

ENVIRONMENT MANAGEMENT ACT

CHAPTER 14

[Assented to July 7, 1981.]

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Interpretation

1. (1) In this Act

“air” means the atmosphere, but does not include the atmosphere in a mine or man-made enclosure that is not open to the weather;

“board” means the Environmental Appeal Board established under this Act;

“conservation officer” means a person designated as a conservation officer under section 9 (1);

“director” means a person appointed as a director in the Ministry of Environment under the *Public Service Act*;

“environment” includes air, land, water and all other external conditions or influences under which man, animals and plants live or are developed;

“environmental emergency” means an occurrence or natural disaster that affects the environment and includes

- (a) a flood,
- (b) a landslide, and
- (c) a spill or leakage of oil or of a poisonous or dangerous substance;

“land” means the solid part of the earth’s surface and includes the foreshore and land covered by water;

“municipality” includes a regional district;

“regional manager” means a person appointed as a manager in the Ministry of Environment under the *Public Service Act* and employed in a regional office of the ministry.

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

Environmental management

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

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

Environmental assessment

3. Where the minister considers that a person proposes to do anything that would have a detrimental environmental impact, and that the environmental impact cannot be assessed from information available to the minister, he may require the person to supply an environmental impact assessment in respect of that thing, prepared in accordance with the regulations.

Environmental protection orders

4. (1) The minister may, in writing, declare pursuant to this section that an existing or proposed work, undertaking, product use or resource use has or potentially has a detrimental environmental impact.

(2) A declaration by the minister under subsection (1) must state the facts on which it is based, is conclusive for the purposes of the declaration as to all those questions of fact and is binding on all persons and courts.

(3) Where a declaration has been made under subsection (1), the minister may, after notifying the person affected but without the necessity of holding a hearing, make an interim order

- (a) restricting, modifying or prohibiting the operation of the work or undertaking, or the use of the product or resource, or
- (b) generally requiring the person to do anything that the minister requires to be done with respect to the work or undertaking, or the use of the product or resource

in a way specified in the order for a period not exceeding 15 days.

(4) The minister may not extend or renew an interim order.

(5) Where a declaration has been made under subsection (1), the Lieutenant Governor in Council may, after notifying the person affected, but without the necessity of holding a hearing and whether or not an interim order has been made or has expired, make an order

- (a) restricting, modifying or prohibiting the operation of the work or undertaking, or the use of the product or resource, or
- (b) generally requiring the person to do anything that the Lieutenant Governor in Council requires to be done with respect to the work or undertaking, or the use of the product or resource

in a way specified in the order, either permanently or for a specified period, and if an interim order with respect to the same subject matter is still in force, it expires on the coming into force of the Lieutenant Governor in Council's order.

(6) An order under subsection (3) or (5)

- (a) may not be made later than one year after the date of the minister's declaration under subsection (1), and
- (b) must state the reasons for making the order.

(7) A person to whom an order made under subsection (3) or (5) is expressed to apply shall comply with the order, notwithstanding any other enactment.

(8) Where the minister has made a declaration, the Lieutenant Governor in Council may direct him to prepare an environmental management plan for the locality that is or would be affected by the detrimental environmental impact.

(9) Where an environmental management plan has been prepared under subsection (8), the Lieutenant Governor in Council may approve the plan with or without modification, and for the purpose of its implementation may order that no licence, permit or power under an enactment shall be issued or exercised except as authorized by and in accordance with the order, and a licence or permit issued contrary to the order, or the exercise of a power contrary to the order, has no effect.

Environmental emergency measures

5. (1) Where the minister considers that

- (a) an environmental emergency exists, and
- (b) immediate action is necessary to prevent, lessen or control any hazard that the emergency presents,

he may declare, in writing, that an environmental emergency under this section exists.

(2) Where the minister has made a declaration under subsection (1), he or any public officer of his ministry authorized by him in writing may order any person to provide labour, services, material, equipment or facilities or to allow the use of land for the purpose of preventing, lessening or controlling the hazard presented by the emergency and, on the making of the order,

- (a) the Provincial Emergency Program director shall not, in relation to the emergency, exercise his powers under the *Emergency Program Act*,
- (b) compensation for labour or services shall be as the Lieutenant Governor in Council provides, and
- (c) compensation for material, equipment, facilities or the use of land shall, if not agreed on, be fixed by arbitration under the *Arbitration Act*.

(3) An order under subsection (2)

- (a) expires 15 days after it is made unless rescinded earlier under subsection (4), and

- (b) shall not require any person to supply labour who is unfit to do so or under 19 years old.
- (4) The Lieutenant Governor in Council may by order
 - (a) confirm, modify or rescind an order under subsection (2), and
 - (b) extend the period of validity of an order under subsection (2), except as to any requirement that a person supply labour, for a period the Lieutenant Governor in Council considers necessary.
- (5) A person affected by an order made under subsection (2) or (4) shall comply with the order notwithstanding any other enactment.
- (6) An order under subsection (2) is not a regulation under the *Regulation Act*.

Recovery of costs

- 6. (1) Where the minister certifies that money is required for immediate response to an environmental emergency, the amount he certifies to be required may be paid out of the consolidated revenue fund without an appropriation other than this section.
- (2) A certificate signed by the minister and showing an amount of money expended by the government under this section is conclusive as to the amount expended.
- (3) An amount shown by a certificate referred to in subsection (2) is a debt due to the government recoverable, subject to subsection (4), by action in the Supreme Court from the person whose act or neglect caused or who authorized the events that caused the environmental emergency in proportions the court determines.
- (4) Where the court is satisfied that the expenditure incurred by the government under this section was either
 - (a) excessive, taking into consideration the magnitude of the emergency and the results achieved by the expenditure, or
 - (b) unnecessary, taking into consideration the unlikelihood of significant material loss to any person had the government not acted under this section,
 it may reduce or extinguish the amount of the judgment that it otherwise would have ordered be entered against the person against whom the action has been brought.
- (5) For the purpose of subsection (3), anything done or omitted by a person acting in the course of his employment is also the act or omission of his employer.

Inquiries

- 7. (1) The minister may whenever he considers it necessary order an inquiry with respect to the environment and for that purpose the minister or a person appointed by him to hold the inquiry has the powers, protection and privileges of a commissioner under sections 12, 15 and 16 of the *Inquiry Act*.
- (2) A person appointed under subsection (1) shall conduct the inquiry in accordance with terms of reference and any procedural guidelines for the inquiry specified by the minister.

Entry on private land

- 8. The minister, members of the board, conservation officers and other persons the minister designates in writing have for the purposes of this Act the right to enter any property except a private residence.

Enforcement

- 9. (1) The minister may designate as a conservation officer a person employed in his ministry.
- (2) A conservation officer may, in relation to and under an Act listed in Column 1 of the Schedule to this Act, perform and exercise the duties and powers of the official named in Column 2.
- (3) On information on oath that there is reasonable cause to suspect that an offence under this Act has occurred or is about to occur, the Provincial Court may, on being satisfied that an entry and search is likely to provide evidence of the commission of an offence under this Act, issue a warrant authorizing a conservation officer to enter and search property specified in the warrant and to seize and remove anything that he has reasonable or probable grounds for believing may provide evidence of the commission of an offence under this Act.
- (4) A person required by an Act administered by the minister to keep records shall submit the records to a conservation officer for inspection on request.
- (5) Where a person refuses to submit records for inspection as required under this section, the Provincial Court may, on being satisfied that an inspection of the records is necessary for the administration of the Act that requires them to be kept, issue a warrant authorizing a conservation officer to enter property specified in the warrant and to seize the records.
- (6) A conservation officer shall, on seizing a record or any other thing under this section, give a receipt.
- (7) Where a record or any other thing is seized under this section, the minister may, in his discretion, order its return on application by a person claiming ownership, but where he considers anything seized to be a pollutant or environmental hazard, it shall not be returned, and the person claiming it is not entitled to compensation.

Evidence

- 10. (1) The production in a proceeding of an order, permit, licence, approval or certificate that is issued under this Act or any other enactment administered by the minister and that purports to be signed by, or a copy that purports to be certified as a true copy and to be signed by,
 - (a) the minister, a director or a regional manager,
 - (b) a public officer designated by the minister, or
 - (c) an analyst designated by the minister under subsection (2),
 is without proof of office or signature of the person signing, evidence of the order, permit, licence, approval or certificate and of the matters set out in it.
- (2) The minister may, for purposes of this or any other enactment administered by the minister, designate as an analyst a person he considers qualified, and the person so designated may, with respect to a sample held in his custody, and analysed by him, issue a certificate of analysis.

Environmental Appeal Board

- 11. (1) The Lieutenant Governor in Council shall establish an Environmental Appeal Board to hear appeals that under the provisions of any other enactment are to be heard by the board, and the board shall in relation to the appeals have the powers given to it by that other enactment.

(2) The board shall consist of a chairman, one or more vice chairmen and other members the Lieutenant Governor in Council appoints.

(3) The Lieutenant Governor in Council may appoint persons as temporary members to deal with a matter before the board, or for a period or during circumstances he specifies, and may designate a temporary member to act as chairman or as a vice chairman.

(4) A temporary member has, during the period or under the circumstances or for the purpose for which he is appointed as a temporary member, all the powers of and may perform all the duties of a member of the board.

(5) The Lieutenant Governor in Council may prescribe the remuneration and expenses payable to the members of the board.

(6) The chairman may organize the board into panels, each comprised of one or more members.

(7) The members of the board shall sit

- (a) as a board, or
- (b) as a panel of the board,

and where members sit as a panel,

- (c) 2 or more panels may sit at the same time,
- (d) the panel has all the jurisdiction of and may exercise and perform the powers and duties of the board, and
- (e) an order, decision or action of the panel is an order, decision or action of the board.

(8) The number of members that constitute a quorum of the board or a panel shall be set by regulation of the Lieutenant Governor in Council.

(9) The board, a panel and each member have all the powers, protection and privileges of a commissioner under sections 12, 15 and 16 of the *Inquiry Act*.

(10) In an appeal, the board or a panel may hear any person, including

- (a) a person, a member of a body or a representative of a person or body who made the decision or order that is the subject of the appeal or review, and
- (b) any other person the board invites to appear before it.

(11) Where the board or a panel makes an order or decision with respect to an appeal the chairman shall send a copy of the order or decision to the minister and to the parties.

Variation and rescission

12. The Lieutenant Governor in Council may, in the public interest, vary or rescind an order or decision of the board.

Protection of officials

13. No action may be brought against the board, a panel or any person for anything done or omitted in good faith in the performance or intended performance of a power conferred or a duty imposed under this Act or any other enactment administered by the minister.

Offences

14. (1) A person who

- (a) neglects or refuses to supply an environmental impact assessment when required to do so under section 3,
- (b) supplies an environmental impact assessment under section 3 that he knows to be false or misleading, or to contain false or misleading information,
- (c) neglects or refuses to comply with an order in accordance with section 4 (7),
- (d) neglects or refuses to comply with an order in accordance with section 5 (5), or
- (e) obstructs a person acting under section 8,

commits an offence and is liable to the penalties set out in subsection (2) or (3).

(2) The penalty for an offence under subsection (1) (a), (d) or (e) is a fine not exceeding \$10 000.

(3) The penalty for an offence under subsection (1) (b) or (c) is a fine not exceeding \$100 000.

(4) Where a corporation is convicted of an offence under this Act, a director or officer of the corporation who authorized, permitted or acquiesced in the offence commits the same offence and is liable to the penalty for that offence set out in this section.

(5) Where a person contravenes section 4 (7), each day the contravention continues is a separate offence.

Regulations

15. (1) The Lieutenant Governor in Council may make regulations, and without limiting that power, may prescribe a tariff of fees to be paid with respect to a matter within the jurisdiction of the board, and prescribe practices, procedures and forms to be followed and used by the board.

(2) The minister may make regulations respecting the sampling, analytical, quality control and reporting procedures to be followed by a person required to submit environmental monitoring data as a requirement of an order, permit, licence, approval or certificate issued under this or any other enactment administered by the minister.

Appropriation

16. Money required for the purposes of this Act shall, until March 31, 1982,

- (a) in the absence of an appropriation, or
- (b) where money appropriated is insufficient

be paid out of the consolidated revenue fund but shall not, except for money required under section 6 (1), exceed \$200 000.

Consequential Amendments

Hydro and Power Authority Act Amendment

17. Section 52 (6) of the *Hydro and Power Authority Act*, R.S.B.C. 1979, c. 188, is amended by adding "the *Environment Management Act*,".

Water Act Amendment

18. Section 38 (1) of the *Water Act*, R.S.B.C. 1979, c. 429, is repealed and the following substituted:

- (1) In this section "appeal tribunal" means, in relation to an appeal,
 - (a) the Environmental Appeal Board established under the *Environment Management Act*, or
 - (b) the Comptroller

to whom the appeal is taken.

- (1.1) An appeal lies
 - (a) to the Environmental Appeal Board from every order of the Comptroller, except an order cancelling a licence, and
 - (b) to the Comptroller from every order of the engineer.

Transition

19. An appeal under section 38 of the *Water Act* that, on the day section 18 comes into force has been commenced but not disposed of shall continue and be disposed of as though section 18 had not come into force.

Commencement

20. This Act comes into force on proclamation.

SCHEDULE

(Section 9)

| Column 1 | Column 2 |
|---------------------|------------------------|
| Firearm Act | conservation officer |
| Fish Inspection Act | inspector |
| Fisheries Act | inspector of fisheries |
| Wildlife Act | conservation officer |