain the information prescribed by the regulations.

**(2)** The Minister may require an applicant for an approval to submit any additional information the Minister considers necessary.

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

**(4)** The Minister may require, as part of an application for an approval, that an applicant obtain any municipal approval, permit or other authorization that is required at the time of the application made pursuant to this Part.

**(5)** The Minister shall require, as part of an application for an approval respecting an underground mine, that an applicant obtain written confirmation from the Executive Director of the Occupational Health and Safety Division of the Department of Labour and Advanced Education that

(a) the applicant has provided the Executive Director with sufficient information to comply with the filing requirements of the *Underground Mining Regulations* in respect of the proposed underground mine; and

(b) that a review of the information provided pursuant to the *Underground Mining Regulations* has not revealed any apparent violation of the *Occupational Health and Safety Act* or regulations made pursuant to that Act. 1994-95, c. 1, s. 53; 1999 (2nd Sess.), c. 12, s. 76; 2011, c. 61, s. 22.

**Decision re application**

**54 (1)** A decision on an application for an approval must be made within sixty days of the receipt of the completed application unless the Minister notifies the applicant otherwise in writing.

**(2)** For greater certainty, an application respecting an approval for an underground mine is not a completed application until the written confirmation required by subsection 53(5) has been submitted. 2011, c. 61, s. 23.

**Change of activity**

**55 (1)** No person shall, in any manner, change an activity that is the subject of an approval in a manner that will result, or may result, in an adverse effect 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.

(3) Subsection (1) does not apply to adjustments, repairs, replacements or maintenance made in the normal course of operations. 1994-95, c. 1, s. 55.

#### **Approval**

**56** (1) The Minister may issue or refuse to issue an approval.

(1A) Without restricting the generality of subsection (1), the Minister shall refuse to issue an approval if the written confirmation required by subsection 53(5) has not been submitted.

(2) The Minister may issue an approval subject to any terms and conditions the Minister considers appropriate to prevent an adverse effect.

(3) Without restricting the generality of subsection (2), the Minister may require rehabilitation plans, implementation schedules and security from the approval holder.

(4) 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 or standards adopted or incorporated by the Minister. 1994-95, c. 1, s. 56; 1999 (2nd Sess.), c. 12, s. 76; 2011, c. 61, s. 24.

#### **Temporary approval**

**57** (1) The Minister may issue a temporary approval to the owner of a designated activity who is operating without an approval as required by this Act or the regulations.

(2) A temporary approval issued pursuant to subsection (1) must contain the terms and conditions and the dates for compliance that must be followed by the owner to whom the temporary approval was issued.

(3) Where the owner to whom the temporary approval was issued does not fully comply with all the terms or conditions or time requirements of the temporary approval, the temporary approval is void. 2011, c. 61, s. 25.

#### **Amendment of approval**

**58** (1) On application by an approval holder, 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 amend a term or condition of, add a term or condition to or delete a term or condition from an approval

(a) if an adverse effect has occurred or may occur;

(b) for the purpose of addressing matters related to a temporary suspension of the activity by the approval holder;

(c) if, since the approval was issued, a standard has changed or been created for an activity to which the approval relates;

(d) if the Minister determines that a term or condition imposing a monitoring or reporting requirement should be changed or added;

(e) if the approval was issued prior to January 1, 1995, and has no expiry date; or

(f) to correct a typographical error.

(3) For greater certainty, the Minister may add a term to an approval issued prior to January 1, 1995, specifying an expiry date for the approval.

(4) The Minister shall give notice in writing, together with reasons, to the approval holder at least thirty days in advance of making an amendment, addition or deletion pursuant to subsection (2). 2011, c. 61, s. 25.

#### **Cancellation or suspension of approval**

**58A (1)** The Minister may cancel or suspend an approval

(a) for breach or default of the approval;

(b) if new or corrected information respecting an adverse effect is brought to the attention of the Minister; or

(c) if an approval is no longer required under this Act or the regulations.

(2) The Minister shall forthwith on cancellation or suspension of an approval pursuant to subsection (1) give notice in writing, together with reasons, of the cancellation or suspension to the approval holder. 2011, c. 61, s. 25.

#### **Transfer or amendment of approval**

**59 (1)** No person shall transfer, sell, lease, assign or otherwise dispose of an approval without the written consent of the Minister.

(2) A consent pursuant to subsection (1) shall be given within sixty days of the receipt of an application or request, unless the Minister notifies the applicant otherwise, in writing, within ten days of receipt of the application or request.

(3) The Minister may impose any terms or conditions that the Minister considers appropriate in respect of the transfer, assignment or other disposition of an approval. 1994-95, c. 1, s. 59; 2006, c. 30, s. 18.

#### **New information**

**60** An approval holder shall forthwith submit to the Minister any new and relevant information respecting any adverse effect that actually results or may

potentially result from the activity to which the approval relates that comes to the attention of the approval holder after the issuance of the approval. 1994-95, c. 1, s. 60.

#### **Application for certificate of variance**

**61 (1)** An approval holder or any person engaged in an activity for which an approval may be issued may apply to the Minister for a certificate of variance to vary a term or condition of the approval or a requirement of the regulations.

**(2)** The Minister may issue a certificate of variance if the Minister considers that the proposed variance is not likely to cause an adverse effect and shall advise the applicant and the approval holder of the decision.

**(3)** The Minister may

(a) impose any term or condition that the Minister considers appropriate with respect to any certificate of variance;

(b) specify requirements as to the manner in which the activity to which the certificate of variance relates is to 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 a certificate of variance.

**(4)** A certificate of variance is in effect only during the period prescribed and, notwithstanding anything contained in this Act, during that period the terms and conditions of the approval or the requirements of the regulations that are not varied by the certificate apply to the activity to which the certificate relates. 1994-95, c. 1, s. 61; 2006, c. 30, s. 19; 2011, c. 61, s. 26.

#### Notifications

##### **Provision of notification**

**61A (1)** No person shall knowingly

(a) commence any activity designated by the regulations as requiring a notification; or

(b) continue any activity designated by the regulations as requiring a notification beyond the length of time prescribed by the regulations,

unless that person provides a notification to the Minister.

**(2)** No person shall

(a) commence any activity designated by the regulations as requiring a notification; or

(b) continue any activity designated by the regulations as requiring a notification beyond the length of time prescribed by the regulations,



unless that person provides a notification to the Minister. 2011, c. 61, s. 27.

#### **Notifications**

**61B** A notification to the Minister must

- (a) be provided in the manner; and
- (b) contain the information,

prescribed by the regulations. 2011, c. 61, s. 27.

#### Standards

#### **Standards**

**61C (1)** No person shall knowingly commence or continue any activity designated by the regulations as being governed by a standard except in accordance with that standard.

**(2)** No person shall commence or continue any activity designated by the regulations as being governed by a standard except in accordance with that standard. 2011, c. 61, s. 27.

#### Certificate of Qualification

#### **Certificate of qualification**

**62** No person shall commence or continue any activity or the use of any thing that is designated by the regulations as an activity or thing in respect of which a certificate of qualification is required unless that person holds the appropriate certificate of qualification. 1994-95, c. 1, s. 62.

#### **Application for certificate**

**63 (1)** Application for a certificate of qualification shall be made to the Minister or the authorized representative of a designated organization in accordance with the regulations.

**(2)** The Minister or authorized representative may require an applicant for a certificate of qualification to submit any additional information the Minister or authorized representative considers necessary. 1994-95, c. 1, s. 63; 2011, c. 61, s. 28.

#### **Issuance of certificate**

**64 (1)** The Minister or the authorized representative of a designated organization may issue or refuse to issue a certificate of qualification in accordance with the regulations.

**(2)** The Minister may issue a certificate of qualification subject to any terms and conditions considered appropriate.

(3) A certificate of qualification is valid for the term prescribed in the regulations. 1994-95, c. 1, s. 64; 2011, c. 61, s. 29.

#### **Amendment and cancellation of certificate**

**65 (1)** The Minister may

(a) amend a term or condition of, add a term or condition to, or delete a term or condition from a certificate of qualification if the Minister considers it appropriate to do so;

(b) cancel or suspend a certificate of qualification if the Minister considers it appropriate to do so;

(c) correct a typographical error in a certificate of qualification; or

(d) cancel a certificate of qualification on application by the holder of the certificate of qualification.

(2) The Minister shall give notice in writing, together with reasons, to the holder of a certificate of qualification at least thirty days in advance of making an amendment, addition or deletion pursuant to clause (1)(a).

(3) The Minister shall forthwith on cancellation or suspension of a certificate of qualification pursuant to clause (1)(b) give notice, in writing, together with reasons, of the cancellation or suspension to the holder of the certificate of qualification.

(4) The Minister may exercise a power under subsection (1) in respect of a certificate of qualification issued by the authorized representative of a designated organization. 1994-95, c. 1, s. 65; 2006, c. 30, s. 20; 2011, c. 61, s. 30.

#### **Security**

**65A (1)** Where required by the regulations, a person who

(a) applies for an approval, a certificate of qualification or a certificate of variance to carry out an activity or undertaking;

(b) commences or continues an activity that is governed by the regulations;

(c) commences or continues an activity that is designated by the regulations as being governed by a standard;

(d) is the owner of land upon which an activity that is governed by the regulations is occurring or is about to occur; or

(e) is the owner of land upon which an activity that is designated by the regulations as being governed by a standard is occurring or is about to occur,

shall, in respect of the activity or undertaking, provide financial or other security or carry insurance.

(2) The Minister may determine the manner in which, and the conditions under which, any security that is deposited pursuant to subsection (1) may be forfeited or returned, in whole or in part.

(3) Subsection (1) does not apply to the Government or a Government agency. 2011, c. 61, s. 31.

### Regulations

- 66 (1) The Governor in Council may make regulations
- (a) prescribing classes of approvals;
  - (b) designating activities or classes of activities in respect of which an approval is required and specifying the class of approval required;
    - (ba) designating activities in respect of which a notification is to be provided or compliance with a standard is mandated;
    - (bb) respecting the circumstances under which an approval or notification is required and prescribing the persons or classes of persons who are required to obtain an approval or to provide a notification;
    - (bc) respecting the procedures related to the provision of notifications;
    - (bd) respecting the procedures related to the application for or issuance of approvals;
    - (be) respecting temporary approvals;
    - (bf) designating activities or things or classes of activities or things in respect of which a certificate of qualification is required and specifying the kind of certificate of qualification required;
    - (bg) prescribing the persons or classes of persons who are required to obtain a certificate of qualification;
    - (bh) respecting the procedures related to the application for or issuance of certificates of qualification;
    - (bi) respecting the terms and conditions upon which approvals and certificates of qualification may be granted and to which they are subject;
    - (bj) respecting the terms and conditions upon which certificates of qualification may be reinstated;
    - (bk) designating organizations for the purpose of issuing certificates of qualification and specifying the kinds of certificates of qualification the authorized representative of a designated organization is authorized to issue;

(bl) prescribing the length of time for which certificates of qualification may be issued by the Minister;

(bm) prescribing the length of time for which certificates of qualification may be issued by the authorized representatives of a designated organization;

(bn) prescribing the length of time for which approvals may be issued and the length of time during which an activity for which a notification is to be provided is permitted to continue after notification;

(bo) permitting an approval or certificate of qualification to be issued for a shorter period of time than that prescribed by the regulations;

(bp) requiring operators, installers or designers of equipment or other things that may have an impact on the environment to meet the specified eligibility requirements as to training or experience or both, or to hold a specified kind of certificate of qualification;

(bq) prescribing certificates and other proofs of qualification from other jurisdictions as certificates of qualification for the purpose of this Act;

(c) governing and prohibiting any activity or the use of any thing for the purpose of the protection of the environment, including regulations governing the design, construction, maintenance or use of the activity or thing;

(d) governing and prohibiting the manufacture, sale or use of any equipment, device or service designed or provided for any purpose related to the protection of the environment;

(e) respecting security under Section 65A;

(ea) respecting the establishment and administration of any board or designated organization governing the oversight of persons with certificates of qualification and establishing reporting requirements applicable to such boards and designated organizations;

(eb) respecting the submission of reports and returns in respect of activities;

(ec) respecting the records to be kept in respect of an activity, including the form of records, and the person by whom, the place at which and the length of time for which records are to be kept;

(ed) requiring the submission of records to the Minister and providing for the inspection of records by the Minister;

(ee) establishing the means of determining what constitutes adjustments, repairs, replacements or maintenance made in the normal course of operations for the purpose of subsection 55(3);

(f) generally, respecting any matter necessary or advisable to effectively carry out the intent and purpose of this Part.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 1994-95, c. 1, s. 66; 2006, c. 30, s. 22; 2011, c. 61, s. 32.

## PART VI

### RELEASE OF SUBSTANCES

#### Prohibition

**67 (1)** No person shall knowingly release or permit the release into the environment of a substance in an amount, concentration or level or at a rate of release that causes or may cause an adverse effect, unless authorized by an approval or the regulations.

(2) No person shall release or permit the release into the environment of a substance in an amount, concentration or level or at a rate of release that causes or may cause an adverse effect, unless authorized by an approval or the regulations. 1994-95, c. 1, s. 67; 2006, c. 30, s. 23.

#### Prohibition

**68 (1)** No person shall knowingly release or permit the release of a substance into the environment in an amount, concentration or level or at a rate of release that is in excess of that expressly authorized by an approval or the regulations.

(2) No person shall release or permit the release of a substance into the environment in an amount, concentration or level or at a rate of release that is in excess of that expressly authorized by an approval or the regulations. 1994-95, c. 1, s. 68.

#### Duty to report release

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

- (a) the Department at its emergency telephone number;
- (b) the owner of the substance, where applicable, 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, where applicable, if the person reporting knows or is readily able to ascertain the identity of that person; and
- (d) any other person who the person reporting knows or ought to know may be directly affected by the release.

(2) Any person responsible for the release of a substance into the environment that is in excess of an amount, concentration, level or rate of release expressly authorized by an approval or regulations, shall forthwith, as soon as that person knows or ought to know of the release, report it in the manner prescribed in the approval or the regulations, as the case may be, to the persons identified in clauses (1)(a) to (d).

(3) Any person who discovers or becomes aware of a release of a substance into the environment that is in excess of an amount, concentration, level or rate of release expressly authorized by an approval or the regulations shall forthwith, as soon as that person knows or ought to know of the release, report it in the manner prescribed in the approval or the regulations, as the case may be, to the persons identified in clauses (1)(a) to (d). 1994-95, c. 1, s. 69; 2011, c. 61, s. 33.

#### **Voluntary submission of information**

**70** (1) Any person responsible who voluntarily provides the Department with detailed information obtained through an environmental audit or environmental-site assessment about non-compliance with the requirements of this Act by that person, shall not be prosecuted for the non-compliance, if the person complies with

(a) the terms of any agreement negotiated by the Minister and the person; or

(b) any order issued under Part XIII to address the non-compliance by the person.

(2) Subsection (1) does not apply if the Department is independently aware of the non-compliance prior to receiving the information from the person. 1994-95, c. 1, s. 70.

#### **Duty to take remedial measures**

**71** Any person responsible for the release of a substance under this Part 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 such a manner as to minimize adverse effects;

(b) take any other measures required by an inspector or an administrator; and

(c) rehabilitate the environment to a standard prescribed or adopted by the Department. 1994-95, c. 1, s. 71.

**Emergency measures**

- 72 (1) Where an inspector or an administrator is of the opinion that
- (a) a release of a substance into the environment may occur, is occurring or has occurred; and
  - (b) the release may cause, is causing or has caused an environmental emergency,

the inspector or administrator may take such emergency measures prescribed in the regulations that the inspector or administrator considers necessary to prevent, reduce and remedy the adverse effects.

(2) Subsection (1) applies whether or not the release of the substance into the environment is or was expressly authorized by, and is or was in compliance with, an approval or the regulations. 1994-95, c. 1, s. 72.

**Powers of Minister**

- 73 The Minister may
- (a) classify releases for the purpose of this Part and exempt any release or any class of release from the application of this Part and attach terms and conditions to any such exemption;
  - (b) prescribe the concentration, amount, level and rate, including the maximum concentration, amount, level and rate of a substance that may be released into the environment;
    - (ba) establish procedures respecting the conducting of sampling, analysis, tests, measurements or monitoring of substances;
  - (c) determine the manner in which a report of a release of a substance is to be made and the contents of the report. 1994-95, c. 1, s. 73; 2006, c. 30, s. 24.

**Regulations**

- 74 (1) The Governor in Council may make regulations
- (a) respecting release reporting under Section 69;
  - (b) respecting environmental-site assessments and environmental audits provided pursuant to Section 70;
  - (c) respecting remediation measures under Section 71;
  - (d) respecting emergency measures taken under Section 72, including acceptable qualifications for emergency responders;
  - (e) generally, respecting any matter necessary or advisable to effectively carry out the intent and purpose of this Part.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 1994-95, c. 1, s. 74; 2006, c. 30, s. 25.

## PART VII

### DANGEROUS GOODS AND PESTICIDES

#### Storing and handling

**75** Unless authorized under this Part or regulations made pursuant to this Part, a person who handles dangerous goods, waste dangerous goods or pesticides shall do so in a manner that ensures that the dangerous goods, waste dangerous goods or pesticides do not cause an adverse effect to the environment. 1994-95, c. 1, s. 75.

#### Prohibition

**76** Subject to the regulations, no person shall sell or distribute any crop, food, feed, animal, plant, water, produce, product or other matter that

(a) contains dangerous goods, waste dangerous goods or a pesticide in excess of the permissible concentrations as established by this Act, the *Food and Drug Act* (Canada) or the *Pest Control Products Act* (Canada); or

(b) the person knows or ought reasonably to know has been contaminated by dangerous goods, waste dangerous goods or pesticides in excess of permissible concentrations as established by this Act, the *Food and Drug Act* (Canada) or the *Pest Control Products Act* (Canada). 1994-95, c. 1, s. 76.

#### Research

**77** The Minister shall undertake research and adopt policies, programs and strategies to find alternatives to the use of dangerous goods and pesticides and to reduce the production of waste dangerous goods and pesticides. 1994-95, c. 1, s. 77.

### Dangerous Goods and Waste Dangerous Goods

#### Powers of Minister

**78 (1)** The Minister may

(a) stipulate the quantity or concentration of dangerous goods or waste dangerous goods that may be released into the environment, either alone or in combination with any other substance from any source;

(b) stipulate the manner and conditions under which dangerous goods or waste dangerous goods may be released into the environment, either alone or in combination with any other substance;



(c) establish procedures respecting the conducting of sampling, analyses, tests, measurements or monitoring of dangerous goods or waste dangerous goods and the submission of the results to the Minister;

(d) establish procedures requiring and respecting the submission of samples of dangerous goods or waste dangerous goods to the Minister.

(2) The Minister may direct a person responsible for dangerous goods or waste dangerous goods to

(a) take specified precautions regarding the handling of dangerous goods or waste dangerous goods;

(b) handle dangerous goods or waste dangerous goods in accordance with specified terms and conditions;

(c) remove dangerous goods or waste dangerous goods from a specified location;

(d) take dangerous goods or waste dangerous goods to a specified location;

(e) take specified precautions with respect to the treatment or decontamination of a place affected by dangerous goods or waste dangerous goods;

(f) take specified precautions with respect to the future use of a place affected by dangerous goods or waste dangerous goods;

(g) undertake, in respect of dangerous goods or waste dangerous goods, investigations, tests, surveys or other action and report the results to the Minister;

(h) prepare and submit to the Minister a written contingency plan respecting the handling of dangerous goods or waste dangerous goods. 1994-95, c. 1, s. 78.

#### Pesticides

#### Prohibitions

79 (1) Subject to subsection (2), no person shall

(a) sell, distribute, use, apply, handle, store or transport a pesticide;

(b) operate or clean any machinery, equipment, vehicle, aircraft or vessel used in connection with the sale, distribution, use, application, handling, storage or transportation of a pesticide; or

(c) use or clean a pesticide container,

except in accordance with the regulations and the label filed with the certificate of registration for that pesticide.

(2) Where there is a conflict between any applicable provision of a regulation and the provision on the label referred to in subsection (1), the most stringent provision prevails.

(3) No person shall dispose of a pesticide, a mixture containing a pesticide, a thing that is treated or contaminated with a pesticide or a container that has been used to hold a pesticide in a manner other than the manner prescribed in the regulations. 1994-95, c. 1, s. 79.

#### **Pesticide research**

80 (1) A person conducting pesticide research in the Province shall

- (a) notify the Department before commencing the pesticide research; and
- (b) provide the Department with such information as the Minister considers necessary.

(2) The Minister may give such additional directions as the Minister considers appropriate to a person to whom a research authorization certificate or a research notification certificate is issued pursuant to the *Pest Control Products Regulations* (Canada).

(3) Crops used for pesticide research shall be destroyed or otherwise prevented from direct or indirect entry into food-marketing channels, unless otherwise approved for entry into food-marketing channels by the Department of Health (Canada). 2011, c. 61, s. 34.

#### **Powers and duties of Minister**

81 The Minister

- (a) shall develop, co-ordinate and enforce policies, planning and programs respecting integrated pest management and alternatives to the use of pesticides;
- (b) may make grants and loans for research related to pesticides and integrated pest management and the control of pests in such amounts and on such terms and conditions as the regulations prescribe. 1994-95, c. 1, s. 81.

#### **Petroleum Products**

##### **"motive fuel" defined**

82 In Sections 83 and 84, "motive fuel" means any petroleum product used to power a vehicle, aircraft or vessel and includes gasoline and diesel oil but does not include kerosene or fuel oil. 1994-95, c. 1, s. 82.

**Prohibition**

**83 (1)** No person shall store or sell as a retailer, wholesaler or wholesaler-retailer any motive fuel or fuel oil from

- (a) a terminal, bulk plant, bulk station or other facility operated in the Province by a wholesaler of motive fuel or fuel oil;
- (b) a motive fuel or fuel oil outlet operated by that person;
- or
- (c) any other facility,

unless that person holds a valid approval.

**(2)** No retailer shall sell or store motive fuel or fuel oil unless

- (a) the motive fuel or fuel oil is purchased from a wholesaler who holds a valid approval; or
- (b) that person is a wholesaler-retailer who holds a valid approval. 1994-95, c. 1, s. 83.

**Regulations**

**84 (1)** The Governor in Council may make regulations

- (a) designating dangerous goods and waste dangerous goods, and classifying dangerous goods and waste dangerous goods;
- (b) respecting the places where dangerous goods, waste dangerous goods or pesticides may be released into the environment;
- (c) respecting the quantity or concentration of dangerous goods, waste dangerous goods or pesticides that may be handled;
- (d) respecting the purposes for which dangerous goods, waste dangerous goods or pesticides or a product containing dangerous goods, waste dangerous goods or pesticides may be handled;
- (e) regulating or prohibiting the handling of dangerous goods, waste dangerous goods or pesticides, and containers holding dangerous goods, waste dangerous goods or pesticides;
- (f) respecting the sale or distribution of items referred to in Section 76;
- (g) requiring and respecting the submission of information including manifests relating to dangerous goods, waste dangerous goods or pesticides to the Minister;
- (h) requiring manufacturers, distributors or sellers to recall products or materials containing dangerous goods, waste dangerous goods or pesticides;
- (i) governing signs, markings or other identification to be used for public notification;

(j) 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;

(k) determining, in the case of any fluid or substance, whether or not that fluid or substance is motive fuel or fuel oil;

(l) prescribing the conditions under which an approval holder may purchase, receive, sell or deliver motive fuel or fuel oil;

(m) prescribing the safety requirements which may apply to this Part;

(n) designating organizations to test equipment and train persons who handle motive fuel or fuel oil according to standards or specifications established or approved by the Minister;

(o) approving equipment or any type of equipment used by an approval holder;

(p) prescribing grades of motive fuel and associated products and providing for the identification thereof;

(q) specifying the books and records required to be maintained;

(r) prohibiting or restricting giving away merchandise to promote the sale of motive fuel or fuel oil;

(s) regarding the rights of approval holders to discharge security documents and leasing arrangements for wholesale and retail motive fuel and fuel oil outlets;

(t) generally, respecting any matter necessary or advisable to effectively carry out the intent and purpose of this Part.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 1994-95, c. 1, s. 84.

## PART VIII

### CONTAMINATED SITES

#### **Application of Part**

**85** This Part applies regardless of when a substance became present over, in, on or under a contaminated site. 1994-95, c. 1, s. 85.

#### **Orphan contaminated sites**

**86** The Minister may enter into agreements and establish programs and other measures the Minister considers necessary to pay for the costs of restoring and securing contaminated sites and the environment affected by contaminated sites

where a person responsible for the contaminated site cannot be identified or is unable to pay for the costs. 1994-95, c. 1, s. 86.

#### **Designation of contaminated site**

**87 (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 follow standards, criteria or guidelines established or adopted by the Department before making a designation pursuant to subsection (1).

**(3)** Subsection (1) applies notwithstanding that

(a) an administrative or enforcement remedy has been pursued under this Act or under any other law in respect of the contaminated site;

(b) the substance was released in accordance with this Act or any other law;

(c) the release of the substance was not prohibited under this Act; or

(d) the substance originated from a source other than the contaminated site.

**(4)** The Minister may cancel the designation of a contaminated site made pursuant to this Section. 1994-95, c. 1, s. 87.

#### **Notice of designation**

**88** The Minister shall

(a) give notice, in writing, of a preliminary determination of a designation of an area of the environment, provide an opportunity for comment on the determination, 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) any person responsible for the contaminated site that the Minister considers appropriate,

(ii) any registered owner of real property directly affected by the designation,

(iii) a municipality where the contaminated site is located;

(b) give notice to the persons referred to in clause (a) respecting the cancellation of a designation;

(c) file the designation or cancellation of the designation in the environmental registry. 1994-95, c. 1, s. 88.

**Remedial action plans and agreements**

**89 (1)** A person responsible for a contaminated site may, in accordance with the regulations,

(a) prepare for the approval of the Minister a remedial action plan in respect of the contaminated site; and

(b) enter into a written agreement with the Minister or with other persons responsible for the contaminated site or with both the Minister and other persons responsible, providing for the remedial action to be taken in respect of the contaminated site and providing for the apportionment of the costs of taking that action.

**(2)** An agreement pursuant to clause (1)(b) to which the Minister is not a party is not binding on the Minister unless it is approved by the Minister.

**(3)** Where the persons responsible for a contaminated site cannot reach an agreement or where the Minister rejects an agreement entered into pursuant to clause (1)(b), the Minister may refer the matter to alternate dispute resolution under Part II.

**(4)** Where alternate dispute resolution is unsuccessful or considered inappropriate by the Minister, the Minister may make an order under Part XIII.

**(5)** A person responsible for the contaminated site who violates a term of an agreement reached under clause (1)(b) is guilty of an offence.

**(6)** Where a person responsible for a contaminated site does not, within a reasonable period of time, comply with subsection (1), the Minister may make an order under Part XIII. 1994-95, c. 1, s. 89; 2011, c. 61, s. 35.

**Powers of Minister**

**90** The Minister may

(a) determine the criteria respecting the designation and classification of a contaminated site;

(b) determine the manner and time frame in which the contaminated site must be rehabilitated or managed;

(c) adopt or establish standards, policies, guidelines, procedures or protocols, including risk based assessment and management models and tools, for the assessment, rehabilitation or management of contaminated sites;

(d) subject to Section 165, enter into written agreements pursuant to Section 89 respecting the liability of secured creditors, receivers, receiver managers, trustees in bankruptcy, executors, administrators and other persons;

(e) compile a list of persons or classes of persons who are not responsible for rehabilitation at a contaminated site;

(f) establish programs and enter into agreements to rehabilitate or manage a contaminated site or prevent the creation of a contaminated site.  
1994-95, c. 1, s. 90; 2006, c. 30, s. 26.

## Regulations

- 91 (I)** The Governor in Council may make regulations
- (a) respecting assessment and rehabilitation criteria used for the purpose of defining, determining or designating contaminated sites or for the rehabilitation and clean-up of such sites;
  - (b) designating persons or classes of persons who are not persons responsible for contaminated sites;
  - (c) respecting the duties and rights of any persons, including, but not limited to, vendors, purchasers, owners, occupiers or site professionals, in relation to property that is or may be contaminated;
  - (ca) respecting reporting and remediation requirements;
  - (d) respecting procedures to cover the allocation of liability or agreements negotiated under this Part;
  - (da) establishing standards and procedures respecting the conducting of sampling, analyses, tests, measurements or monitoring of substances at a contaminated site;
  - (db) respecting the identification and notification of the discovery of contaminated sites;
  - (dc) respecting site assessment and the development of remedial action plans involving contaminated sites;
  - (dd) respecting voluntary remediation agreements made with the Department involving contaminated sites;
  - (de) respecting the use and application of generic and risk based remedial criteria, including the use of scientific models to predict human health or ecological effects from contaminants;
  - (df) respecting the preparation and content of environmental site assessment reports, risk assessment reports, site closure reports, monitoring reports and any other type of environmental report required for a contaminated site;
  - (dg) respecting the requirements for insurance and qualifications of site professionals who perform work, oversee work or who take responsibility for quality and accuracy of the work to rehabilitate contaminated sites, on behalf of the person responsible for the contaminated site;
  - (dh) respecting the regulatory liability of persons responsible for the contaminated site following the completion of remediation and site closure, or for the transfer of regulatory liability between third parties;

(di) respecting the filing and transfer of records of site condition and certificates of property use, and with respect to the filing of environmental notices on property title respecting records of site condition and certificates of property use;

(e) generally, respecting any matter necessary or advisable to effectively carry out the intent and purpose of this Part.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 1994-95, c. 1, s. 91; 2006, c. 30, s. 27; 2011, c. 61, s. 36.

## PART IX

### WASTE-RESOURCE MANAGEMENT

#### **Solid-waste-resource strategy**

92 The Minister shall establish a solid-waste-resource management strategy for the Province. 1994-95, c. 1, s. 92.

#### **Waste-diversion goal**

93 (1) The Province shall maintain a goal of fifty per cent solid-waste diversion.

(1A) There is hereby established a target for waste disposal of 300 kilograms per person per year by the year 2015.

(2) The Minister shall, after public consultation, prescribe specific waste diversion goals applicable to a prescribed class of works, undertakings, substances or events.

(3) The Minister may enter into waste-reduction agreements with any person having an interest in waste reduction or solid-waste-resource management.

(4) A waste-reduction goal prescribed pursuant to subsection (2) may apply to all of the Province or part of the Province as specified by the Minister, and the goal may vary in different areas of the Province.

(5) In setting a waste-reduction goal pursuant to subsection (2), the Minister may specify how and when approvals held by persons affected by the target shall be amended in order to implement a waste-reduction goal.

(6) The Governor in Council may make regulations defining any word or expression used but not defined in this Section.

(7) The exercise by the Governor in Council of the authority contained in subsection (6) is regulations within the meaning of the *Regulations Act*. 1994-95, c. 1, s. 93; 2006, c. 30, s. 28.



**Waste-resource management studies**

**94 (1)** The Minister shall conduct, support or promote research on waste-resource management including, but not limited to,

- (a) the composition and distribution of waste in the Province;
- (b) source reduction, reuse, composting and recycling;
- (c) the use of packaging;
- (d) litter prevention;
- (e) market information and business opportunities for specific waste-resource management practices;
- (f) waste-disposal practices and facilities including composting, landfills and incineration;
- (g) the social and economic feasibility of household and other solid waste-separation schemes, including studies of the type and amount of recyclable materials in solid wastes from all sources in the Province.

**(2)** The Minister may provide financial assistance for waste-resource management studies undertaken pursuant to subsection (1). 1994-95, c. 1, s. 94.

**Agreements**

**95** The Minister may enter into agreements or co-operate with a municipality or other persons to

- (a) establish cost sharing arrangements or provide other financial incentives to encourage source reduction, reuse, recycling and composting;
- (b) implement policies to recycle waste materials, to promote energy conservation and to purchase products made from recyclable materials;
- (c) prepare model by-laws and promote the enactment of municipal legislation respecting waste-resource management, including littering, recycling and composting;
- (d) undertake and encourage litter clean-up and composting programs, and encourage industry to support such programs;
- (e) encourage industry stewardship and product stewardship;
- (f) generally, promote integrated waste-resource management.

1994-95, c. 1, s. 95; 2006, c. 30, s. 29.

**Recyclable materials**

**96** The Minister may

- (a) establish restrictions and prohibitions on the storage and disposal of types of waste or recyclable materials in specified types of waste treatment, storage or disposal facilities;
- (b) develop codes and guidelines for the use and content of recyclable materials in the manufacture of new substances or products;
- (c) prescribe minimum content requirements for recyclable materials in specific substances or products, or establish restrictions on the production or sale of products that cannot be reused or recycled. 1994-95, c. 1, s. 96.

**Composting**

**97** The Minister shall promote composting as an option for waste-resource management. 1994-95, c. 1, s. 97.

**Resource Recovery Fund**

**98** There is hereby established in accordance with the regulations the Resource Recovery Fund. 1994-95, c. 1, s. 98.

**Litter prevention**

- 99 (1)** The Minister shall encourage litter prevention or reduction by
- (a) regulating waste-disposal practices at construction sites, at commercial and service outlets and at other places where litter is or may be accumulated;
  - (b) requiring organizers of public and private events to have available and maintain an adequate number of receptacles for recyclable and compostable materials and litter or 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 vehicles, utility poles, structures or other things;
  - (d) regulating the disposal of waste or litter on real property or on, into or under water or ice;
  - (e) generally, providing for any matter that will prevent or reduce litter.

**(2)** No person shall release or permit the release of litter into the environment, except as authorized by this Act or the regulations. 1994-95, c. 1, s. 99; 2006, c. 30, s. 30.

**Designated materials**

**100 (1)** The Minister may designate materials the use of which is to be banned, reduced, composted or recycled.

(2) A person who manufactures or distributes a designated material for sale in the Province and a retailer of a designated material shall, in accordance with the regulations,

- (a) collect the surcharge prescribed for the designated material in accordance with the regulations;
- (b) where the regulations require, deposit the surcharge in the Resource Recovery Fund.

(3) A person who manufactures or distributes a designated material for sale in the Province and a retailer shall, in accordance with the regulations, provide in the Province depots and other methods for the collection and recovery of the designated material.

(4) No person shall sell or use, for a purpose beyond the purpose designated under subsection (1), a designated material the use of which has been banned, reduced or requires recycling under subsection (1). 1994-95, c. 1, s. 100.

#### **Packaging and labelling**

**101 (1)** The Minister may establish or adopt programs or policies respecting the use of packaging and labelling of materials including, but not limited to,

- (a) imposing requirements or standards with respect to the type, size, labelling, composition, compostability and disposal of packaging, including standards for material degradability, compostability and recyclability;
- (b) reducing or mitigating the adverse effects created by packaging;
- (c) establishing measures to encourage source reduction, composting, reuse and recycling of packaging;
- (d) providing information on packaging to enable consumers to identify products or packaging that have the least impact on the environment;
- (e) requiring any person who produces or sells a product or substance to
  - (i) accept the product or substance, or packaging associated with the product or substance, from any person, except for a person engaged in commercial waste management, including recycling, who no longer wants the product, substance or packaging, and
  - (ii) manage the product, substance or packaging in such a manner that there are no adverse effects upon the environment.

(2) The Minister may approve the packaging and labelling of materials.

(3) No person shall use, offer for sale or sell packaging, product containers or disposable products, or any material used in packaging, product containers or disposable products, contrary to this Act or the regulations. 1994-95, c. 1, s. 101; 2006, c. 30, s. 31.

### Regulations

**102** (1) The Governor in Council may make regulations

(a) respecting designated materials including, but not limited to,

(i) prescribing designated material for the purposes of this Part and creating different classes of designated material for different purposes,

(ii) prohibiting or restricting the manufacture, sale or distribution of designated material,

(iii) requiring that designated material or any other product be recycled, including the prohibition of a material or product in landfills or other disposal areas,

(iv) requiring the development and implementation of a waste minimization, recycling or recovery plan for designated material by manufacturers, distributors, retailers or any other person, specifying the manner in which designated material is to be managed,

(v) respecting surcharges on designated material including, without restricting the generality of the foregoing, regulations establishing or providing for the manner of establishing the classes of designated material for which surcharges are payable, prescribing the amount of a surcharge or the method of determining it, providing for the manner in which and the times at which surcharges are to be collected and paid and respecting the advertising of surcharges,

(vi) providing for the payment by manufacturers, distributors and retailers of designated material and any other persons of surcharges to fund litter control programs and respecting the collection and spending of these surcharges,

(vii) respecting the establishment, classification, licensing and operation of depots, including the qualifications of persons who may operate such depots,

(viii) respecting the amount and kind of designated material a retailer is required to accept at depots,

(ix) specifying designated material or other material for which payment must be made by a retailer or depot opera-

tor on its return, and specifying the amount of such payment and commissions or fees which the retailer or the depot operator may retain,

(x) requiring manufacturers or distributors to pay depot operators and retailers in respect of the collection of designated material or other material and prescribing the amount of the payments, the manner in which payments are to be calculated and commissions or fees which the manufacturer or distributor may retain,

(xi) requiring the compilation, maintenance and provision of recycle dockets or records and information in respect of designated materials;

(b) respecting the establishment and operation of the Resource Recovery Fund and respecting the manner and the purposes for which money in the Fund may be used;

(c) establishing standards for waste-separation programs, and waste-disposal programs, facilities and sites;

(d) respecting recycling, including the recycling of dangerous goods and how recyclable dangerous goods are to be dealt with when they are no longer recyclable and must be treated as waste dangerous goods;

(e) regarding the use and disposal of beverage containers;

(f) regarding the use of packaging and the labelling of materials;

(g) regarding the use or disposal of litter;

(h) respecting composting;

(ha) respecting the establishment and administration of the Resource Recovery Fund Board;

(i) generally, respecting any matter necessary or advisable to effectively carry out the intent and purpose of this Part.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 1994-95, c. 1, s. 102; 2006, c. 30, s. 32.

## PART X

### WATER-RESOURCE MANAGEMENT

#### **Vesting of watercourses**

**103** Notwithstanding any enactment, or any grant, deed or transfer made on or before May 16, 1919, whether by Her Majesty or otherwise, or any possession, occupation, use or obstruction of any watercourse, or any use of any water by

any person for any time whatever, but subject to subsection 3(2) of the *Water Act*, every watercourse and the sole and exclusive right to use, divert and appropriate any and all water at any time in any watercourse is vested forever in Her Majesty in right of the Province and is deemed conclusively to have been so vested since May 16, 1919, and is fully freed, discharged and released of and from every fishery, right to take fish, easement, *profit à prendre* and of and from every estate, interest, claim, right and privilege, whether or not of the kind hereinbefore enumerated, and is deemed conclusively to have been so fully freed, discharged and released since May 16, 1919. 1994-95, c. 1, s. 103.

**Lead agency**

- 104** The Department is designated as the lead agency of Government to
- (a) promote sustainable management of water resources;
  - (b) allocate water resources among competing users in a manner that will further sustainable development;
  - (c) take such measures as are reasonable to provide access to safe, adequate and reliable water supplies for individual, municipal, industrial and agricultural uses;
  - (d) promote the health and integrity of aquatic ecosystems, to protect habitats for animals and plants and to provide for continued recreational benefits;
  - (e) promote informed decision making in water-resource management through public education and participation. 1994-95, c. 1, s. 104; 2006, c. 30, s. 33.

**Minister has supervision of water resources**

- 105 (1)** The Minister has supervision of the uses of all water resources and watercourses and the allocation of water in the Province.
- (2)** The Minister shall establish a water-resource management strategy for the Province.
- (3)** The Minister may
- (a) authorize, restrict or prohibit the alteration of watercourses and wetlands;
  - (b) establish or adopt water-management goals;
  - (c) establish or adopt water-quality guidelines, objectives and standards;
  - (d) establish or adopt indicators of aquatic-ecosystem health and integrity;
  - (e) develop sensitivity indices for the water resources of the Province;

- (f) establish or adopt goals for effluent reduction;
- (g) establish total allowable wasteloads for water resources;
- (h) provide funding for water related research, investigation and monitoring;
- (i) approve water works and sewage works and funding for water works and sewage works;
- (j) approve watershed-protection strategies;
- (k) adopt strategies to protect watersheds for specific uses;
- (l) classify water resources according to their sensitivity or uses;
- (m) promote water-resource management with any person who may have an interest, and co-ordinate the activities of the Government or any Government agency with interests and mandates related to water-resource management;
- (n) co-operate with other agencies respecting areas naturally prone to flooding;
- (o) *repealed 2006, c. 30, s. 34.*

**(4)** The Minister may identify any qualified persons, including water or watershed advisory boards, committees or authorities, and request those persons to promote informed public participation, provide advice to the Minister respecting watershed management and undertake such aspects of watershed management as may be assigned to those persons by the Minister. 1994-95, c. 1, s. 105; 2006, c. 30, s. 34; 2011, c. 61, s. 37.

#### **Designation of protected water area**

**106 (1)** The Minister, when requested by an operator of a water works or proposed water works, may designate an area surrounding any source or future source of water supply for a water works as a protected water area.

**(2)** The operator of a water works or proposed water works named in a designation made pursuant to subsection (1) shall

- (a) give notice of the designation of the area as a protected water area by publishing the notice in a newspaper having circulation in the county or counties in which the area is located and in the Royal Gazette;
- (b) have the notice of designation recorded at the registry of deeds and the land registration office in the county or counties in which the area is located; and
- (c) post signs in the area indicating that it has been designated a protected water area.

(3) The operator of a water works or proposed water works is responsible for taking all measures to protect the area designated, and the enforcement of any regulations made pursuant to subsection (6).

(4) When requested by an operator of a water works or proposed water works, the Minister may cancel a designation made pursuant to this Section, in whole or in part.

(5) Any protected water area designated pursuant to the *Water Act*, prior to the coming into force of this Act remains so designated.

(5A) Any area surrounding a source of public water supply defined and prescribed pursuant to Section 16 of Chapter 42 of the Acts of 1963, *An Act to Amend the Water Act*, is deemed to be a protected water area designated pursuant to the *Water Act* and remains so designated.

(5B) Any designation of a protected water area and any regulations regulating an activity in a designated protected water area that is referenced in subsection (5A) or were in effect on April 1, 1977, are deemed to have been filed pursuant to subsection 24(1) of the *Regulations Act* before April 1, 1978.

(6) At the request of the operator of the water works or proposed water works, the Minister may make regulations to prohibit, regulate or require the doing of any act or acts in a protected water area that may impair or prevent the impairment, as the case may be, of the quality of the water in the protected water area.

(7) Before designating a protected water area, the Minister shall ensure that the operator of the water works or proposed water works has provided opportunities for public consultation.

(8) No claim for injurious affection lies against any person as the result of a designation of a protected water area.

(9) The exercise by the Minister of the authority contained in subsection (6) is regulations within the meaning of the *Regulations Act*. 1994-95, c. 1, s. 106; 2001, c. 6, s. 103; 2006, c. 30, s. 35.

#### **No grant of fishing rights**

107 Nothing in this Act authorizes the granting of any fishing right or privilege. 1994-95, c. 1, s. 107.

#### **No rights by prescription**

108 (1) Possession, occupation, use or obstruction of any watercourse, or any use of any water resource by any person for any time whatever on or after May 17, 1919, shall not be deemed to give an estate, right, title or interest therein or thereto or in respect thereof to any person.



(2) Notwithstanding subsection (1), possession, occupation or use of a watercourse where the land is no longer covered by water, for a period of not less than forty years continuously, may give an interest therein in accordance with the principles of adverse possession or prescription. 1994-95, c. 1, s. 108; 2001, c. 6, s. 103.

109 *repealed 2011, c. 61, s. 38.*

### Regulations

- 110 (1) The Governor in Council may make regulations
- (a) respecting the uses to which specified watercourses may be put;
  - (b) defining contaminants for the purpose of this Part and prescribing permissible limits for such contaminants present in or being discharged into water or a watercourse;
  - (c) respecting the construction, operation, classification and maintenance of water-treatment and water-distribution facilities and sewage-treatment and sewage-collection facilities and the operators of such facilities;
  - (d) respecting the infilling or alteration of wetlands, swamps, marshes, ravines or gulches;
  - (e) respecting the qualifications for well contractors and well pump installers;
  - (f) providing for the issuing of tags, decals, plates, devices, documents or other things to a holder of a certificate of qualification to serve as evidence that a drilling machine is being operated under a certificate;
  - (g) requiring and governing the taking of samples, tests, analyses, surveys and logs and other well data and the submission of them to the Minister;
  - (h) governing the reclamation of wells and the methods and requirements to be observed in reclamation operations;
  - (i) respecting remedial action to be taken with respect to problem wells;
  - (j) respecting the control of flowing wells;
  - (k) respecting the methods of drilling and digging wells, and of determining sources of groundwater;
  - (l) respecting the precautions and measures to be taken prior to and during the drilling, digging and development of a well;

- (m) respecting the casing, anchorage, equipment, materials and installations to be used in the drilling, completion, operation, reconditioning and production of wells;
- (n) respecting the maintenance of inactive wells;
- (o) respecting the ongoing maintenance and operation of active wells;
- (p) respecting the drilling and reclamation of wells;
- (q) respecting well log books;
- (qa) providing for the protection of human health and the prevention of drinking-water health hazards through the control and regulation of drinking-water supplies, drinking-water testing and reporting;
- (qb) respecting water distributed by water haulers for consumptive purposes;
- (qc) respecting vehicles and containers used by water haulers;
- (qd) respecting the qualifications of water haulers;
- (qe) respecting the requirements for the selection, design, construction, installation, covering, operation, maintenance and repair of on-site sewage disposal systems;
- (qf) respecting lot specifications and clearance distances for the construction and installation of on-site sewage disposal systems;
- (qg) respecting the requirements for the construction and installation of innovative sewage disposal systems;
- (qh) respecting the qualifications for qualified persons, installers and septic-tank cleaners for on-site sewage disposal systems;
- (qi) respecting vehicles and containers used by septic-tank cleaners;
- (r) generally, respecting any matter necessary or advisable to effectively carry out the intent and purpose of this Part.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 1994-95, c. 1, s. 110; 2006, c. 30, s. 36; 2011, c. 61, s. 39.

## PART XI

## AIR-QUALITY MANAGEMENT

**Duties of and powers of Minister****111 (1)** The Minister shall

- (a) establish Provincial ambient air-quality standards or objectives necessary for the protection of the environment; and
- (b) establish performance specifications and standards for air-quality testing and monitoring.
- (c) *repealed 2011, c. 61, s. 40.*

**(2)** The Minister may

- (a) establish air-emission standards to toxic, common and nuisance air contaminants and odour;
- (b) adopt overall Provincial emission caps and production goals and product manufacturing, sale and use restrictions to address air-quality issues of regional or global significance;
- (c) conduct or require air-quality and meteorological studies and compliance-monitoring programs;
- (d) establish regional air-quality-management programs to address the combined effects of multiple sources of air contaminants;
- (e) enter into agreements respecting air-management issues;
- (f) prepare model by-laws and otherwise co-operate with municipalities to promote improved air quality;
- (g) establish requirements respecting the operation or maintenance of any equipment, device or service that may emit contaminants into the air;
- (h) maintain inventories and establish reporting requirements for emissions of air contaminants. 1994-95, c. 1, s. 111; 2006, c. 30, s. 37; 2011, c. 61, s. 40.

**Regulations****112 (1)** The Governor in Council may make regulations

- (a) restricting the manufacture, sale or use of a substance having the potential to release environmentally damaging substances into the atmosphere;
- (b) limiting the concentration or quantity of emissions into the atmosphere, either alone or in combination with any other substance;

- (c) requiring the submission of information related to the release of substances into the atmosphere;
- (d) establishing standards or objectives for ambient air quality;
- (e) governing or prohibiting practices or activities that may emit contaminants into the atmosphere;
- (f) generally, respecting any matter necessary or advisable to effectively carry out the intent and purpose of this Part.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 1994-95, c. 1, s. 112.

## PART XII

### INSPECTIONS AND INVESTIGATIONS

#### **Inspector deemed peace officer**

**113** An inspector, in carrying out duties pursuant to this Act, has and may exercise in any part of the Province all the powers, authorities and immunities of a peace officer as defined in the *Criminal Code* (Canada). 1994-95, c. 1, s. 113.

#### **Programs to promote reporting**

- 114** The Minister shall establish programs to promote the reporting of
- (a) acts or omissions that cause adverse effects; and
  - (b) acts or omissions that may constitute offences under this Act.
- 1994-95, c. 1, s. 114.

#### **Application for investigation**

**115 (1)** Any person who is of the opinion that an offence has been committed under this Act may apply to the Department to have an investigation of the alleged offence conducted.

(2) An application pursuant to subsection (1), if the Department so requests, shall be accompanied by a solemn declaration

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

(3) Any person who wilfully or intentionally provides false information in an application pursuant to subsection (1) is guilty of an offence. 1994-95, c. 1, s. 115.

**Investigation**

**116 (1)** On receipt of an application pursuant to Section 115, the Minister shall acknowledge receipt of the application and shall investigate all matters that the Minister considers necessary for a determination of the facts about the alleged offence.

**(2)** Within ninety days after receiving the application, the Minister shall report to the applicant on the progress of the investigation and the action, if any, proposed to be taken in respect of the alleged offence, but information shall not be disclosed to the applicant, if such disclosure would be contrary to the *Freedom of Information and Protection of Privacy Act*.

**(3)** The Minister may discontinue an investigation if the Minister is of the opinion that the alleged offence 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 applicant and to any person whose conduct was investigated. 1994-95, c. 1, s. 116; 2011, c. 61, s. 41.

**Inspections must be permitted**

**117** It is a condition of every approval, certificate of qualification or certificate of variance that the holder must forthwith on request permit inspectors to carry out inspections authorized pursuant to this Part of any place, other than a dwelling place, to which the approval, certificate of qualification or certificate of variance relates. 1994-95, c. 1, s. 117.

**Assistance to inspectors**

**118** The owner or occupier of any place, or any person the inspector reasonably believes is related to or associated with any activity at the place, in respect of which an inspector is exercising powers or carrying out duties pursuant to this Part shall

(a) give the inspector all reasonable assistance to enable the inspector to exercise those powers and carry out those duties; and

(b) furnish all information relative to the exercising of those powers and the carrying out of those duties that the inspector may reasonably require. 1994-95, c. 1, s. 118; 2006, c. 30, s. 38.

**Right of entry and inspection**

**119 (1)** For the purpose of ensuring compliance with this Act, the regulations, a standard or an order made under Part XIII, an inspector, subject to Sections 22 and 120, may, at any reasonable time,

- (a) enter and inspect any place to which this Act applies to determine
  - (i) the extent, if any, to which a substance may cause, is causing or has caused an adverse effect,
  - (ii) the cause of any adverse effect that may occur, is occurring or has occurred,
  - (iii) how an adverse effect may be prevented, eliminated, reduced or ameliorated and how the environment may be rehabilitated,
  - (iv) compliance with this Act, the regulations and the standards;
- (b) enter and inspect any place to which this Act applies if the inspector believes waste can be found in that place;
- (c) enter and inspect any place to which this Act applies in or from which the inspector believes a substance is being, has been or may be released into the environment;
- (d) enter and inspect any place to which this Act applies that the inspector believes is likely to contain documents related to
  - (i) an activity or thing that is regulated pursuant to this Act, the regulations or a standard, or
  - (ii) the release of a substance into the environment;
- (e) enter and inspect any place to which this Act applies that the inspector believes is, or is required to be, the subject of or referred to in an approval, notification, standard, temporary approval, certificate of qualification, certificate of variance or order;
- (ea) enter and inspect any place to which this Act applies that the inspector believes is being used by a designated organization to provide training or examinations for, or to keep records or other documents related to the training, application for or issuance of, certificates of qualification;
- (f) stop and inspect any vehicle, aircraft or vessel to which this Act applies to ascertain whether it or the manner in which it is being operated complies with this Act;
- (g) where the inspector believes that any thing may release, is releasing or has released into the environment a substance that may cause, is causing or has caused an adverse effect,
  - (i) require the person having care, management or control of the thing to detain the thing at the place where it is found, or
  - (ii) remove the thing or cause it to be removed from the place where it is found and give a receipt for it;

(h) require the production of any documents that are required to be kept pursuant to this Act or any other documents that are related to the purpose for which the inspector is exercising any power under clauses (a) to (g).

**(1A)** An inspector and a person lawfully accompanying an inspector may, while carrying out duties under this Act, enter on or pass over any land or water, whether enclosed or not, without being liable for trespass and without the owner of the property having the right to object.

**(1B)** In the course of exercising powers pursuant to subsection (1), an inspector may do any or all of the following:

(a) require that any thing be operated, used or set in motion under conditions specified by the inspector;

(b) use any machine, structure, material or equipment in the place being inspected in order to carry out the inspection;

(c) take samples, or require that samples be taken, of any substance or thing;

(d) conduct tests or take measurements, or require that tests be conducted or measurements be taken, in respect of any substance or thing;

(e) make copies of or take extracts from any documents referred to in clause (1)(h);

(f) use any computer system at any place to examine any data contained in or available to the computer system;

(g) record or copy any information by any method;

(h) reproduce any record from data in the form of a printout or other intelligible output;

(i) take a printout or other output for examination or copying;

(j) use any copying equipment to make copies;

(k) take any photographs or audio-video records;

(l) make reasonable inquiries of any person, orally or in writing.

**(2)** An inspector may not detain or remove a thing pursuant to clause (1)(g) for more than five days, excluding holidays, without the consent of the person having care, management or control of it or the owner of it, except pursuant to an order issued pursuant to subsection (3).

**(3)** Where a justice is satisfied on evidence under oath by an inspector that there is reasonable ground to believe that a thing detained or removed pursuant to clause (1)(g) should be detained or removed for longer than five days,

excluding holidays, to protect or conserve the environment, the justice may issue or renew an order authorizing an inspector to detain or remove the thing for the period of time set out in the order.

(4) An inspector who applies for an order pursuant to subsection (3) shall give reasonable notice of the application to the person having care, management or control of the thing to be detained or removed or to the owner of it.

(5) An inspector may remove documents that the inspector is entitled to examine or copy or otherwise reproduce but shall give a receipt to the person from whom they were taken and shall promptly return them on completion of the examination or reproduction. 1994-95, c. 1, s. 119; 2006, c. 30, s. 39; 2011, c. 61, s. 42.

#### **Private dwelling place**

**120** Notwithstanding anything contained in this Act, an inspector may not enter a private dwelling place or any part of a place that is designed to be used and is being used as a permanent or temporary private dwelling place except

- (a) with the consent of the occupant of the place; or
- (b) pursuant to an order under Section 121 to enter and inspect, or under the authority of a search warrant. 1994-95, c. 1, s. 120.

#### **Order to enter and inspect**

**121 (1)** Notwithstanding anything contained in this Act, where a justice is satisfied on evidence under oath by an inspector that

- (a) there are reasonable grounds to believe that it is appropriate for the administration of this Act for the inspector to do anything set out in Section 119; and
- (b) the inspector may not be able to carry out duties under this Act effectively without an order under this Section because
  - (i) no person is present to grant access to a place that is locked or is otherwise inaccessible,
  - (ii) a person has denied the inspector access to a place or there is reasonable ground for believing that a person may deny the inspector access to a place,
  - (iii) a person has prevented the inspector from doing anything set out in Section 119 or denied the inspector access to any thing as a result of which the inspector is unable to do anything set out in Section 119,
  - (iv) there is reasonable ground to believe that a person may prevent an inspector from doing anything set out in Section 119, or may deny the inspector access to any thing as a result of which the inspector may be unable to do anything set out in Section 119,



(v) it is unpractical, because of the remoteness of the place to be inspected or because of any other reason, for the inspector to obtain an order under this Section without delay if access is denied, or

(vi) there are reasonable grounds to believe that an attempt by the inspector to do anything set out in Section 119 without the order might defeat the purpose of that Section or cause an adverse effect,

the justice may issue an order authorizing the inspector to do anything set out in Section 119 that is specified in the order for the period of time set out in the order.

(2) The period of time referred to in subsection (1) may not extend beyond thirty days after the date on which the order is made, but the order may be renewed for any reason set out in subsection (1) for one or more periods each of which is not more than thirty days.

(3) An application pursuant to subsection (2) may be made before or after the expiry of the period.

(4) An order under this Section may be issued or renewed on application without notice. 1994-95, c. 1, s. 121; 2011, c. 61, s. 43.

### Seizure

122 (1) An inspector may seize any thing that is produced to the inspector, or that is in plain view during an inspection under Sections 119 and 121.

(2) The inspector may remove the thing seized or may detain it in the place where it is seized.

(3) The inspector shall inform the person from whom the thing was seized of the reason for the seizure and shall give the person a receipt for it.

(4) *repealed 2011, c. 61, s. 44.*

1994-95, c. 1, s. 122; 2011, c. 61, s. 44.

### Directives

122A (1) An inspector may issue a directive to a person requiring the person to

(a) take such measures in accordance with clause 71(b) as the inspector may specify;

(b) furnish the inspector with information in accordance with clause 118(b);

(c) detain a thing in accordance with subclause 119(1)(g)(i);

(d) produce a document in accordance with clause 119(1)(h); or

(e) take any action prescribed by the regulations in any circumstance prescribed by the regulations.

(2) A directive is not subject to appeal or review under this Act.

(3) The Governor in Council may make regulations

(a) respecting the issuance of directives pursuant to this Section, including

(i) prescribing the circumstances in which a directive may be issued, and

(ii) prescribing the actions a person may be required to take in relation to a directive;

(b) generally, respecting any matter necessary or advisable to effectively carry out the intent and purpose of this Section.

(4) The exercise by the Governor in Council of the authority contained in subsection (3) is regulations within the meaning of the *Regulations Act*, 2011, c. 61, s. 45.

#### Use of assistants

**123** An inspector or administrator, in carrying out any duties or exercising any powers under this Act, may be accompanied by one or more persons considered by the inspector or administrator to be necessary to enable the inspector or administrator to carry out those duties and exercise those powers. 1994-95, c. 1, s. 123.

#### Employee protection

**124 (1)** No employer shall

(a) dismiss or threaten to dismiss an employee;

(b) discipline or suspend an employee;

(c) impose a penalty on an employee; or

(d) intimidate or coerce an employee,

because the employee has reported or proposes to report to any person an act or omission that contravenes or that the employee has reasonable grounds to believe may contravene this Act.

(2) Any person who wilfully or intentionally provides false or misleading information pursuant to subsection (1) is guilty of an offence. 1994-95, c. 1, s. 124.

## PART XIII

## ORDERS

**Ministerial control order**

**125 (1)** Where the Minister believes on reasonable and probable grounds that a person has contravened or will contravene this Act, the Minister may, whether or not the person has been charged or convicted in respect of the contravention, issue an order requiring a person, at that person's own expense, to

- (a) cease the specified activity;
- (b) stop, limit, alter or control the release of any substance into the environment or part thereof in accordance with the directions set out in the order, either permanently or for a specified period;
- (c) alter the procedures to be followed in the control, reduction or elimination of the release of any substance into the environment or part thereof;
- (d) install, replace or alter any equipment or thing designed to control, reduce or eliminate the release of any substance into the environment or part thereof;
- (e) take interim measures to control, eliminate or manage the adverse effect, including the provision of potable water to affected parties;
- (f) undertake remedial action to control, reduce, eliminate or mitigate an adverse effect;
- (g) install, replace or alter a facility in order to control, reduce, eliminate or mitigate the release of any substance into or on the environment or part thereof;
- (h) carry out clean-up, site rehabilitation or management, site security and protection or other remedial actions in accordance with directions set out in the order;
- (i) comply with directions set out in the order respecting the withdrawal of water from a watercourse, including directions to stop the withdrawal;
- (j) refrain from altering a watercourse or comply with directions set out in the order respecting altering a watercourse;
- (k) where a person has altered a watercourse, or has unlawfully released a contaminant into a watercourse, or where a contaminant may reach a watercourse, take immediate action to remedy the damage that person has caused;
- (l) where a person is handling, storing or transporting dangerous goods, waste dangerous goods or pest-control products, take such action as is deemed necessary to avoid contamination by the good or product;

(m) cause a crop, feed, food, animal, plant, water, produce, product or other matter contaminated by a pest-control product to be destroyed or rendered harmless;

(n) restrict the sale, handling, use or distribution of a crop, feed, food, animal, plant, water, produce, product or other matter permanently or for such period of time as deemed necessary;

(o) take specified precautions with respect to the treatment or decontamination of an area affected by dangerous goods, waste dangerous goods or a pest-control product;

(p) take specified precautions with respect to the future use of an area affected by dangerous goods, waste dangerous goods or a pest-control product;

(q) restrict or prohibit the use of a contaminated site, or the use of any product that comes from a contaminated site;

(r) provide security in an amount and form specified by the Department during a clean-up and afterwards for monitoring or other purposes;

(s) do all things and take all steps necessary to comply with this Act, or to repair any injury or damage, or to control, eliminate or manage an adverse effect.

**(2)** In environmentally sensitive areas, an order under subsection (1) may impose terms and conditions in excess of requirements provided in regulations, policies, guidelines or standards prescribed or adopted by the Department.

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

- (a) requiring a person, at that person's own expense, to
  - (i) maintain records on any relevant matter, and report periodically to the Minister or person appointed by the Minister,
  - (ii) hire an expert to prepare a report for submission to the Minister or person appointed by the Minister,
  - (iii) submit to the Minister or person appointed by the Minister any information, proposal or plan specified by the Minister setting out any action to be taken by the person with respect to the subject-matter of the order,
  - (iv) prepare and submit a contingency plan,
  - (v) undertake tests, investigations, surveys and other action and report results to the Minister,

- (vi) take any other measure that the Minister considers necessary to facilitate compliance with the order or to protect or restore the environment;
- (b) fixing the manner or method of, or the procedures to be used in, carrying out the measures required by the order;
- (c) fixing the time within which any measure required by the order is to be commenced and the time within which the order or any portion of the order is to be complied with. 1994-95, c. 1, s. 125.

**Ministerial stop order**

**126** Where the Minister believes on reasonable and probable grounds that there is a likelihood of an irreparable adverse effect, the Minister may make an order to shut down or stop an undertaking forthwith, either permanently or for a specified period of time. 1994-95, c. 1, s. 126.

**Litter-control order**

**127** The Minister, an administrator or an inspector may issue an order to clean up any litter that has been disposed of contrary to this Act. 1994-95, c. 1, s. 127.

**Emergency order**

**128 (1)** In an emergency situation, an inspector may issue a written or oral order pursuant to Sections 125 or 126.

**(2)** Any order issued pursuant to subsection (1) shall be ratified and confirmed, in writing, by an administrator within three business days or the order is null and void. 1994-95, c. 1, s. 128; 2006, c. 30, s. 40; 2011, c. 61, s. 46.

**Factors to be considered before making order**

**129 (1)** In deciding whether to issue an order pursuant to this Part, the Minister, an administrator or an inspector shall be guided by the following considerations, if such information is available or accessible to the Minister, an administrator or an inspector:

- (a) when the substance became present over, in, on or under the site;
- (b) in the case of an owner, occupier or operator, or previous owner, occupier or operator of the site
  - (i) whether the substance was present over, in, on or under the site at the time that person became an owner, occupier or operator,
  - (ii) whether the person knew or ought reasonably to have known that the substance was present over, in, on or under the site at the time that person became an owner, occupier or operator,

- (iii) whether the presence of the substance over, in, on or under the site ought to have been discovered by the owner, occupier or operator had the owner, occupier or operator exercised due diligence in ascertaining the presence of the substance before the owner, occupier or operator became an owner, occupier or operator, and whether the owner, occupier or operator exercised such due diligence,
- (iv) whether the presence of the substance over, in, on or under the site was caused solely by the act or omission of an independent third party,
- (v) the economic benefits the person may have received and the relationship between that price and the fair market value of the site had the substance not been present over, in, on or under it;
- (c) in the case of a previous owner, occupier or operator whether that person disposed of the interest in the site without disclosing the presence of the substance over, in, on or under the site to the person who acquired the interest;
- (d) whether the person took all reasonable care to prevent the presence of the substance over, in, on or under the site;
- (e) whether a person dealing with the substance ignored industry standards and practices in effect at the time or complied with the requirements of applicable enactments in effect at the time;
- (f) whether the person contributed to further accumulation or the continued release of the substance on becoming aware of the presence of the substance over, in, on or under the site;
- (g) what steps the person took to deal with the site on becoming aware of the presence of the substance over, in, on or under the site;
- (h) any other criteria the Minister considers to be relevant.

**(2)** An order made by the Minister pursuant to this Part may

- (a) require the person to whom the order is directed to take any measures that the Minister considers are necessary to restore or secure the contaminated site and the environment affected by the contaminated site;
- (b) provide for the apportionment of the cost of compliance with the order;
- (c) in accordance with the guidelines or regulations, regulate or prohibit the use of the contaminated site or the use of any product that comes from the contaminated site. 1994-95, c. 1, s. 129; 2006, c. 30, s. 41.

**Order may deal with several substances**

**130 (1)** An order made pursuant to this Part may deal with several substances and may be directed to one or more persons.

**(2)** An order pursuant to this Part remains in effect until it is revoked by the Minister.

**(3)** An order issued pursuant to this Part is binding on the heirs, successors, executors, administrators, trustees, receiver, receiver manager and assigns of the person to whom it is directed.

**(4)** An order pursuant to this Part may be issued against any person responsible regardless of whether the act or omission that resulted in issuance of the order, occurred before or after the coming into force of this Act. 1994-95, c. 1, s. 130.

**Amendment or revocation of order**

**131 (1)** The Minister may

- (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; or
- (c) amend a typographical error in an order.

**(2)** A copy of an order amended or revoked pursuant to subsection (1) shall be served as prescribed in this Act on the person to whom the original order was directed. 1994-95, c. 1, s. 131.

**Compliance with order**

**132 (1)** When an order is served on a person to whom it is directed, that person shall comply with the order forthwith or, where a period for compliance is specified in the order, within the time period specified.

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

**(3)** Reasonable costs, expenses or charges incurred by the Minister pursuant to this Part are recoverable by order of the Minister

- (a) against the person to whom the order was directed; or
- (b) directing any person who has purchased real property from the person to whom the order was directed to pay to the Minister from any money which is still owed to the vendor, a sum not to exceed the amount owing in respect of the costs, expenses or charges.

**(4)** A purchaser who pays an amount to the Minister pursuant to clause (3)(b) is discharged from any obligation to pay that amount to the vendor.

(5) For the purpose of this Section, the costs referred to in subsection (3) include any costs incurred in investigating and responding to

- (a) any matter to which an order relates; or
- (b) the failure to comply with an order.

(6) In any claim or action under this Section, a certificate purporting to be signed by the Minister setting out the amount of the cost, expense or charge is admissible in evidence and is, in the absence of evidence to the contrary, proof

- (a) of the amount of the cost, expense or charge set out in the certificate; and
- (b) that the cost, expense or charge was made necessary or caused by the release of a substance, contaminant, waste or thing to which the claim or action relates.

(7) Where an order to pay is issued by the Minister pursuant to subsection (3), the order may be filed with the prothonotary of the Supreme Court and recorded in the environmental registry and, when so filed and recorded,

- (a) the order is of the same force and effect as if it were a judgment against real property that the person named in the order may now or hereafter own;
- (b) a lien is established on the property referred to in clause (a) for the amount stated and it is deemed to be taxes in respect of the real property and may be collected in the same way and in the same priority as taxes under the *Assessment Act*; and
- (c) the order may be enforced as if it were a judgment of the Supreme Court in civil proceedings.

(8) No lien under subsection (7) is created against a property registered pursuant to the *Land Registration Act* until the order is recorded in the parcel register. 1994-95, c. 1, s. 132; 2003, c. 6, s. 103.

**133** *repealed 2011, c. 61, s. 47.*

#### **Joint and several liability**

**134 (1)** Where an order under this Part is directed to more than one person, all persons named in the order are jointly responsible for carrying out the terms of the order and are jointly and severally liable for payment of the costs of doing so, including any costs incurred by the Minister under Section 132.

(2) Subsection (1) does not apply to an order where the Minister and the persons responsible have agreed to an apportionment of costs.

(3) Notwithstanding subsection (1), where an order is directed to a person who is acting in the capacity of executor, administrator, receiver, receiver



manager or trustee in respect of a contaminated site, the liability of that person is limited to the value of the assets the person is administering, less the reasonable costs and fees of the administration.

(4) The limitation of liability under subsection (3) does not apply if the executor, administrator, receiver, receiver manager or trustee contributes to further accumulation or the continued release of the substance on becoming aware of the presence of substance in, on or under the contaminated site.

(5) Where a person named in an order did not cause or contribute to the loss, damage, cost or expense by fault or negligence, each of the persons liable to pay compensation, whether or not they are named in the order, are liable to make contribution to and indemnify that person to such degree as is determined to be just and equitable in the circumstances.

(6) Where two or more persons are liable to pay compensation under this Part, those persons are jointly and severally liable to the person suffering the loss, damage, cost or expense but, as between those persons, in the absence of a contract or agreement, each is liable to make contribution to and indemnify each other in accordance with the following principles:

(a) where two or more persons are liable to pay compensation under this Part and one or more of them caused or contributed to the loss damage, costs or expense by fault or negligence, such one or more of them shall make contribution to and indemnify,

(i) where one person is found at fault or negligent, any other person liable to pay compensation under this Part, and

(ii) where two or more persons are found at fault or negligent, each other and any other person liable to pay compensation under this Part in the degree in which each of such two or more persons caused or contributed to the loss, damage, cost or expense by fault or negligence;

(b) for the purpose of subclause (a)(ii), if it is not practicable to determine the respective degrees in which the fault or negligence of two or more persons liable to pay compensation under this Part caused or contributed to the loss, damage, cost or expense, such two or more persons shall be deemed to be equally at fault or negligent.

(7) The right of contribution or indemnification under subsections (5) and (6) may be enforced by action in a court of competent jurisdiction. 1994-95, c. 1, s. 134.

#### **Payment by insurer**

135 (1) Where a person to whom an order issued pursuant to this Part is insured under an insurance policy that provides for coverage for any 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 any cost, expense, loss, damage or charge incurred by the Minister while acting pursuant to Section 132.

(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) on a *pro rata* basis or such other basis as the Minister considers appropriate with other persons who have incurred any cost, expense, loss, damage or charge in the circumstances described in subsection (1) and the insurer shall pay the proceeds in accordance with the agreement.

(3) Where an insurer has made a payment pursuant to subsection (1) or (2), the payment is deemed 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 the Minister or any other 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 obligated 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. 1994-95, c. 1, s. 135.

#### **Orders not regulations under Regulations Act**

**135A (1)** Orders issued under this Part are not regulations within the meaning of the *Regulations Act*.

(2) Orders issued under this Part after February 18, 2003, are valid notwithstanding that those orders were not filed with the Registrar of Regulations as required by the *Regulations Act*. 2006, c. 2, s. 3.

#### **Regulations**

**136 (1)** The Governor in Council may make regulations

- (a) respecting the issuance of orders pursuant to this Part;
- (b) generally, respecting any matter necessary or advisable to effectively carry out the intent and purpose of this Part.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 1994-95, c. 1, s. 136.

## PART XIV

## APPEALS

**Appeal to Minister**

**137 (1)** A person who is aggrieved by a decision or order of an administrator or person delegated authority pursuant to Section 17 may, within thirty days of the decision or order, appeal by notice in writing, stating concisely the reasons for the appeal, to the Minister.

**(2)** The notice of appeal may be in a form prescribed by the Minister.

**(3)** The Minister shall notify the appellant, in writing, of the decision within sixty days of receipt of the notice of appeal.

**(4)** The Minister may dismiss the appeal, allow the appeal or make any decision or order the administrator could have made.

**(5)** The administrator and the appellant shall take such action as is necessary to implement the decision of the Minister disposing of the appeal.

**(6)** The initiation of an appeal pursuant to this Section does not suspend the operation of any decision or order appealed from, including the requirement to comply with an order under Part XIII, pending the disposition of the appeal. 1994-95, c. 1, s. 137; 2006, c. 30, s. 42; 2011, c. 61, s. 48.

**Appeal to Supreme Court**

**138 (1)** Subject to subsection (2), a person aggrieved by

- (a) a regulation;
- (b) a decision of the Minister pursuant to Section 137;
- (c) a decision of the Minister respecting the granting or refusal of a certificate or an approval;
- (d) a decision of the Minister respecting the terms or conditions of a certificate or an approval;
- (e) a decision of the Minister respecting the amendment, addition or deletion of terms and conditions of a certificate or an approval;
- (f) a decision of the Minister respecting the cancellation or suspension of a certificate or an approval; or
- (g) an order,

may, within thirty days of the decision or order, appeal on a question of law or on a question of fact, or on a question of law and fact, to a judge of the Supreme Court, and the decision of that court is final and binding on the Minister and the appellant,

and the Minister and the appellant shall take such action as may be necessary to implement the decision.

(2) For greater certainty, a decision of the Minister to approve or reject an undertaking registered under Part IV may not be appealed pursuant to subsection (1).

(3) *repealed 2011, c. 61, s. 49.*

(4) An appeal pursuant to this Part shall be commenced within thirty days of the date of the decision or the date of the order referred to in subsection (1).

(5) The initiation of an appeal pursuant to this Part does not suspend the operation of any act or omission appealed from, including the requirement to comply with an order under Part XIII, pending the disposition of the appeal.

(6) The decision of the court under subsection (1) is final and there is no further appeal to the Nova Scotia Court of Appeal. 1994-95, c. 1, s. 138; 2011, c. 61, s. 49.

#### **Technical irregularity**

139 An appeal in connection with any matter under this Act shall be dismissed by the Supreme Court if the sole ground for relief established on the appeal is a defect in form or a technical irregularity. 1994-95, c. 1, s. 139.

#### **Regulations**

140 (1) The Governor in Council may make regulations respecting any matter necessary or advisable to effectively carry out the intent and purpose of this Part.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 1994-95, c. 1, s. 140.

### PART XV

#### CIVIL REMEDIES

##### **Other civil remedies unaffected**

141 No civil remedy for an act or omission is suspended or affected by reason only that the act or omission is an offence under this Act or gives rise to a civil remedy under this Act, and nothing in this Act shall be construed so as to repeal, remove or reduce any remedy available to any person under any enactment, at common law or under any Act of Parliament or of a provincial legislature. 1994-95, c. 1, s. 141.

**Civil cause of action**

**142** Where a person is convicted of an offence under this Act, the conviction is *prima facie* evidence of negligence and any 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 an amount equal to the reasonably foreseeable loss or damage proved to have been suffered as a result of the conduct that constituted the offence. 1994-95, c. 1, s. 142.

**Protection from liability**

**143** Notwithstanding anything contained in this Act, no action for damages may be commenced or maintained and no cause of action lies against

- (a) an employee, as defined in the *Civil Service Act*, who is
  - (i) under the direction of the Minister,
  - (ii) acting under the direction of an employee referred to in subclause (i), or
  - (iii) acting pursuant to a delegation pursuant to Part II;
- (b) an agent of the Government, including an emergency responder;
- (c) an employee or agent of a Government agency, a municipality or the Government of Canada, any department or agency of that Government, or any person if there has been a delegation pursuant to Part II;
- (d) an employee or agent of a Government agency or a municipality, or any person if there has been a transfer of administration pursuant to Part II;
- (e) a municipality, or a board or commission if there has been a delegation or transfer of administration pursuant to Part II; or
- (f) any person who has been retained or employed by, and any person who serves on any board or advisory committee or as a Corps member under this Act,

if the action arises out of any act or omission of that person that occurs while that person is carrying out duties or exercising powers pursuant to this Act in good faith and, without restricting the generality of the foregoing, no person referred to in this Section is liable for damage caused by a system of inspection or the manner in which inspections are to be performed or the frequency, infrequency or absence of inspections. 1994-95, c. 1, s. 143; 2006, c. 30, s. 43.

**Recovery of costs by Government**

**144** The Government may recover in debt either in an action or as prescribed in this Act or the regulations against any person who is convicted of an offence under this Act the costs and expenses incurred by the Government

- (a) in responding to any matter related to the offence; and

(b) in carrying out or causing to be carried out any preventive or remedial action made necessary by the act or omission that constituted the offence. 1994-95, c. 1, s. 144.

## PART XVI

### TRANSBOUNDARY POLLUTION

#### **Interpretation of Part**

**145** In this Part,

(a) "person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government in its private or public capacity, governmental subdivision or agency, or any other legal entity;

(b) "reciprocating jurisdiction" means a state of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States of America or a province of Canada that has enacted this Act or provides substantially equivalent access to its courts and administrative agencies. 1994-95, c. 1, s. 145.

#### **Access to Nova Scotia courts**

**146** An action or other proceeding for injury or threatened injury to property or person in a reciprocating jurisdiction caused by pollution originating, or that may originate, in the Province may be brought in the Province. 1994-95, c. 1, s. 146.

#### **Pollution originating in Nova Scotia**

**147** A person who suffers or is threatened with injury to the person or the person's property in a reciprocating jurisdiction caused by pollution originating, or that may originate, in the Province has the same rights to relief with respect to the injury or threatened injury, and may enforce those rights in the Province, as if the injury or threatened injury occurred in the Province. 1994-95, c. 1, s. 147.

#### **Applicable law**

**148** The law to be applied in an action or proceeding brought pursuant to this Part, including what constitutes "pollution", is the law of the Province excluding choice of law rules. 1994-95, c. 1, s. 148.

#### **Rights not superior**

**149** This Part does not accord a person injured or threatened with injury in a reciprocating jurisdiction any rights superior to those that the person would have if injured or threatened with injury in the Province. 1994-95, c. 1, s. 149.

#### **Preservation of existing rights**

**150** The right provided in this Part is in addition to and not in derogation of any other rights. 1994-95, c. 1, s. 150.

**Act binds Crown**

**151** This Part binds Her Majesty in right of the Province only to the extent that Her Majesty would be bound if the person were injured or threatened with injury in the Province. 1994-95, c. 1, s. 151.

**Reciprocating jurisdiction**

**152** Notwithstanding the definition of "reciprocating jurisdiction", the Governor in Council may, by regulation, declare a jurisdiction to be a reciprocating jurisdiction for the purpose of this Part. 1994-95, c. 1, s. 152.

**Uniformity of law**

**153** This Part shall be applied and construed to carry out its general purpose to make uniform the law with respect to the subject of this Part among jurisdictions enacting it. 1994-95, c. 1, s. 153.

**Agreements**

**154** In addition to every power vested in the Minister, the Minister may, subject to the approval of the Governor in Council, enter into agreements with

- (a) the government of a reciprocating jurisdiction;
- (b) any person,

for the purpose of establishing committees or co-ordinating or implementing programs relating to transboundary pollution and may consult with and advise any such government or person with respect to policies and programs relating to transboundary pollution. 1994-95, c. 1, s. 154.

**Regulations**

**155 (1)** The Governor in Council may make regulations respecting any matter necessary or advisable to carry out the intent and purpose of this Part.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 1994-95, c. 1, s. 155.

## PART XVII

ENVIRONMENTAL INDUSTRIES,  
INNOVATIONS AND TECHNOLOGIES**Lead agency**

**156 (1)** The Department is designated the lead agency of Government to promote the development and use of sustainable environmental industries, innovations and technologies.

**(2)** To fulfil the mandate prescribed in subsection (1), the Minister may

(a) and (b) *repealed 2006, c. 30, s. 44.*

(c) assist in the development and implementation of policies and programs to support pollution prevention, environmental management systems, best management practices and the use and commercialization of sustainable environmental innovations, technologies and services;

(d) promote the growth of the environmental sector in local and global markets;

(e) co-ordinate inter-departmental activities to achieve the mandate prescribed in subsection (1);

(f) harmonize strategies, programs and policies with other governments;

(g) enter into co-operative agreements;

(h) promote and host forums, trade shows and marketing workshops;

(i) assist in the delivery of government support to environmental industry in a direct, accessible, service-oriented and cost effective manner;

(j) promote such other activities as may be necessary to support pollution prevention, environmental management systems, best management practices and environmental industries, innovations and technologies.

**(3)** For greater certainty, this Section shall prevail over every other enactment. 1994-95, c. 1, s. 156; 2006, c. 30, s. 44.

## PART XVIII

### PENALTIES AND PROSECUTIONS

#### Limitation period

**157** A prosecution for an offence under this Act may not be commenced more than two years after the later of

(a) the date on which the offence was committed; or

(b) the date on which evidence of the offence first came to the attention of an inspector, an administrator or the Minister, whichever occurs first. 1994-95, c. 1, s. 157.

#### Offences

**158** A person who

(a) knowingly provides false or misleading information pursuant to a requirement under this Act to provide information;



- (b) provides false or misleading information pursuant to a requirement under this Act to provide information;
- (c) does not provide information as required pursuant to this Act;
- (d) hinders or obstructs an inspector or administrator who is exercising powers or carrying out duties, or attempting to do so, pursuant to this Act;
- (e) knowingly contravenes a term or condition of an approval, an environmental assessment approval, a temporary approval, a certificate of variance or a certificate of qualification;
- (f) contravenes a term or condition of an approval, an environmental assessment approval, a temporary approval, a certificate of variance or a certificate of qualification;
- (g) knowingly contravenes an order;
- (ga) knowingly contravenes a directive;
- (h) contravenes an order;
- (ha) contravenes a directive;
- (hb) contravenes a regulation made pursuant to subsection 106(6);
- (i) contravenes Section 32, 50, 55, 59, 60, 61A, 61C, 62, 67, 68, 69, 71, 75, 76, 79, 83, 89, 115, 124 or 132; or
- (j) otherwise contravenes this Act or the regulations,

is guilty of an offence. 1994-95, c. 1, s. 158; 2006, c. 30, s. 45; 2011, c. 61, s. 50.

### Penalty

**159 (1)** A person who commits an offence referred to in subsections 50(1), 61A(1), 61C(1), 67(1) or 68(1) or clauses 158(a), (e), (g) or (ga) is liable to a fine of not less than one thousand dollars and not more than one million dollars or to imprisonment for a period of not more than two years, or to both a fine and imprisonment.

**(2)** A person who commits an offence referred to in Section 32, subsection 50(2), Sections 55, 59 or 60, subsections 61A(2) or 61C(2), Section 62, subsection 67(2), subsection 68(2), Sections 69, 71, 75, 76, 79, 83, 89, 115, 124 or 132 or clauses 158(b), (c), (d), (f), (h), (ha) or (hb) is liable to a fine of not more than one million dollars.

**(3)** *repealed 2006, c. 30, s. 46.*

**(4)** A person who commits an offence referred to in any other provision of this Act is liable to a fine of not more than five hundred thousand dollars. 1994-95, c. 1, s. 159; 2006, c. 30, s. 46; 2011, c. 61, s. 51.

**Section 99 offence**

**159A (1)** In this Section, “business” means

- (a) a person authorized or entitled to carry on a trade, occupation, profession, service or venture with a view to a profit, including a partnership and a limited partnership; or
- (b) a corporation.

**(2)** A business that commits an offence referred to in Section 99 is liable to a fine of not more than one hundred thousand dollars or the fine prescribed in the regulations.

**(3)** Notwithstanding clause 3(a), a person, other than a business, who commits an offence referred to in Section 99 is liable to a fine of not more than ten thousand dollars or the fine prescribed in the regulations. 2006, c. 30, s. 47.

**Due diligence defence**

**160** Unless otherwise provided in this Act, no person shall be convicted of an offence under this Act if the person establishes that the person

- (a) exercised all due diligence to prevent the commission of the offence; or
- (b) reasonably and honestly believed in the existence of facts that, if true, would render the conduct of that person innocent. 1994-95, c. 1, s. 160.

**Additional fine**

**161** Where a person is convicted of an offence under this Act and the court is satisfied that, as a result of the commission of the offence, monetary benefits accrued to the offender, the court may order the offender to pay, in addition to a fine under Section 159, a fine in an amount equal to the estimation of the court of the amount of those monetary benefits. 1994-95, c. 1, s. 161.

**Continuing offence**

**162** Where an offence under this Act is committed or continued on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed. 1994-95, c. 1, s. 162.

**Offences by employees**

**163** In any prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the knowledge or consent of the accused. 1994-95, c. 1, s. 163.

**Liability of directors and officers**

**164** Where a corporation commits an offence under this Act or the regulations, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the violation of this Act or the regulations is guilty of the offence and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted. 1994-95, c. 1, s. 164.

**Responsibility of lenders, trustees and secured creditors**

**165 (1)** Notwithstanding anything contained in this Act or any other enactment 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 under any such provision beyond the value of the assets the persons are administering less the reasonable costs and fees of the administration, in relation to their position as receiver, receiver manager, trustee, executor or administrator of the assets of a person responsible, in respect of any adverse effect that occurred

(a) before the appointment of the 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 on any person regarding the manner of treatment, disposal or handling of a substance and the control or requirements, in whole or in part, caused the site to become a contaminated site.

**(3)** Notwithstanding anything contained in this Act or any other enactment, a secured creditor is responsible for rehabilitation at a contaminated site if

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

(b) subject to subsection (4), the secured creditor becomes the registered owner of the real property at the contaminated site unless an agreement is entered into pursuant to Section 89,

but a secured creditor is not responsible for rehabilitation where it acts primarily to protect its security interest, including, without restricting the generality of the foregoing, where the secured creditor

(c) participates only in purely financial matters related to the site;

(d) has the capacity or ability to influence any 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 such a way as to cause or increase contamination;

(e) imposes requirements on any person if the requirements do not have a reasonable probability of causing or increasing contamination at the site; or

(f) appoints a person to inspect or investigate a contaminated site to determine future steps or actions that the secured creditor might take.

(4) Notwithstanding clause 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.

(5) Nothing in this Section exempts a secured creditor, receiver, receiver manager, trustee, executor or administrator from any duty to report or make disclosure imposed by a provision of this Act. 1994-95, c. 1, s. 165.

#### **Court orders relating to penalty**

**166 (1)** Where a person is convicted of an offence under this Act, in addition to any other penalty that may be imposed pursuant to 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 any action the court considers appropriate to remedy or prevent any adverse effect that results or may result from the act or omission that constituted the offence;

(c) directing the offender to publish, in the prescribed manner and at the cost of the offender, the facts relating to the conviction;

(d) directing the offender to notify any person aggrieved or affected by the conduct of the offender, of the facts relating to the conviction, in the prescribed 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 any order made pursuant to this Section;

(f) on application to the court by the Minister within three years after the date of conviction, directing the offender to submit to the Minister any information with respect to the conduct of the offender that the court considers appropriate in the circumstances;

(g) directing the offender to compensate the Minister, in whole or in part, for the cost of any remedial or preventive action that

was carried out or caused to be carried out by the Government and was made necessary by the act or omission that constituted the offence;

- (h) directing the offender to perform community service;
- (ha) directing the offender to pay to the Minister the costs incurred by the Minister in carrying out the investigation of the offence;
- (hb) directing the offender to dispose of the litter in a manner and within the time prescribed by the Minister;
- (i) requiring the offender to comply with any 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 other offences.

**(1A)** Where a person, having failed to comply with an order made pursuant to Part XIII, is convicted of contravening subsection 132(1), the court may, in addition to any other penalty that may be imposed pursuant to this Act, make an order directing the person to comply with the order made pursuant to Part XIII.

**(2)** Where a person contravenes an order made pursuant to clause (1)(c), the Minister may publish the facts in compliance with the order.

**(3)** Where the court makes an order pursuant to clause (1)(g) or the Minister incurs publication costs pursuant to subsection (2), the costs constitute a debt due to the Government.

**(4)** An order made pursuant to subsection (1) or (1A) comes into force on the day on which it is made or on any other day specified in the order and continues in force for the period specified in the order. 1994-95, c. 1, s. 166; 2006, c. 30, s. 48; 2011, c. 61, s. 52.

#### **Variation of court order**

**167 (1)** Where a court has made an order pursuant to Section 166, the court may, on application by the offender or the Crown, require the offender to appear before it and, after hearing the offender and the Crown, may make an order

- (a) changing the original order or the conditions specified in it;
- (b) relieving the offender absolutely or partially from compliance with any or all of the order;
- (c) reducing the period for which the original order is to remain in effect;
- (d) extending the period for which the original order is to remain in effect for an additional period not to exceed one year.

(2) Before making an order pursuant to subsection (1), the court may direct that notice be given to any persons the court considers to be interested and the court may hear any such persons.

(3) Where an application made pursuant to this Section in respect of an offender has been heard by a court, no other application pursuant to this Section may be made with respect to the offender except with leave of the court. 1994-95, c. 1, s. 167.

#### **Compensation for loss or damage to property**

**168 (1)** Where a person is convicted of an offence under this Act, the court may, at the time sentence is imposed and on the application of a person aggrieved, order the offender to pay to the person an amount not to exceed five thousand dollars or such other amount as is prescribed by the regulations by way of satisfaction or compensation for loss or damage to property suffered by that person as a result of the commission of the offence.

(2) A person in whose favour an order is made pursuant to subsection (1) may file the order with the prothonotary or clerk of the court and, on filing, the order may be enforced as if it were a judgment of the court in civil proceedings. 1994-95, c. 1, s. 168; 2006, c. 30, s. 49.

#### **Recovery of costs for emergency measures**

**169** All costs, expenses or charges incurred in the carrying out of emergency measures including, without limiting the generality of the foregoing, any management or remediation measures, are recoverable by the Minister or a municipality, either by an action in debt or by a method prescribed in this Act or the regulations, against the person responsible for the need to take the emergency measures. 2006, c. 30, s. 50.

#### **Court order regarding hindrance or obstruction**

**170** Where a person hinders or obstructs an inspector or administrator contrary to clause 158(d), the Minister may apply to the Supreme Court for an order prohibiting that person from so hindering or obstructing, and the court may make any order it considers appropriate. 1994-95, c. 1, s. 170.

#### **Regulations**

- 171 (1)** The Governor in Council may make regulations
- (a) prescribing penalties in respect of offences created under this Act;
  - (b) respecting any matter necessary or advisable for the administration of a system of administrative penalties;
  - (c) respecting restitution orders under Section 168;
  - (d) respecting the liability of persons referred to in Section 165;

(e) generally, respecting any matter necessary or advisable to effectively carry out the intent and purpose of this Part.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 1994-95, c. 1, s. 171.

## PART XIX

### DOCUMENTARY EVIDENCE

#### Documentary evidence

172 (1) In any proceeding under this Act,

(a) a report or other document of an analyst with respect to the results of an analysis purporting to be signed by an analyst;

(b) a document purporting to be signed by a person authorized to issue an approval, a certificate of qualification or a certificate of variance stating that on a specified day or during a specified period a person named in the document was or was not the holder of an approval, a certificate of qualification or a certificate of variance;

(c) a document setting out with reasonable particularity the conviction and sentence of a person for an offence under this Act purporting to be signed by

(i) the person who made the conviction, or

(ii) the prothonotary or clerk of the court in which the conviction was made;

and

(d) a statement purporting to be signed by an administrator setting out the day on which the administrator became aware of the subject-matter of any proceedings,

shall be admitted in evidence as *prima facie* proof of the contents of the document, certificate, report or statement, without proof of the signature or official character of the person signing the certificate, report or statement.

(2) A notice, approval, order, certificate of variance, certificate of qualification or consent purporting to be signed by the person authorized to issue, make or give it is admissible in evidence without proof of the signature or official character of the person signing it. 1994-95, c. 1, s. 172.

#### Appointment and certificate of analyst

173 (1) The Minister may appoint as an analyst any person who, in the opinion of the Minister, has the qualifications and experience to be so appointed.

(2) No document of an analyst may be received in evidence unless the party intending to produce it has given to the party against whom it is intended to be produced reasonable notice of that intention together with a copy of the certificate.

(3) The party against whom a document of an analyst is produced may, with the leave of the court, require the attendance of the analyst for the purpose of cross-examination. 1994-95, c. 1, s. 173.

## PART XX

### MISCELLANEOUS

#### Review of Act

**174** The Minister shall review this Act within ten years of the coming into force of this Section, or sooner, and at least every ten years thereafter. 2011, c. 61, s. 53.

#### Transitional provisions

**175 (1)** Every permit, requirement, licence, approval, order, designation or certificate given, made or issued pursuant to one or more of the Acts listed in Section 176 that is subsisting and in force on December 31, 1994, is deemed to have been given, made or issued pursuant to this Act and continues in force until varied, cancelled, suspended or appealed in accordance with this Act.

(2) Where a right of appeal existed in one or more of the Acts listed in Section 176 and an appeal arises after January 1, 1995, the appeal provisions in this Act apply. 1994-95, c. 1, s. 175.

#### Repeal of Acts

**176 (1)** Chapter 118 of the Revised Statutes, 1989, the *Dangerous Goods and Hazardous-wastes Management Act*, is repealed.

(2) Chapter 128 of the Revised Statutes, 1989, the *Derelict Vehicles Removal Act*, is repealed.

(3) Chapter 149 of the Revised Statutes, 1989, the *Environmental Assessment Act*, is repealed.

(4) Chapter 150 of the Revised Statutes, 1989, the *Environmental Protection Act*, is repealed.

(5) Chapter 9 of the Acts of 1990, the *Environmental Trust Act*, is repealed.

(6) Chapter 184 of the Revised Statutes, 1989, the *Gasoline and Fuel Oil Licensing Act*, is repealed.



(7) Chapter 8 of the Acts of 1989, the *Litter Abatement Act*, is repealed.

(8) Chapter 331 of the Revised Statutes, 1989, the *Ozone Layer Protection Act*, is repealed.

(9) Chapter 341 of the Revised Statutes, 1989, the *Pest Control Products (Nova Scotia) Act*, is repealed.

(10) Chapter 12 of the Acts of 1989, the *Recycling Act*, is repealed.

(11) Chapter 410 of the Revised Statutes, 1989, the *Salvage Yard Licensing Act*, is repealed.

(12) Chapter 431 of the Revised Statutes, 1989, the *Smelting and Refining Encouragement Act*, is repealed.

(13) Chapter 15 of the Acts of 1993, the *Transboundary Pollution Act*, is repealed.

(14) Section 2, subsection 3(1) and Sections 4 to 23 of Chapter 500 of the Revised Statutes, 1989, the *Water Act*, are repealed.

(15) Chapter 502 of the Revised Statutes, 1989, the *Well Drilling Act*, is repealed.

(16) Chapter 510 of the Revised Statutes, 1989, the *Youth Conservation Corps Act*, is repealed. 1994-95, c. 1, s. 176.

**Effective date**

177 This Act has effect on and after January 1, 1995. 1994-95, c. 1, s. 177.