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# **WASTE MANAGEMENT ACT [REPEALED]**

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**WASTE MANAGEMENT ACT [REPEALED]**  
CHAPTER 482 [REPEALED July 8, 2004 by 2003 Bill 57 (B.C. Reg. 317/2004)]

*As it read on July 8th, 2004*

[includes 2004 Bill 3 (B.C. Reg. 274/2004) amendments (effective July 4, 2004)]

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## PART 1 – Interpretation

### Definitions and interpretation

1. (1) In this Act:

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

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

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

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

**"appeal board"** means the Environmental Appeal Board established under the *Environment Management Act*;

**"approval"** means an approval given under section 11 or under the regulations;

**"biomedical waste"** means

- (a) a substance that is prescribed as a biomedical waste by the Lieutenant Governor in Council, and
- (b) if the Lieutenant Governor in Council prescribes circumstances in which a substance is a biomedical waste, a substance that is present in those circumstances;

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

**"district director"** means,

- (a) except in sections 24.1 and 24.2, a person appointed as district director by the board of the Greater Vancouver Regional District under section 24,
- (b) for the purpose of section 24.1, a person appointed as district director by the Administration Board of the Greater Vancouver Sewerage and Drainage District under section 24.1, or

(c) for the purpose of section 24.2, a person appointed as district director by a regional district under section 24.2,  
and includes an assistant district director appointed under those sections;

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

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

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

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

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

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

**"manifest"** means a form prescribed for use in accordance with section 9;

**"municipal liquid waste"** means

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

**"municipal solid waste"** means

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

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

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

**"officer"** means

- (a) a person or class of persons employed by the government or a municipality and designated in writing by the director as an officer, or
- (b) a conservation officer defined in section 1 (1) of the *Environment Management Act*;

**"operational certificate"** means a certificate issued under section 18 (5) for the design, operation, maintenance, performance and closure of sites or facilities used for the storage, treatment or disposal of recyclable material or waste;

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

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

- (a) used to protect, contain or transport a commodity or product, or
- (b) attached to a commodity or product or its container for the purpose of marketing or communicating information about the commodity or product;

**"permit"** means a permit issued under section 10 or under the regulations;

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

**"recyclable material"** means a product or substance that has been diverted from disposal, has no reuse value in its present form and satisfies at least one of the following criteria:

- (a) is organic material that has been diverted from residential, commercial or institutional sources and is capable of being composted, or is being composted, at a site;
- (b) is managed as a marketable commodity with an established market by the owner or operator of a site;
- (c) is being used in the manufacture of a new product that has an established market or is being processed as an intermediate stage of an existing manufacturing process;
- (d) has been identified as a recyclable material in a plan;

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

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

- (a) preliminary site investigations, detailed site investigations, analysis and interpretation, including tests, sampling, surveys, data evaluation, risk assessment and environmental impact assessment;
- (b) evaluation of alternative methods of remediation;
- (c) preparation of a remediation plan, satisfactory to the manager, including a plan for any consequential or associated removal of soil or soil relocation from the site;
- (d) implementation of a remediation plan;
- (e) monitoring, verification and confirmation of whether the remediation complies with the remediation plan, applicable standards and requirements imposed by the manager;
- (f) other action that the Lieutenant Governor in Council may prescribe;

**"special waste"** means

- (a) a substance that is prescribed as a special waste by the Lieutenant Governor in Council, and
- (b) if the Lieutenant Governor in Council prescribes circumstances in which a substance is a special waste, a substance that is present in those circumstances;

**"waste"** includes

- (a) air contaminants,
- (b) litter,
- (c) effluent,
- (d) refuse,
- (e) biomedical waste,
- (f) special wastes, and
- (g) any other substance designated by the Lieutenant Governor in Council,

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

**"waste management plan"** means a waste management plan under Part 3;

**"water"** includes ground water, as defined in the *Water Act*, and ice;

**"white goods"** means stoves, refrigerators, freezers, washers, dryers and dishwashers;

**"works"** includes

- (a) a drain, ditch, sewer and a waste disposal system including a sewage treatment plant, pumping station and outfall,
  - (b) a device, equipment, land and a structure that
    - (i) measures, handles, transports, stores, treats or destroys waste or a substance that is capable of causing pollution, or
    - (ii) introduces into the environment waste or a substance that is capable of causing pollution,
  - (c) an installation, plant, machinery, equipment, land or a process that causes or may cause pollution or is designed or used to measure or control the introduction of waste into the environment or to measure or control a substance that is capable of causing pollution, or
  - (d) an installation, plant, machinery, equipment, land or a process that monitors or cleans up pollution or waste.
- (2) For the purposes of this Act, introduction of a waste into the environment means depositing the waste on or in, or allowing or causing the waste to flow or seep on or into, any land or water or allowing or causing the waste to be emitted into the air.
- (3) A provision of this Act or of the regulations that confers powers on an officer also confers them on a manager.
- (4) A provision of this Act or of the regulations that confers powers on an officer or a manager also confers them on the director.
- (5) For the purposes of the definitions of "air contaminant" and "effluent", it is not necessary to prove
- (a) that the air contaminant or effluent, if diluted at or subsequent to the point of discharge, continues to be capable of harming, injuring or damaging a person, life form, property or the environment, or
  - (b) the actual presence of a person who, or any life form that, is capable of being harmed or injured by the discharge of the air contaminant or effluent.

1982-41-1; 1987-51-1; 1989-62-1; 1990-74-1; 1992-25-1; RS1996(Supp)-482-1; 1993-25-1; 1998-21-1; 1999-38-70; 2002-27-15; 2003-52-518.

## Conflicts with other Acts



2. (1) If there is a conflict between
- (a) this Act, its regulations or an approval, licence, order, permit or waste management plan,
  - (b) the *Geothermal Resources Act*, the regulations under that Act or a permit, licence, lease, authorization, order or agreement entered into under that Act, and
  - (c) the *Transport of Dangerous Goods Act* and the regulations under that Act,
- this Act, its regulations and an approval, licence, order, permit or waste management plan issued or subsisting under this Act apply.
- (2) *Repealed.* [2002-36-89 (B.C.Reg. 171/2002)]
- 1982-41-2; 1987-51-2; 2002-36-89 (B.C.Reg. 171/2002).

## PART 2 – Prohibitions and Permits

-- Sections 3 - 9.2 of Part 2 --

### Waste disposal – strict liability

3. (1) For the purposes of this section, the conduct of an industry, trade or business includes the operation by any person of facilities or vehicles for the collection, storage, treatment, handling, transportation, discharge, destruction or other disposal of waste.
- (2) Subject to subsection (5), a person must not, in the course of conducting an industry, trade or business, introduce or cause or allow waste to be introduced into the environment.
- (3) Subject to subsection (5), a person must not introduce or cause or allow to be introduced into the environment, waste produced by any prescribed activity or operation.
- (4) Subject to subsection (5), a person must not introduce waste into the environment in such a manner or quantity as to cause pollution.
- (5) Nothing in this section or in a regulation made under subsection (3) prohibits any of the following:
- (a) the disposition of waste in compliance with a valid and subsisting permit, approval, order or regulation, or with a waste management plan approved by the minister;
  - (b) the discharge into the air of an air contaminant from an incinerator operated under authority, licence or permit of a municipality;
  - (c) the disposition of human remains in crematoria in compliance with the *Cremation, Interment and Funeral Services Act*;
  - (d) the discharge of air contaminants authorized by a bylaw made under section 24 (3) (d);
  - (e) the burning of leaves, foliage, weeds, crops or stubble for domestic or agricultural purposes or in compliance with the *Weed Control Act*;
  - (f) the use of pesticides or biocides for agricultural, domestic or forestry purposes in compliance with the *Pesticide Control Act*, the *Pest Control Products Act* (Canada) and any other Act and regulation governing their use;
  - (g) *Repealed.* [2000-9-71]

- (h) fires set or controlled by a person
    - (i) acting under an order of a local assistant, as defined in the *Fire Services Act*, if the local assistant orders the fire for training purposes, or
    - (ii) carrying out
      - (A) fire control and suppression operations under section 89 of the *Forest Practices Code of British Columbia Act*, or
      - (B) a resource management open fire, as that term is defined in the *Forest Fire Prevention and Suppression Regulation*, B.C. Reg. 169/95, if the person carries out the fire in accordance with the *Forest Practices Code of British Columbia Act* and the regulations made under that Act;
  - (i) emissions from steam powered or internal combustion engines in compliance, if applicable, with the *Motor Vehicle Act* and regulations;
  - (j) emission into the air of soil particles or grit in the course of agriculture or horticulture;
  - (k) the disposal of waste by a person other than a municipality
    - (i) by means of a system of waste disposal lawfully operated by a municipality or other public authority, and
    - (ii) in compliance with the rules and regulations that apply to that system;
  - (l) emission of an air contaminant from combustion of wood or fossil fuels used solely for the purpose of comfort heating of domestic, institutional or commercial buildings;
  - (m) emission of an air contaminant from food preparation in
    - (i) residential premises, or
    - (ii) retail food outlets.
- (6) Nothing in subsection (5) (b) or (l) authorizes the use of an incinerator or domestic, institutional or commercial heating equipment for the purpose of destroying special waste by means of combustion.
- (7) In subsection (5) (m):

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

**"retail food outlets"** means

- (a) restaurants, hotels, motels and similar premises, and
- (b) premises in which food is prepared and sold by retail sale, such as
  - (i) exclusively retail bakeries, and
  - (ii) premises selling take out food.

1982-41-3; 1983-20-63; 1985-52-96; 1987-51-3; 1989-62-2; 1990-74-2; 1992-25-2; 1998-29-44; 2000-9-71; 2004-35-99.

### Special wastes – confinement

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

the regulations.

- (2) Except to the extent expressly authorized by a permit, approval, order, waste management plan or the regulations, a person must not release a special waste from the confinement required by subsection (1).
- (3) If a special waste is released from or escapes from the confinement required by subsection (1), it is, for the purposes of this Act, deemed to have been introduced into the environment.

1982-41-3.1; 1987-51-4.

### **Special wastes – disposal facilities**

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

1982-41-3.2; 1993-13-13.

### **Powers of Lieutenant Governor in Council**

6. (1) If the Lieutenant Governor in Council considers it to be necessary in the public interest, the Lieutenant Governor in Council has and may exercise, in respect of wastes, all the powers that a director or district director may exercise under this Act in respect of wastes, and without limiting that power, the Lieutenant Governor in Council may, after any consultations the Lieutenant Governor in Council considers desirable, issue permits for the construction and operation of facilities for the management, treatment, disposal, recycling, storage and destruction of wastes or for the introduction of wastes into the environment.
- (2) In acting under this section, the Lieutenant Governor in Council may act in a manner the Lieutenant Governor in Council considers to be in the public interest and is not limited to the considerations that would be taken into account by a director, district director, officer or manager.

1982-41-3.3; 1987-51-4.

### **Packaging, product containers and disposable products**

7. A person must not 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.

1982-41-3.4; 1992-25-3.

### **Special waste storage and disposal**

8. (1) A person must not store more than a prescribed amount of a special waste except in accordance with
  - (a) an approval, order or permit that requires or authorizes the person to store that kind of special waste, or
  - (b) a waste management plan approved under Part 3.
- (2) A person who is storing a quantity of a substance at the time that the substance is prescribed to be a special waste does not contravene subsection (1) by continuing to store the same or a different quantity of that substance if the person notifies a manager in accordance with the regulations of the location, quantity and type of substance that the person is storing.

- (3) Despite subsection (2), a manager may in writing order a person referred to in subsection (2), who is storing a special waste, to apply for a permit or approval and, if the manager does so, the person must apply for the permit or approval within 60 days of being served with notice of the order.
- (4) If a person applies for a permit or approval as required under subsection (3) and his or her application is refused, the person must dispose of the special waste in accordance with an order of a manager.

1982-41-4; 1987-51-5; 1990-74-3; 1993-13-14.

### Transportation of special wastes

9. (1) A person who produces or stores a special waste
- (a) must not cause or allow more than a prescribed amount of the special waste to be transported from the property where he or she produces or stores it unless the person first
    - (i) completes, in the form and manner prescribed, the part of a manifest that applies to him or her, and
    - (ii) files the manifest in the manner prescribed,
  - (b) must ensure that the person transporting more than the prescribed amount of the special waste from the place where it is produced or stored has a licence for that purpose, if a licence is required by the regulations, and
  - (c) must not cause or allow more than the prescribed amount of the special waste to be transported to a place unless
    - (i) a permit, order, approval, waste management plan or regulation permits or requires it to be stored or introduced into the environment at that place, or
    - (ii) storage of the special waste at that place is permitted by the operation of section 8.
- (2) A person must not transport more than a prescribed amount of a special waste unless the person
- (a) carries with him or her
    - (i) a manifest completed as required by subsection (1) and this subsection, and
    - (ii) if required by the regulations, a licence, and
  - (b) has completed, in accordance with the regulations, that part of the manifest that applies to him or her.
- (3) A person must not accept delivery of more than a prescribed amount of a special waste unless the person
- (a) receives from the transporter a manifest that has been completed as required by subsections (1) and (2),
  - (b) completes the part of the manifest that applies to him or her and files the manifest in the form and manner prescribed, and
  - (c) has a permit or approval to store or introduce into the environment that kind and amount of special waste, or is allowed to store the special waste by the operation of section 8, or the storage or introduction is authorized by the regulations or by an order or waste management plan.
- (4) In a prosecution for a contravention of this section, the burden of proving compliance with subsection (1) (a) or (c) or with subsection (2) or (3) is on the defendant.

**Littering – strict liability**

- 9.1** (1) In this section, “**public place**” means
- (a) a place open to the air to which the public is entitled or permitted to have access without payment and, for the purpose of this definition, a covered place open to the air on at least one side must be treated as being a place open to the air, and
  - (b) a park or public campground.
- (2) A person must not throw down, drop or otherwise deposit, and leave, in a public place anything in such circumstances as to cause or contribute to the defacement of that place by litter.
- (3) The prohibition in subsection (2) does not apply if the depositing and leaving was authorized by law, or was done with the consent of the owner, occupier or other person or authority having the control of the public place.
- (4) In a prosecution, the onus of establishing that subsection (3) applies is on the defendant.

RS1996(Supp)-482-2; 1982-41-6.

**Discharge of waste from recreational vehicles – strict liability**

- 9.2** A person must not discharge domestic sewage or waste from a trailer, camper, transportable housing unit, boat or house boat onto land, into any reservoir or into any lake, pond, stream or other natural body of water, except
- (a) in compliance with a permit, approval, order, waste management plan or regulation,
  - (b) if disposal facilities are provided, in accordance with proper and accepted methods of disposal using those facilities, and in accordance with the *Health Act* and regulations, or
  - (c) by excavating a pit on land and burying and covering the domestic sewage or waste with not less than 30 cm of clean soil.

RS1996(Supp)-482-2; 1982-41-7.

**-- Sections 10 - 16 of Part 2 --****Permits**

- 10.** (1) A manager may issue a permit to introduce waste into the environment, to store special waste or to treat or recycle special waste subject to requirements for the protection of the environment that the manager considers advisable and, without limiting that power, may in the permit do one or more of the following:
- (a) require the permittee to repair, alter, remove, improve or add to works or to construct new works and to submit plans and specifications for works specified in the permit;
  - (b) require the permittee to give security in the amount and form and subject to conditions the manager specifies;
  - (c) require the permittee to monitor in the way specified by the manager the waste, the method of handling, treating, transporting, discharging and storing the waste and the places and things that the manager considers will

- be affected by the discharge of the waste or the handling, treatment, transportation or storage of the waste;
- (d) require the permittee to conduct studies and to report information specified by the manager in the manner specified by the manager;
  - (e) specify procedures or requirements respecting the handling, treatment, transportation, discharge or storage of waste that the permittee must fulfill;
  - (f) require the permittee to recycle certain wastes, and to recover certain reusable resources, including energy potential from wastes.
- (2) A permit does not authorize the introduction of special waste into the environment unless it specifies the characteristics and quantity of special waste that may be introduced.

1982-41-8; 1990-74-4.

## Approvals

11. (1) A manager may approve the introduction of waste into the environment, the storage of special waste or the treatment or recycling of special waste for a period of up to 15 months without issuing a permit.
- (2) A manager may issue his or her approval subject to requirements for the protection of the environment that the manager considers advisable and, without restricting that power, may include as a requirement anything referred to in section 10 (1).

1982-41-9; 1990-74-5.

## Spill prevention and reporting

12. (1) In this section, “**polluting substance**” means any substance, whether gaseous, liquid or solid, that could, in the opinion of the minister, substantially impair the usefulness of land, water or air if it were to escape into the air, or were spilled on or were to escape onto any land or into any body of water.
- (2) If a person has possession, charge or control of any polluting substance, the minister may, if the minister considers it reasonable and necessary to lessen the risk of an escape or spill of the substance, order that person
- (a) to undertake investigations, tests, surveys and any other action the minister considers necessary to determine the magnitude of the risk and to report the results to the minister,
  - (b) to prepare, in accordance with the minister’s directions, a contingency plan containing information the minister requires, and
  - (c) to construct, alter or acquire at the person’s expense any works, or carry out at the person’s expense any measures that the minister considers reasonable and necessary to prevent or abate an escape or spill of the substance.
- (3) If an escape or spill occurs of a substance for which a contingency plan was prepared, a manager may order any person having possession, charge or control of the substance at the time it escaped or was spilled, or the person who prepared the plan or all of them to put the contingency plan into operation at their expense.
- (4) The minister may order a person who prepared a contingency plan to test the plan.
- (5) If a polluting substance escapes or is spilled or waste is introduced into the environment other than as allowed or authorized by
- (a) section 3,

- (b) a bylaw under section 24,
- (c) a waste management plan approved by the minister, or
- (d) a permit, approval or order,

the person who had possession, charge or control of the substance or waste immediately before the escape, spill or introduction must, immediately after he or she learns of the escape, spill or introduction, report the escape, spill or introduction in accordance with the regulations.

- (6) In a prosecution for a contravention of subsection (5), it is presumed that the accused knew of the escape, spill or introduction at the time of the alleged contravention and the burden of proving that he or she did not know is on the accused.
- (7) The minister may amend or cancel an order made under this section.

1982-41-10; 1992-25-4.

## Spill response actions

- 12.1** (1) In this section:

"**spill**" means the introduction of a substance into the environment, whether intentional or unintentional, otherwise than as authorized under this Act;

"**spill response actions**" means actions carried out by the government under subsection (2).

- (2) If an officer considers that
  - (a) a spill that has occurred may pose a hazard to health or the environment, or that there is an imminent threat of a spill that may pose such a hazard, and
  - (b) action is necessary to address the hazard or threat,
 the government may carry out actions to assess, monitor, prevent, stabilize, contain, remove, clean up, evacuate persons from the area of or otherwise address the perceived hazard or threat.
- (3) Spill response actions may be carried out anywhere and, without limiting this, a person acting on behalf of the government may enter on private property for the purpose of carrying out those actions.
- (4) If the government carries out spill response actions, a manager may,
  - (a) subject to the regulations, issue a certificate
    - (i) setting out the reasonable costs of the spill response actions,
    - (ii) identifying one or more persons who had possession, charge or control of the substance referred to in subsection (2), and
    - (iii) specifying all or part of those costs as being payable by one or more of the persons identified in the certificate, and
  - (b) by serving notice of the certificate on a person identified in it, require the person to pay all or part of the costs as specified in the certificate.
- (5) Subject to the regulations, a certificate under subsection (4)
  - (a) may apportion the costs to be paid among the persons who had possession, charge or control of the substance referred to in subsection (2), and
  - (b) may specify that 2 or more of the persons identified in the certificate are

- jointly and severally liable to pay all or a portion of the costs.
- (6) If notice of a certificate is served under subsection (4) (b),
- (a) the amount certified as being payable by a person is a debt due to the government by the person, and
  - (b) if the certificate is filed in the Supreme Court, it has the same effect and is subject to the same proceedings as a judgment of the court for the recovery of a debt in the amount stated in the certificate against the person named in it.

1997-18-17.

### **Amendment of permits and approvals**

- 13.** (1) A manager may, subject to this section and the regulations, and for the protection of the environment,
- (a) on the manager's own initiative if he or she considers it necessary, or
  - (b) on application by a holder of a permit or holder of an approval,
- amend the requirements of the permit or approval.
- (2) A manager may,
- (a) after consultation with the minister, amend a permit or approval issued by the Lieutenant Governor in Council, or
  - (b) after consultation with the director, amend a permit or approval issued by the director.
- (3) If a permit or approval is subject to conditions imposed pursuant to a decision made in an appeal to the appeal board under Part 7, those conditions must not be amended except
- (a) by the appeal board, and
  - (b) after the appeal board has given the parties an opportunity to be heard on the question of whether the conditions should be amended.
- (4) A manager's power to amend a permit or approval includes all of the following:
- (a) authorizing or requiring the construction of new works in addition to or instead of works previously authorized or required;
  - (b) authorizing or requiring the repair of, alteration to, improvement of, removal of or addition to existing works;
  - (c) requiring security, altering the security required or changing the type of security required or the conditions of giving security;
  - (d) extending or reducing the term of the permit or approval or renewing it;
  - (e) authorizing or requiring a change in the characteristics or components of waste discharged, stored, treated, handled or transported;
  - (f) authorizing or requiring a change in the quantity of waste discharged, stored, treated, handled or transported;
  - (g) authorizing or requiring a change in the location of the discharge or storage, treatment, handling or transportation of the waste;
  - (h) altering the time specified for the construction of works or the time for other requirements imposed on the holder of the permit or the approval;
  - (i) authorizing or requiring a change in the method of discharging, storing, treating, handling or transporting the waste;
  - (j) changing or imposing any procedure or requirement that was imposed or could have been imposed under section 10 or 11.



- (5) A manager may renew an approval before or after the end of the term of the approval.
- (6) A manager may not renew an approval if the term of the approval and the term of renewal, when taken together, would exceed 15 months.
- (7) If a manager amends a permit or approval, the manager
  - (a) may require that a holder of the permit or approval supply the manager with plans, specifications and other information the manager requests, and
  - (b) must give the holder of the permit or approval notice in writing of the amendment and publish notice of the amendment in the prescribed manner.
- (8) Despite subsection (7) (b), the manager may give the notice by electronic means to an address provided by the holder of the permit or approval.  
1982-41-11; 1987-51-7; 1989-62-3; 1997-18-18; 1999-38-71.

### Transfers of permits, approvals, etc.

- 14. (1) A transfer of a permit or approval is without effect unless a manager has consented in writing to the transfer.
  - (1.1) Despite subsection (1), the manager may give the consent by electronic means to an address provided by the holder of the permit or approval.
  - (2) A licence referred to in section 9 is not transferable.  
1982-41-12; 1999-38-72.

### Variance orders

- 15. (1) If the minister considers that a person should have temporary relief from the requirements of an order, permit, approval, licence or waste management plan, the minister may issue a variance order with respect to that order, permit, approval, licence or waste management plan.
- (2) If the minister issues a variance order, the minister must
  - (a) specify the requirements in respect of which he or she grants the relief,
  - (b) specify the period during which the variance order will remain in effect, and
  - (c) cause notice of the variance order to be published in Part 1 of the Gazette.
- (3) The minister may, despite subsection (2),
  - (a) cancel a variance order, or
  - (b) renew or extend a variance order.  
1982-41-13.

### Abandonment

- 16. (1) A person to whom a permit or approval is issued, but who has not exercised any right under it to discharge waste or store special waste, may abandon it by sending or delivering to a manager notice that the person elects to abandon it.
- (2) A person who elects under subsection (1) to abandon a permit or approval does not commit an offence merely because he or she has not complied with a requirement of the permit or approval.
- (3) A person to whom a permit or approval has been issued, and who has exercised a right under it to discharge waste or store special waste may, subject to subsection

- (4), abandon it by sending or delivering to a manager notice that the person elects to abandon it.
- (4) A notice under subsection (3) is not effective unless it is received by or delivered to a manager.
- (5) A person who elects under subsection (3) to abandon a permit or approval
  - (a) does not commit an offence merely because after the abandonment became effective he or she has not complied with the requirements of the permit or approval, and
  - (b) is, despite the abandonment, bound by those additional requirements that the manager imposes respecting restoration of the environment or the control and monitoring of the waste discharged or the waste that continues to be discharged after abandonment.

1982-41-14.

## PART 3 – Municipal Waste Management

-- Sections 17 - 22 of Part 3 --

### Definitions

17. In this Part:

"**code of practice**" means a code of practice attached to and forming part of a bylaw made under section 19;

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

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

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

"**waste management plan**" means a plan that contains provisions or requirements for the management of recyclable material or waste or a class of wastes within the whole or a specified part of one or more municipalities.

1998-21-2.

### Waste management plans

- 18. (1) A municipality, alone or with one or more other municipalities, may submit for approval by the minister a waste management plan respecting the management of municipal liquid waste.
- (2) A regional district must, on the written request of the minister, submit for approval by the minister a waste management plan for biomedical waste that is for the benefit of the total area of the regional district.
- (3) Despite any other requirement of this Act, the minister may, by notice in writing,
  - (a) direct a municipality to prepare or revise a waste management plan and submit it to the minister on or before a date specified by the minister, or
  - (b) specify a date by which a municipality must furnish proof, in a form satisfactory to the minister, of the progress that the municipality is making to comply with this section.
- (4) If the minister considers it to be in the public interest and is satisfied that a municipality is making efforts in good faith to complete a waste management

plan in accordance with this Act and the regulations, the minister may, on conditions specified by the minister, grant an extension of a date specified under this section.

- (5) If a waste management plan is approved by the minister, a manager may
- (a) issue an operational certificate to a municipality or to any person who is the owner of a site or facility covered by the waste management plan, and
  - (b) attach conditions to the operational certificate,
- and the operational certificate forms a part of the waste management plan.
- (6) Despite subsection (5), an operational certificate must be issued in accordance with an approved waste management plan and must not conflict with the waste management plan in any substantive fashion.
- (7) The minister may, at any time, with or without conditions, approve all or any part of a waste management plan or an amendment to a waste management plan.
- (8) The minister may, by order, amend or cancel a waste management plan and, if cancelled, the waste management plan ceases to have force or effect.
- (9) Despite anything in the *Community Charter* or the *Local Government Act*, if a waste management plan
- (a) is required under subsection (2) or (3) (a), or
  - (b) has been approved by the minister under subsection (7),
- a bylaw adopted by a municipality for the purpose of preparing the waste management plan referred to in paragraph (a), or implementing the waste management plan referred to in paragraph (b), does not require a petition, the assent of the electors, the approval of the electors or consent on behalf of the electors.
- (10) Nothing in a waste management plan prevents the exercise of rights conferred by a permit or approval subsisting on the date the waste management plan is approved unless the permit or approval is suspended or cancelled by the minister under section 36 (1).
- (11) Despite subsection (10), if a permit or approval contains any provision that conflicts with a requirement of an approved waste management plan, that provision of the permit or approval that conflicts does not apply after the waste management plan is approved.
- (12) Despite subsection (10), if an operational certificate is issued in respect of a site or facility for which a permit or approval was previously issued for the discharge of waste in the jurisdiction covered by an approved waste management plan, the permit or approval is cancelled.

1982-41-16; 1992-25-6; 1998-21-3; 2000-7-191, Sch.; 2003-52-519.

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

19. (1) In this section and sections 19.1, 24.1 and 24.2:

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

**"plan"** means a waste management plan that

- (a) is for the management of municipal solid waste and recyclable material, and
- (b) is approved by the minister;

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

**"regional district"** means

- (a) a regional district as defined in the *Local Government Act*, or
- (b) the Greater Vancouver Sewerage and Drainage District constituted under the *Greater Vancouver Sewerage and Drainage District Act*;

**"site"** means any site, works or facility, including those identified specifically or by class in a plan, that is used for the management of municipal solid waste or recyclable material;

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

- (2) Despite any other Act, a person must manage municipal solid waste and recyclable material at a site in accordance with
  - (a) any applicable plan for the site,
  - (b) any requirements that a manager may include in an operational certificate or permit issued for the site, and
  - (c) any applicable bylaw made under subsection (3) of this section or section 24.1 or 24.2.
- (3) For the purpose of implementing a plan, a regional district may make bylaws to regulate the management of municipal solid waste or recyclable material and may, without limitation, make bylaws regulating, prohibiting or respecting one or more of the following:
  - (a) the types, quality or quantities of municipal solid waste or recyclable material that may be brought onto or removed from a site;
  - (b) the discarding or abandonment of municipal solid waste or recyclable material;
  - (c) the burning of any class or quantity of municipal solid waste or recyclable material;
  - (d) the delivery, deposit, storage or abandonment of municipal solid waste or recyclable material at authorized or unauthorized sites;
  - (e) the transport of municipal solid waste or recyclable material within or through the area covered by the plan;
  - (f) the operation, closure or post-closure of sites, including requirements for
    - (i) the recording and submission of information,
    - (ii) audited statements respecting the municipal solid waste or recyclable material received at and shipped from a site, and
    - (iii) the installation and maintenance of works;
  - (g) setting fees and charges that may vary according to
    - (i) the quantity, volume, composition or type of municipal solid waste or recyclable material, or
    - (ii) the class of persons, sites, operations, activities, municipal solid wastes or recyclable materials,
 and specifying the manner and timing of the payment of those fees and charges;
  - (h) requiring the owner or operator of a site or a hauler to

- (i) hold a recycler licence, a waste stream management licence or a hauler licence, or
- (ii) comply with a code of practice;
- (i) setting the terms and conditions for issuing, suspending, amending or cancelling a licence referred to in paragraph (h);
- (j) requiring an owner or operator of a site or a licence holder to obtain risk insurance or provide security satisfactory to the regional district to ensure
  - (i) compliance with the bylaws, and
  - (ii) that sufficient funding is available for site operations, remediation, closure and post-closure monitoring;
- (k) requiring the owner or operator of a site to contain municipal solid waste or recyclable material within specified height and spatial area limits, and specify requirements and terms for confirming compliance with those limits;
- (l) prohibiting unauthorized persons from handling or removing municipal solid waste or recyclable material that is deposited at a site or set out for collection;
- (m) establishing different prohibitions, conditions, requirements and exemptions for different classes of persons, sites, operations, activities, municipal solid wastes or recyclable materials;
- (n) requiring the owner of municipal solid waste or recyclable material, the deposit of which has been prohibited by bylaw, to bear the cost of its disposal in a manner specified in the bylaw;
- (o) authorizing designated persons to enter a site or inspect the contents of a vehicle for the purpose of enforcing a bylaw made under this subsection and, for this purpose, sections 29 and 30 (2) apply to a designated person as if the designated person is an officer referred to in that section, but only in respect of municipal solid waste and recyclable material;
- (p) providing that
  - (i) a contravention of a provision of the bylaws is an offence punishable by a fine not exceeding \$200 000, and
  - (ii) if a corporation commits an offence under the bylaws, an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the offence commits the offence even though the corporation is convicted.
- (4) Before exercising the authority under this section, a regional district must
  - (a) undertake consultations with affected stakeholders, and
  - (b) indicate its intention to do so in its plan.
- (5) This section does not apply to the management of municipal solid waste or recyclable material at the site at which it originates.
- (6) A regional district, including its employees and elected officials, is not liable
  - (a) to any person for environmental conditions at a site, or
  - (b) to remediate a site included in a plan,
 solely because it holds security as may be required under a bylaw made under this Part.

1998-21-4; 1999-37-328; 2000-7-191, Sch.

## Municipal solid waste disposal fees

- 19.1** (1) In this section, “waste hauler” means
- (a) a municipality that picks up, delivers, hauls or transports municipal solid waste, or
  - (b) a person who, on a commercial basis, picks up, delivers, hauls or transports municipal solid waste.
- (2) In addition to its other powers, a regional district may, by bylaw, exercise one or more of the following powers in relation to the collection and disposal of municipal solid waste generated within its area or within a municipality that has contracted with the regional district for the disposal of municipal solid waste from the municipality:
- (a) setting fees payable by generators of municipal solid waste or by other persons who use the services of a waste hauler;
  - (b) setting levels of fees based on
    - (i) the quantity, volume, type or composition of municipal solid waste generated,
    - (ii) the fees charged by the applicable waste hauler for its services, or
    - (iii) any other basis prescribed by regulation;
  - (c) varying fees by class of persons, operations, activities, industries, trades, businesses, works, sites or municipal solid wastes;
  - (d) requiring waste haulers to
    - (i) act as agents of the regional district when collecting fees under this section,
    - (ii) remit fees to the regional district in accordance with the bylaw,
    - (iii) maintain records in accordance with the bylaw, and
    - (iv) permit an employee or agent of the regional district to inspect and make copies of these records during the waste hauler’s normal business hours;
  - (e) setting conditions respecting the collection and remittance of fees by waste haulers and setting compensation payable to the haulers for this service;
  - (f) establishing fines for failure to comply with a bylaw made under this section.

1998-21-4.

## Public consultation process

- 20.** (1) A municipality must provide a process for comprehensive review and consultation with the public respecting all aspects of the development, amendment and final content of a waste management plan which applies to that municipality.
- (2) A waste management plan must not be approved by the minister unless the minister is satisfied that there has been adequate public review and consultation with respect to the development, amendment and final content of the waste management plan.
- (3) A manager must, not less than 14 days before the issuance of an operational certificate, state his or her intention to issue the operational certificate by providing

- (a) written notice to the person named in the operational certificate, and
  - (b) any other public notice that may be prescribed by the Lieutenant Governor in Council.
- (4) The manager must allow any person who has been given notice under subsection (3) to
- (a) inspect the proposed operational certificate, and
  - (b) provide comments to the manager respecting the requirements of the proposed operational certificate.
- 1982-41-16.2; 1992-25-6.

### **Powers of manager respecting operational certificates**

- 21.** A manager may exercise a power or authority in relation to an operational certificate in the same manner and to the same extent as provided by this Act with respect to a permit.
- 1982-41-16.3; 1992-25-6.

### **Sewage control areas**

- 22.** (1) The Lieutenant Governor in Council may designate all or a specified part of a municipality as a sewage control area, and on the designation the council, board or other governing body of the municipality
- (a) must appoint one or more persons as sewage control managers, and
  - (b) may appoint one or more persons as municipal sewage control officers who have and may exercise, in relation to the sewage control area, the powers of an officer set out in section 29.
- (2) A sewage control manager may, subject to any applicable waste management plan, by order, prohibit or regulate the discharge of any type of waste other than domestic sewage into a sewage facility.
- (3) Without limiting subsection (2), a sewage control manager may
- (a) in an order made under subsection (2) specify
    - (i) the conditions under which the waste may be discharged into a sewage facility, and
    - (ii) that the person who discharges, or the council, board or other governing body that permits the waste to be discharged into the sewage facility in the municipality, or both of them, monitor the waste discharged in the manner and at the times specified, or
  - (b) amend or revoke an order made by him or her under subsection (2).
- (4) A sewage control manager may order a person who discharges waste other than domestic sewage into a sewage facility, or who possesses waste other than domestic sewage that may ultimately be discharged into a sewage facility, to keep records and provide information in the form and manner required by the sewage control manager respecting the waste discharged, handled, stored, treated or transported.
- (5) A person affected by an order of a sewage control manager under this section may appeal the order under Part 7 in the same manner as if the order were a decision of the director, and Part 7 applies.
- (6)

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

1982-41-17.

**-- Sections 23 - 25 of Part 3 --**

**Sewerage in regional districts**

- 23.** (1) The board of the Greater Vancouver Sewerage and Drainage District or, if a regional district exercises a power to provide a service related to the disposal or treatment of sewage, the board of the district, may make bylaws respecting the direct or indirect discharge of wastes into any sewer or drain connected to a sewage facility operated by the district.
- (2) A bylaw made under this section may provide that its contravention is an offence punishable by a fine not exceeding \$10 000.
- (3) Without limiting subsection (1), a bylaw may do one or more of the following:
- (a) require the keeping of records and the provision of information respecting waste produced on property other than residential property;
  - (b) impose conditions respecting the discharge into sewers of waste produced on property other than residential property;
  - (c) provide that its prohibitions, restrictions and requirements apply only to specified classes or to specified persons.

1982-41-18; 1989-59-38.

**Control of air contaminants  
in Greater Vancouver**

- 24.** (1) Despite anything in its letters patent or supplementary letters patent, the Greater Vancouver Regional District may provide the service of air pollution control and air quality management and, for that purpose, the board of the regional district may, by bylaw, prohibit, regulate and otherwise control and prevent the discharge of air contaminants.
- (2) The board of the Greater Vancouver Regional District must appoint
- (a) officers who may, with respect to the discharge of air contaminants in the Greater Vancouver Regional District, exercise all the powers of an officer under section 29 and the regulations, and
  - (b) a district director and one or more assistant district directors who may, with respect to the discharge of air contaminants in the Greater Vancouver Regional District, exercise all the powers of a manager under this Act and the regulations.
- (3) Without limiting subsection (1), a bylaw under this section may do one or more of the following:
- (a) provide that contravention of a provision of the bylaw that is intended to limit the quantity of air contaminants or that specifies the characteristics of air contaminants that may be discharged into the air is an offence punishable by a fine not exceeding \$1 000 000;
  - (b) provide that a contravention of a provision of the bylaw, other than a provision referred to in paragraph (a), is an offence punishable by a fine not exceeding \$200 000;
  - (c) require the keeping of records and the provision of information respecting air contaminants and their discharge;



- (d) exempt from the application of section 3 (2) and (3), in relation to the discharge of air contaminants, any operation, activity, industry, trade, business, air contaminant or works that complies with the bylaw, if it also complies with any further restrictions or conditions imposed by this Act or a regulation, permit, order or approved waste management plan under this Act;
- (e) establish different prohibitions, regulations, rates or levels of fees, conditions, requirements and exemptions
  - (i) for different persons, operations, activities, industries, trades, businesses, air contaminants or works, and
  - (ii) for different classes of persons, operations, activities, industries, trades, businesses, air contaminants or works.
- (4) A district director may, by order, impose on a person further restrictions or conditions in relation to an operation, activity, industry, trade, business, air contaminant or works covered by a bylaw under subsection (3) (d) in order that the person may qualify for an exemption under that subsection, including a condition that the person obtain a permit.
- (5) The minister may require the Greater Vancouver Regional District to amend, suspend or cancel any bylaw or part of a bylaw made under this section if the minister considers it necessary in the public interest.  
1982-41-19; 1989-59-39; 1992-25-7; 1998-21-5; 2000-7-262.

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

- 24.1** (1) In addition to anything in the *Greater Vancouver Sewerage and Drainage District Act*, the Administration Board of the Greater Vancouver Sewerage and Drainage District may make bylaws to prohibit, regulate or otherwise control the introduction into the environment of municipal solid waste.
- (2) Without limiting subsection (1), a bylaw under this section may do one or more of the following:
- (a) provide that contravention of a provision of the bylaw that is intended to limit the quantity of municipal solid waste, or that specifies the characteristics of municipal solid waste that may be discharged into the environment, is an offence punishable by a fine not exceeding \$1 000 000;
  - (b) provide that a contravention of a provision of the bylaw, other than a provision referred to in paragraph (a), is an offence punishable by a fine not exceeding \$200 000;
  - (c) require the keeping of records and the provision of information respecting municipal solid waste and its discharge;
  - (d) exempt from the application of section 3 (2) and (3), in relation to the discharge of municipal solid waste, any operation, activity, industry, trade, business, works, site, facility or municipal solid waste that complies with the bylaw, if it also complies with any further restrictions or conditions imposed by this Act or a regulation, permit, order or approved waste management plan under this Act;
  - (e) establish different prohibitions, regulations, rates or levels of fees, conditions, requirements and exemptions for different classes of persons, operations, activities, industries, trades, businesses, works, sites or municipal solid wastes.
- (3) The Administration Board of the Greater Vancouver Sewerage and Drainage District, before exercising a power under subsection (1) or (2), must

- (a) appoint a district director and one or more assistant district director who may, with respect to the management of municipal solid waste and recyclable material at sites within the area of the Greater Vancouver Regional District, exercise all the powers of a manager under this Act and the regulations, and
- (b) appoint officers who may, with respect to the management of municipal solid waste and recyclable material at sites within the area of the Greater Vancouver Regional District, exercise all the powers of an officer under sections 29 and 30 of this Act and under the regulations.
- (4) If the minister considers it necessary in the public interest with respect to the exercise of the powers granted under subsections (1) and (2), the minister may
  - (a) require officers designated by the minister to carry out a review of the manner in which the powers have been exercised by the Greater Vancouver Sewerage and Drainage District, or
  - (b) take any action to ensure proper administration of the powers granted, including the authorization of designated officers to carry out the duties associated with those powers.
- (5) After a minister receives a report and recommendation from the officers referred to in subsection (4) (a), and after any consultation the minister considers necessary, the minister may revoke any or all of the powers granted under subsection (1) or (2).
- (6) No action lies, and no proceedings may be brought, against the Greater Vancouver Sewerage and Drainage District or an officer, employee or elected or appointed official of the Greater Vancouver Regional District because of anything arising out of the administration of the powers, duties and functions under this section unless a person establishes that the Greater Vancouver Sewerage and Drainage District or an officer, employee or elected or appointed official of the Greater Vancouver Regional District has acted in bad faith.
- (7) Part 7 and section 51 of this Act apply to a decision of the Administration Board of the Greater Vancouver Sewerage and Drainage District, or a decision of an officer, employee or elected or appointed official of the Greater Vancouver Regional District, made under the authority of a bylaw made under subsection (1) or (2).
- (8) This section does not apply to a site owned or operated by the Greater Vancouver Sewerage and Drainage District or one of its member municipalities.

1998-21-6.

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

- 24.2** (1) The Lieutenant Governor in Council may, on receipt of a written request from a regional district and after appropriate consultation with the regional district and affected stakeholders, make regulations
- (a) giving the regional district the authority to make bylaws to prohibit, regulate or otherwise control the introduction into the environment of municipal solid waste within the area covered by the regional district's approved solid waste management plan, and
  - (b) specifying the terms and conditions, including the collection of fees, by which the authority is made.
- (2) Section 24.1 (2) to (8) applies to a regional district referred to in subsection (1) of this section.

1998-21-6.

### Bylaw approval or amendment

- 24.3** (1) A bylaw made by a regional district under the authority of section 19, 19.1 or 24.2, or made by the Administration Board of the Greater Vancouver Sewerage and Drainage District under the authority of section 19, 19.1, or 24.1, must not be adopted without the prior approval in writing of the minister.
- (2) If the minister considers it necessary in the public interest, the minister may require a regional district or the Greater Vancouver Sewerage and Drainage District to amend, suspend or cancel any bylaw or part of a bylaw, or any authorization given pursuant to a bylaw, made under section 19, 19.1, 24.1 or 24.2.

1998-21-6.

### Delegation of powers

- 24.4** (1) For the purposes of sections 19, 19.1, 24 and 24.2, a regional district may, by bylaw, delegate to an officer or employee of the regional district the power to exercise the functions and duties of the regional district in bylaws made under those sections.
- (2) For the purpose of sections 19, 19.1 and 24.1, the Administration Board of the Greater Vancouver Sewerage and Drainage District may, by bylaw, delegate to an officer or employee of the Greater Vancouver Regional district the power to exercise the functions and duties of the Greater Vancouver Sewerage and Drainage District in bylaws made under those sections.
- (3) A bylaw referred to in subsection (1) or (2) must include an appeal mechanism from a decision of the officer or employee.

1998-21-6; 2000-9-72.

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

- 25.** (1) Despite the *Community Charter*, the *Local Government Act*, the *Vancouver Charter* or the *Greater Vancouver Sewerage and Drainage District Act*,
- (a) a bylaw of a municipality, other than a bylaw under section 23, 24, 24.1 or 24.2, or
- (b) a permit, licence, approval or other document issued under the authority of a municipal bylaw
- that conflicts with this Act, the regulations, an approved waste management plan or a permit, approval or order under this Act is without effect to the extent of the conflict.
- (2) A bylaw under section 23, 24, 24.1 or 24.2 that conflicts with this Act, the regulations, an approved waste management plan or a permit, approval or order, other than one issued by a district director, is without effect to the extent of the conflict.
- (3) A permit, approval or order issued by a district director that conflicts with this Act, the regulations, an approved waste management plan or a bylaw under section 23, 24, 24.1 or 24.2 is without effect to the extent of the conflict.
- (4) A bylaw of a municipality that conflicts with a bylaw under section 23, 24, 24.1 or 24.2 is without effect to the extent of the conflict.
- (5) For the purposes of subsections (1) to (4), a conflict does not exist solely because further restrictions or conditions are imposed by the bylaw, permit, licence,

approval, order or other document that is without effect if a conflict exists, unless the minister by order declares that a conflict exists.

- (6) Despite the *Local Government Act* and the *Vancouver Charter*, if
- (a) a bylaw of a municipality purports to zone land for a use, or
  - (b) a land use contract under the *Local Government Act* purports to restrict the use of land to a use
- that would not allow the land to be used for the purpose allowed under a permit, approval or order issued in respect of the land or an approved waste management plan respecting the land, the Lieutenant Governor in Council may, by order, suspend the operation of the bylaw or contract to the extent the Lieutenant Governor in Council considers necessary to enable the rights given by the permit, approval or order to be exercised.

1982-41-20; 1992-25-8; 1998-21-7; 2000-7-191, Sch.; 2003-52-520.

## PART 4 – Contaminated Site Remediation

### Part 4: Division 1 – Definitions and Interpretation

#### Definitions and interpretation

26. (1) In this Part:

"**allocation panel**" means an allocation panel established under section 27.2;

"**approval in principle**" means an approval in principle described in section 27.6;

"**approving officer**" means an approving officer as defined in the *Land Title Act*;

"**certificate of compliance**" means a certificate of compliance described in section 27.6;

"**conditional certificate of compliance**" means a conditional certificate of compliance described in section 27.6;

"**contaminated site**" means an area of land in which the soil or any groundwater lying beneath it, or the water or the underlying sediment, contains

- (a) a special waste, or
- (b) another prescribed substance in quantities or concentrations exceeding prescribed criteria, standards or conditions;

"**contaminated soil relocation agreement**" means a contaminated soil relocation agreement referred to in section 28.1;

"**contamination**" means the presence, in soil, sediment or groundwater, of special waste or another substance in quantities or concentrations exceeding prescribed criteria, standards or conditions;

"**detailed site investigation**" means a detailed site investigation referred to in section 26.2;

"**district inspector**" means a district inspector as defined in the *Mines Act*;

"**division head**" means a division head as defined in the *Petroleum and Natural Gas Act*;

"**government body**" means a federal, provincial or municipal body, including an

agency or ministry of the Crown in right of Canada or British Columbia or an agency of a municipality;

**"high risk orphan site"** means an orphan site determined to be a high risk orphan site under section 28.4;

**"minor contributor"** means a responsible person determined to be a minor contributor under section 27.3;

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

**"operator"** means, subject to subsection (2), a person who is or was in control of or responsible for any operation located at a contaminated site, but does not include a secured creditor unless the secured creditor is described in section 26.5 (3);

**"orphan site"** means

- (a) a contaminated site for which a responsible person cannot be found or is not willing or financially able to carry out remediation in a time frame specified by a manager, or
- (b) a contaminated site of which a government body has become the owner subsequent to the failure of the former owner to comply with a requirement to carry out remediation at the site;

**"owner"** means a person who is in possession of, has the right of control of, occupies or controls the use of real property, including, without limitation, a person who has any estate or interest, legal or equitable, in the real property, but does not include a secured creditor unless the secured creditor is described in section 26.5 (3);

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

**"preliminary site investigation"** means a preliminary site investigation referred to in section 26.2;

**"registrar"** means the registrar of the site registry established under section 26.3;

**"remediation order"** means a remediation order under section 27.1;

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

**"responsible person"** means a person described in section 26.5;

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

**"site investigation"** means a site investigation and report referred to in section 26.2;

**"site profile"** means a site profile referred to in section 26.1;

**"subdivision"** means

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

**"voluntary remediation agreement"** means a voluntary remediation agreement referred to in section 27.4.

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

- (a) exercising regulatory authority with respect to a contaminated site,
- (b) carrying out remediation at a contaminated site, or

- (c) providing advice or information with respect to a contaminated site or any activity that took place on the contaminated site.

RS1996(Supp)-482-3; 1993-25-2; 1998-43-321 (B.C.Reg. 43/2000).

## Part 4: Division 2 – Identification of Contaminated Sites

### Site profiles

- 26.1** (1) A person must provide a site profile in accordance with the regulations
- (a) to the approving officer when the person applies for or otherwise seeks approval for a subdivision of land that the person knows or reasonably should know is or was used for industrial or commercial activity, and
  - (b) to the applicable municipality when the person applies for or otherwise seeks approval for
    - (i) zoning of land that the person knows or reasonably should know is or was used for industrial or commercial activity,
    - (ii) a development permit or a development variance permit for land that the person knows or reasonably should know is or was used for industrial or commercial activity,
    - (iii) removal of soil from property that the person knows or reasonably should know is or was used for industrial or commercial activity,
    - (iv) a demolition permit respecting a structure that the person knows or reasonably should know is or was used for industrial or commercial activity, or
    - (v) a prescribed activity.
- (2) Subject to the regulations, an owner of real property must provide a site profile to a manager if the owner
- (a) owns real property that is used or has been used for activities specified in the regulations,
  - (b) dismantles a building or structure or otherwise decommissions a type of site specified in the regulations,
  - (c) applies for or otherwise seeks approval for any other activity specified in the regulations, or
  - (d) undertakes activities or receives information prescribed in the regulations.
- (3) Subject to the regulations, an owner under the *Petroleum and Natural Gas Act* must provide a site profile to a division head if the owner applies for a certificate of restoration respecting a well, test hole or production facility in accordance with section 84 of that Act.
- (4) Subject to the regulations, an owner under the *Mines Act*, including the agent or manager of the owner, must provide a site profile to a district inspector if the owner
- (a) applies for a permit or for revisions to conditions of an existing permit under section 10 of the *Mines Act*, or
  - (b) gives notice of intention to stop work in, on or near a mine before abandonment in accordance with the Health, Safety and Reclamation Code for Mines in British Columbia prepared under the *Mines Act*.
- (5) A municipality, approving officer, division head or district inspector must

- (a) assess a site profile received under subsection (1), (2), (3) or (4) in accordance with the regulations,
  - (b) if the assessment of the site profile under paragraph (a) indicates that a manager should review the site profile to determine if a site investigation is required, forward a copy of the site profile to a manager, and
  - (c) forward a copy of the site profile to any other person specified in the regulations.
- (6) A municipality, approving officer, division head or district inspector may impose reasonable fees for an assessment under subsection (5) (a).
- (7) A vendor of real property who knows or reasonably should know that real property has been used for
- (a) an industrial or commercial purpose, or
  - (b) a prescribed purpose or activity,
- must provide a site profile to a prospective purchaser of the real property and a manager in accordance with the regulations.
- (8) A trustee, receiver and liquidator or a person commencing foreclosure proceedings, who takes possession or control of real property for the benefit of one or more creditors, must provide a site profile to the manager immediately on taking possession or control if the real property has been used for
- (a) an industrial or commercial purpose, or
  - (b) a prescribed purpose or activity.
- (9) A manager may order a person to prepare and provide to a manager a site profile if that person
- (a) owns or occupies land that, in the opinion of the manager, may be a contaminated site on account of any past or current use on that or other land, or
  - (b) is a person referred to in subsections (1) to (8) and fails to provide a satisfactorily completed site profile.
- (10) If a manager orders the preparation of a site profile respecting land that is subsequently determined not to be a contaminated site, the manager is not liable for any costs incurred by a person in preparing the site profile.
- (11) Except for the duty of a vendor to provide a site profile to a prospective purchaser under subsection (7), the duty to provide a site profile does not apply if a person
- (a) has been ordered to undertake a site investigation under section 26.2,
  - (b) seeks and obtains a determination that the site is a contaminated site under section 26.4 (3) if before the determination the affected person notifies in writing the applicable municipality, approving officer, division head or district inspector, of his or her request for a determination, or
  - (c) has already provided a site profile for the site under subsection (1).

RS1996(Supp)-482-3; 1993-25-2.

## Site investigations

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

- (a) may be a contaminated site, or
  - (b) contains substances that may cause or threaten to cause adverse effects on human health or the environment.
- (2) If a manager orders a preliminary site investigation or a detailed site investigation respecting a site that is subsequently determined not to be a contaminated site, the manager is not liable for any costs incurred by a person for completing the investigation and the related report.
- (3) When a manager receives a report of a preliminary site investigation or a detailed site investigation submitted under this section, the manager must
- (a) determine if the report and investigation comply with any applicable regulations and orders, and
  - (b) give notice of the determination made under paragraph (a),
- and may require additional investigation and reporting as the manager considers necessary to satisfy any orders or investigation and reporting requirements.
- (4) The duty to undertake a preliminary site investigation or a detailed site investigation and to prepare a report of the investigation under this section does not apply if a person seeks and obtains a determination that a site is a contaminated site under section 26.4 (3).

RS1996(Supp)-482-3; 1993-25-2.

## Site registry

- 26.3** (1) The minister must
- (a) establish a site registry, and
  - (b) appoint a registrar to manage the site registry.
- (2) A manager must provide to the registrar, in a form suitable for inclusion in the site registry, information respecting
- (a) all site profiles, preliminary site investigations and detailed site investigations that the manager receives,
  - (b) all orders, approvals, voluntary remediation agreements and decisions, including determinations under section 26.4 (3), made by the manager under this Part,
  - (c) pollution abatement orders requiring remediation under section 31,
  - (d) notifications of independent remediation under section 28 (2),
  - (e) declarations and orders made by the minister under section 28.4, and
  - (f) other information required by the regulations.
- (3) A manager may request the registrar to enter, by notation in the site registry, information that
- (a) is already available to the manager, and
  - (b) would normally be obtained through a site profile or site investigation,
- if, before requesting the registrar to do so, the manager provides
- (c) notice to owners or operators known to the manager of the intention to make the request specified in paragraphs (a) and (b), and
  - (d) an opportunity for owners or operators to show cause to the manager why the information contained in the request should not be entered into the site



registry.

- (4) The registrar must enter by notation into the site registry information referred to in subsections (2) and (3) and decisions of the appeal board.
- (5) In accordance with the regulations, the registrar
  - (a) must provide for reasonable public access to information in the site registry, and
  - (b) may impose fees for providing services and supplying information from the site registry.

RS1996(Supp)-482-3; 1993-25-2.

### Determination of contaminated sites

- 26.4** (1) A manager may determine whether a site is a contaminated site and, if the site is a contaminated site, the manager may determine the boundaries of the contaminated site.
- (2) Subject to subsection (3), in determining whether a site is a contaminated site, a manager must do all of the following:
- (a) make a preliminary determination of whether or not a site is a contaminated site, on the basis of a site profile, a preliminary site investigation, a detailed site investigation or other available information;
  - (b) give notice in writing of the preliminary determination to
    - (i) the person submitting a site profile, a preliminary site investigation or a detailed site investigation for the site,
    - (ii) any municipality, approving officer, division head or district inspector that has received and forwarded to the manager a site profile for the site to which the preliminary determination pertains,
    - (iii) any person with a registered interest in the site as shown in the records of the land title office at the time the manager searches the land title records, and
    - (iv) any person known to a manager who may be a responsible person under section 26.5 if the site is finally determined to be a contaminated site;
  - (c) provide an opportunity for any person to comment on the preliminary determination;
  - (d) make a final determination of whether or not a site is a contaminated site;
  - (e) give notice in writing of the final determination to
    - (i) the person submitting a site profile, a preliminary site investigation or a detailed site investigation for the site,
    - (ii) any municipality, approving officer, division head or district inspector that received, assessed and forwarded to the manager a site profile for the site to which the final determination pertains,
    - (iii) any person with a registered interest in the site as shown in the records of the land title office at the time of the final determination,
    - (iv) any person known to the manager who may be a responsible person under section 26.5, and
    - (v) any person who has commented under paragraph (c);
  - (f) carry out other procedures, if any, specified in the regulations.
- (3)

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

- (a) provides reasonably sufficient information to determine that the site is a contaminated site, and
  - (b) agrees to be a responsible person for the contaminated site.
- (4) The lack of a determination under subsection (2) or (3) does not mean that a site is not a contaminated site.
- (4.1) In addition to a manager making a determination under subsection (1), a site is considered to be or to have been a contaminated site if the manager has done any of the following:
- (a) appointed an allocation panel with respect to the site under section 27.2;
  - (b) determined that a responsible person is a minor contributor with respect to the site under section 27.3;
  - (c) entered into a voluntary remediation agreement with respect to the site under section 27.4;
  - (d) issued an approval in principle with respect to a proposed remediation plan for the site under section 27.6 (1);
  - (e) issued a certificate of compliance or conditional certificate of compliance with respect to remediation of the site under section 27.6 (2) and (3).
- (5) A final determination made under this section is a decision that may be appealed under Part 7 of this Act.

RS1996(Supp)-482-3; 1993-25-2; 2002-34-1.

## **Part 4: Division 3 – Liability**

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

- 26.5** (1) Subject to section 26.6, the following persons are responsible for remediation at a contaminated site:
- (a) a current owner or operator of the site;
  - (b) a previous owner or operator of the site;
  - (c) a person who
    - (i) produced a substance, and
    - (ii) by contract, agreement or otherwise caused the substance to be disposed of, handled or treated in a manner that, in whole or in part, caused the site to become a contaminated site;
  - (d) a person who
    - (i) transported or arranged for transport of a substance, and
    - (ii) by contract, agreement or otherwise caused the substance to be disposed of, handled or treated in a manner that, in whole or in part, caused the site to become a contaminated site;
  - (e) a person who is in a class designated in the regulations as responsible for remediation.
- (2)

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

- (a) a current owner or operator of the site from which the substance migrated;
- (b) a previous owner or operator of the site from which the substance migrated;
- (c) a person who
  - (i) produced the substance, and
  - (ii) by contract, agreement or otherwise caused the substance to be disposed of, handled or treated in a manner that, in whole or in part, caused the substance to migrate to the contaminated site;
- (d) a person who
  - (i) transported or arranged for transport of the substance, and
  - (ii) by contract, agreement or otherwise caused the substance to be disposed of, handled or treated in a manner that, in whole or in part, caused the substance to migrate to the contaminated site.
- (3) A secured creditor is responsible for remediation at a contaminated site if
  - (a) the secured creditor at any time exercised control over or imposed requirements on any person regarding the manner of treatment, disposal or handling of a substance and the control or requirements, in whole or in part, caused the site to become a contaminated site, or
  - (b) the secured creditor becomes the registered owner in fee simple of the real property at the contaminated site,
 

but a secured creditor is not responsible for remediation if it acts primarily to protect its security interest, including, without limitation, if 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.

RS1996(Supp)-482-3; 1993-25-2.

### Persons not responsible for remediation

- 26.6** (1) The following persons are not responsible for remediation at a contaminated site:
- (a) a person who would become a responsible person only because of an act of God that occurred before the coming into force of this section and who exercised due diligence with respect to any substance that, in whole or in part, caused the site to become a contaminated site;
  - (b) a person who would become a responsible person only because of an act of war and who exercised due diligence with respect to any substance that, in whole or in part, caused the site to become a contaminated site;

- (c) a person who would become a responsible person only because of an act or omission of a third party, other than
  - (i) an employee,
  - (ii) an agent, or
  - (iii) a party with whom the person has a contractual relationship,
 if the person exercised due diligence with respect to any substance that, in whole or in part, caused the site to become a contaminated site;
- (d) an owner or operator who establishes that
  - (i) at the time the person became an owner or operator of the site,
    - (A) the site was a contaminated site,
    - (B) the person had no knowledge or reason to know or suspect that the site was a contaminated site, and
    - (C) the person undertook all appropriate inquiries into the previous ownership and uses of the site and undertook other investigations, consistent with good commercial or customary practice at that time, in an effort to minimize potential liability,
  - (ii) while the person was an owner of the site, the person did not transfer any interest in the site without first disclosing any known contamination to the transferee, and
  - (iii) the owner or operator did not, by any act or omission, cause or contribute to the contamination of the site;
- (e) an owner or operator who owned or occupied a site that at the time of acquisition was not a contaminated site and during the ownership or operation the owner or operator did not dispose of, handle or treat a substance in a manner that, in whole or in part, caused the site to become a contaminated site;
- (f) a person described in section 26.5 (1) (c) or (d) or (2) (c) or (d) who
  - (i) transported or arranged to transport a substance to a site if the owner or operator of the site was authorized by or under statute to accept the substance at the time of its deposit, and
  - (ii) received permission to deposit the substance from the owner or operator described in subparagraph (i);
- (g) a government body that involuntarily acquires an ownership interest in the contaminated site, other than by government restructuring or expropriation, unless the government body caused or contributed to the contamination of the site;
- (h) a person who provides assistance or advice respecting remediation work at a contaminated site in accordance with this Act, unless the assistance or advice was carried out in a negligent fashion;
- (i) a person who owns or operates a contaminated site that was contaminated only by the migration of a substance from other real property not owned or operated by the person;
- (j) an owner or operator of a contaminated site containing substances that are present only as natural occurrences not assisted by human activity and if those substances alone caused the site to be a contaminated site;
- (k) subject to subsection (2), a government body that possesses, owns or operates a roadway, highway or right of way for sewer or water on a

- contaminated site, to the extent of the possession, ownership or operation;
- (l) a person who was a responsible person for a contaminated site for which a conditional certificate of compliance or a certificate of compliance was issued and for which another person subsequently proposes or undertakes to
  - (i) change the use of the contaminated site, and
  - (ii) provide additional remediation;
- (m) a person who is in a class designated in the regulations as not responsible for remediation.
- (2) Subsection (1) (k) does not apply with respect to contamination placed or deposited below a roadway, highway or right of way for sewer or water by the government body that possesses, owns or operates the roadway, highway or right of way for sewer or water.
- (3) A person seeking to establish that he or she is not a responsible person under subsection (1) has the burden to prove all elements of the exemption on a balance of probabilities.

RS1996(Supp)-482-3; 1993-25-2.

### General principles of liability for remediation

- 27.** (1) A person who is responsible for remediation at a contaminated site is absolutely, retroactively and jointly and severally liable to any person or government body for reasonably incurred costs of remediation of the contaminated site, whether incurred on or off the contaminated site.
- (2) For the purpose of this section, “**costs of remediation**” means all costs of remediation and includes, without limitation,
- (a) costs of preparing a site profile,
  - (b) costs of carrying out a site investigation and preparing a report, whether or not there has been a determination under section 26.4 as to whether or not the site is a contaminated site,
  - (c) legal and consultant costs associated with seeking contributions from other responsible persons, and
  - (d) fees imposed by a manager, a municipality, an approving officer, a division head or a district inspector under this Part.
- (3) Liability under this Part applies
- (a) even though the introduction of a substance into the environment is or was not prohibited by any legislation if the introduction contributed in whole or in part to the site becoming a contaminated site, and
  - (b) despite the terms of any cancelled, expired, abandoned or current permit or approval or waste management plan and its associated operational certificate that authorizes the discharge of waste into the environment.
- (4) Subject to section 27.3 (3), any person, including, but not limited to, a responsible person and a manager, who incurs costs in carrying out remediation at a contaminated site may pursue in an action or proceeding the reasonably incurred costs of remediation from one or more responsible persons in accordance with the principles of liability set out in this Part.
- (5) Subject to subsections (6) and (7), a person is not required to obtain, as a condition of an action or proceeding under subsection (4) being heard by a court,
- (a)

- a decision, determination, opinion or apportionment of liability for remediation from a manager, or
  - (b) an opinion respecting liability from an allocation panel.
- (6) In all cases the site that is the subject of an action or proceeding must be determined or considered under section 26.4 to be or to have been a contaminated site before the court can hear the matter.
- (7) Despite subsection (6), if independent remediation has been carried out at a site and the site has not been determined or considered under section 26.4 to be or to have been a contaminated site, the court must determine whether the site is or was a contaminated site.
- (8) The court may determine, unless otherwise determined or established under Part 4, any of the following:
- (a) whether a person is a responsible person for remediation at a contaminated site;
  - (b) whether the costs of remediation at a contaminated site have been reasonably incurred;
  - (c) the apportionment of a share of the costs of remediation at a contaminated site amongst one or more responsible persons in accordance with the principles of liability set out in Part 4;
  - (d) such other determinations as necessary to a fair and just disposition of these matters.

RS1996(Supp)-482-3; 1993-25-2; 2002-34-2.

## Remediation orders

- 27.1** (1) A manager may issue a remediation order to any responsible person.
- (2) A remediation order may require a person referred to in subsection (1) to do all or any of the following:
- (a) undertake remediation;
  - (b) contribute, in cash or in kind, towards another person who has reasonably incurred costs of remediation;
  - (c) give security in an amount and form, which can include real and personal property, subject to conditions the manager specifies.
- (3) When considering whether a person should be required to undertake remediation under subsection (2), a manager may determine whether remediation should begin promptly, and must particularly consider the following:
- (a) adverse effects on human health or pollution of the environment caused by contamination at the site;
  - (b) the potential for adverse effects on human health or pollution of the environment arising from contamination at the site;
  - (c) the likelihood of responsible persons or other persons not acting expeditiously or satisfactorily in implementing remediation;
  - (d) in consultation with the chief inspector appointed under the *Mines Act*, the requirements of a reclamation permit issued under section 10 of that Act;
  - (e) in consultation with a division head under the *Petroleum and Natural Gas Act*, the adequacy of remediation being undertaken under section 84 of that Act;
  - (f) other factors, if any, prescribed in the regulations.
- (4)

When considering who will be ordered to undertake or contribute to remediation under subsections (1) and (2), a manager must to the extent feasible without jeopardizing remediation requirements

- (a) take into account private agreements respecting liability for remediation between or among responsible persons, if those agreements are known to the manager, and
  - (b) on the basis of information known to the manager, name one or more persons whose activities, directly or indirectly, contributed most substantially to the site becoming a contaminated site, taking into account factors such as
    - (i) the degree of involvement by the persons in the generation, transportation, treatment, storage or disposal of any substance that contributed, in whole or in part, to the site becoming a contaminated site, and
    - (ii) the diligence exercised by persons with respect to the contamination.
- (5) A remediation order does not affect or modify the right of a person affected by the order to seek or obtain relief under an agreement, other legislation or common law, including but not limited to damages for injury or loss resulting from a release or threatened release of a contaminating substance.
- (6) If a remediation order or a pollution abatement order requiring remediation under section 31 is issued, and a manager has not yet determined if a site is a contaminated site under section 26.4, the manager must, as soon as reasonably possible after the issuance of the order,
- (a) determine whether the subject site is a contaminated site, in accordance with section 26.4, and
  - (b) make a ruling as to whether the person named in the order is a responsible person under section 26.5,
- and if the person is not found to be a responsible person under paragraph (b), the manager making the order must compensate, in accordance with the regulations, the person for any costs directly incurred by the person to comply with the order.
- (7) A person receiving a remediation order under subsection (1) or actual notice of a remediation order under subsection (11) must not, without the consent of a manager, knowingly do anything that diminishes or reduces assets that could be used to satisfy the terms and conditions of the remediation order, and if the person does so, the manager, despite any other remedy sought, may commence a civil action against the person for the amount of the diminishment or reduction.
- (8) A manager may provide in a remediation order that a responsible person at a contaminated site is not required to begin remediation for a specified period of time if the contaminated site does not present an imminent and significant threat or risk to
- (a) human health, given current and anticipated human exposure, or
  - (b) the environment.
- (9) A person who has submitted a site profile under section 26.1 (8) must not directly or indirectly diminish or reduce assets at a site designated in the site registry as a contaminated site, including, without limitation,
- (a) disposition of real or personal assets, or
  - (b) subdivision of land
- until he or she requests and obtains written notice from a manager that the

manager does not intend to issue a remediation order, and if the manager gives notice of the intention to issue a remediation order, or if the manager issues a remediation order, subsection (7) applies.

- (10) A manager may amend or cancel a remediation order.
- (11) A manager making a remediation order must, within a reasonable time, provide notice of the order in writing to every person holding an interest with respect to the contaminated site that is registered in the land title office at the time of issuing the order.

RS1996(Supp)-482-3; 1993-25-2.

## Allocation panel

- 27.2** (1) The minister may appoint up to 12 persons with specialized knowledge in contamination, remediation or methods of dispute resolution to act as allocation advisors under this section.
- (2) A manager may, on request by any person, appoint an allocation panel consisting of 3 allocation advisors to provide an opinion as to all or any of the following:
- (a) whether the person is a responsible person;
  - (b) whether a responsible person is a minor contributor;
  - (c) the responsible person's contribution to contamination and the share of the remediation costs attributable to this contamination if the costs of remediation are known or reasonably ascertainable.
- (3) When providing an opinion under subsection (2) (b) and (c), the allocation panel must, to the extent of available information, have regard to the following:
- (a) the information available to identify a person's relative contribution to the contamination;
  - (b) the amount of substances causing the contamination;
  - (c) the degree of toxicity of the substances causing the contamination;
  - (d) the degree of involvement by the responsible person, compared with one or more other responsible persons, in the generation, transportation, treatment, storage or disposal of the substances that caused the site to become contaminated;
  - (e) the degree of diligence exercised by the responsible person, compared with one or more other responsible persons, with respect to the substances causing contamination, taking into account the characteristics of the substances;
  - (f) the degree of cooperation by the responsible person with government officials to prevent any harm to human health or the environment;
  - (g) in the case of a minor contributor, factors set out in section 27.3 (1) (a) and (b);
  - (h) other factors considered relevant by the panel to apportioning liability.
- (4) A manager may require, as a condition of entering a voluntary remediation agreement with a responsible person, that the responsible person, at his or her own cost, seek and provide to the manager an opinion from an allocation panel under subsection (2).
- (4.1) If a manager has appointed an allocation panel with respect to a site, the site is considered to be a contaminated site at the time the allocation panel was appointed despite the absence of a determination under section 26.4 (1).



- (5) A manager may consider, but is not bound by, any allocation panel opinion.
- (6) Work performed by the allocation panel must be paid for by the person who requests the opinion.

RS1996(Supp)-482-3; 1993-25-2; 2002-34-3.

### Minor contributors

- 27.3** (1) A manager may determine that a responsible person is a minor contributor if the person demonstrates that
- (a) only a minor portion of the contamination present at the site can be attributed to the person,
  - (b) either
    - (i) no remediation would be required solely as a result of the contribution of the person to the contamination at the site, or
    - (ii) the cost of remediation attributable to the person would be only a minor portion of the total cost of the remediation required at the site, and
  - (c) in all circumstances the application of joint and several liability to the person would be unduly harsh.
- (2) When a manager makes a determination under subsection (1) that a responsible person is a minor contributor, the manager must determine the amount or portion of remediation costs attributable to the responsible person.
- (3) A responsible person determined to be a minor contributor under subsection (1) is only liable for remediation costs in an action or proceeding brought by another person or the government under section 27 up to the amount or portion specified by a manager in the determination under subsection (2).
- (4) If a manager has determined that a responsible person is a minor contributor for a site, the site is considered to be a contaminated site at the time of that determination, despite the absence of a determination under section 26.4 (1).

RS1996(Supp)-482-3; 1993-25-2; 2002-34-4.

## Part 4: Division 4 – Implementation of Remediation

### Voluntary remediation agreements

- 27.4** (1) A manager may, on request by a responsible person including a minor contributor, enter into a voluntary remediation agreement consisting of
- (a) provisions for financial or other contributions by the responsible person,
  - (b) a certification by the responsible person that the person has fully and accurately disclosed all information in the person's possession regarding site conditions and the person's activities respecting that site,
  - (c) security in an amount and form which may include real and personal property, subject to conditions the manager specifies,
  - (d) a schedule of remediation acceptable to the manager, and
  - (e) requirements that the manager considers to be reasonably necessary to achieve remediation.
- (2)

A voluntary remediation agreement discharges the responsible person who entered into the voluntary remediation agreement from further liability but does not

- (a) discharge from liability other responsible persons not named in the voluntary remediation agreement but reduces the total potential liability of other responsible persons by the amount, if any, specified in the voluntary remediation agreement,
  - (b) affect or modify in any way any person's right to seek or obtain relief under other legislation or under the common law, including, but not limited to, damages for injury or loss resulting from contamination, or
  - (c) prevent the manager from entering into a further voluntary remediation agreement.
- (3) A manager may stipulate in a voluntary remediation agreement that a responsible person at a contaminated site is not required to begin remediation for a specified period of time, if the responsible person demonstrates that the contaminated site does not present an imminent and significant threat or risk to
- (a) human health, given current and anticipated human exposure, or
  - (b) the environment.
- (4) If a manager has entered into a voluntary remediation agreement for a site, the site is considered to be a contaminated site at the time the agreement was made, despite the absence of a determination under section 26.4 (1).

RS1996(Supp)-482-3; 1993-25-2; 2002-34-5.

## Public consultation and review

- 27.5** (1) A manager may order that a responsible person, at the person's own cost, provide, in accordance with any regulations, for public consultation or review of remediation.
- (2) In considering the need for an order under subsection (1), a manager may take into account such factors as the following:
- (a) the size and location of the contaminated site;
  - (b) the nature of contamination at the contaminated site;
  - (c) the potential for human exposure to contamination;
  - (d) the impact on the environment of the contamination;
  - (e) migration of contamination off the site;
  - (f) proposed remediation methods to be used and the potential for long term health, environmental or financial impacts;
  - (g) opportunities for public involvement afforded by any municipal development approval process;
  - (h) whether consultation with the public would improve the quality of information in a site investigation;
  - (i) whether consultation with the public would enable a well informed choice on the preferred remediation alternative;
  - (j) the extent to which public consultation has already taken place.

RS1996(Supp)-482-3; 1993-25-2.

## Certificates of compliance

- 27.6** (1) On application by a responsible person, a manager may issue an approval in principle stating that a remediation plan for a contaminated site
- (a) has been reviewed by the manager,
  - (b) has been approved by the manager, and
  - (c) may be implemented in accordance with conditions specified by the manager.
- (1.1) For the purpose of subsection (1), if a manager has issued an approval in principle with respect to a proposed remediation plan for a site, the site is considered to be a contaminated site at the time the approval in principle was issued, despite the absence of a determination under section 26.4 (1).
- (2) A manager, in accordance with the regulations, may issue a certificate of compliance with respect to remediation of a contaminated site if
- (a) the contaminated site has been remediated in accordance with
    - (i) prescribed numerical standards,
    - (ii) any orders under this Act,
    - (iii) any remediation plan approved by the manager, and
    - (iv) any requirements imposed by the manager, and
  - (b) any security in an amount and form, which may include real and personal property, required by the manager has been provided relative to the management of substances remaining on the site.
- (3) A manager, in accordance with the regulations, may issue a conditional certificate of compliance with respect to remediation of a contaminated site if
- (a) the contaminated site has been remediated in accordance with
    - (i) prescribed risk based standards and prescribed environmental impact requirements,
    - (ii) any orders under this Act,
    - (iii) any remediation plan approved by the manager, and
    - (iv) any requirements imposed by the manager,
  - (b) information about remediation and the substances remaining on the site has been recorded in the site registry,
  - (c) any monitoring plan relative to the presence of substances on the site required by the manager has been prepared and works have been installed to implement the plan,
  - (d) any security in an amount and form, which may include real and personal property, required by the manager has been provided relative to the management of substances remaining on the site, and
  - (e) the responsible person, if required by the manager, prepares in a form acceptable to a manager, registers and provides proof of registration of a restrictive covenant under section 219 of the *Land Title Act*.
- (3.1) For the purpose of subsection (2) or (3), if a manager has issued a certificate of compliance or conditional certificate of compliance with respect to remediation of a site, the site is considered to have been a contaminated site at the time remediation of the site began, despite the absence of a determination under section 26.4 (1).
- (4)

A conditional certificate of compliance does not take effect until the registrar has made an entry in the site registry indicating that a conditional certificate of compliance has been issued for the site, or a part of the site.

- (5) A manager may withhold an approval in principle, a certificate of compliance or a conditional certificate of compliance if any fees payable under this Part or the regulations are outstanding.
- (6) A manager may issue an approval in principle, a certificate of compliance or a conditional certificate of compliance for a part of a contaminated site.

RS1996(Supp)-482-3; 1993-25-2; 2002-34-6.

### **Independent remediation procedures**

- 28.** (1) A responsible person may carry out independent remediation
  - (a) whether or not a determination has been made as to whether the site is a contaminated site,
  - (b) whether or not a remediation order has been issued with respect to the site, or
  - (c) whether or not a voluntary remediation agreement with respect to the site has been entered into.
- (2) Any person undertaking independent remediation at a contaminated site must
  - (a) notify a manager in writing promptly on initiating remediation, and
  - (b) notify a manager in writing within 90 days of completing remediation.
- (3) A manager may at any time during independent remediation by any person
  - (a) inspect and monitor any aspect of the remediation to determine compliance with the regulations,
  - (b) issue a remediation order as appropriate,
  - (c) order public consultation and review under section 27.5, or
  - (d) impose requirements that the manager considers are reasonably necessary to achieve remediation.
- (4) On request from the responsible person, and on receiving information respecting independent remediation, suitable to a manager, the manager may
  - (a) review the remediation in accordance with the regulations and any requirements imposed under subsection (3) (d), and
  - (b) issue an approval in principle, a certificate of compliance or a conditional certificate of compliance under section 27.6.
- (5) In accordance with the regulations, a manager may assess prescribed fees for carrying out the actions referred to in subsection (4).

RS1996(Supp)-482-3; 1993-25-2.

### **Contaminated soil relocation**

- 28.1** (1) Subject to subsection (5), a person must not relocate contaminated soil from a contaminated site without
  - (a) entering into a contaminated soil relocation agreement, and
  - (b) complying with terms and conditions of the contaminated soil relocation agreement.
- (2) A manager may enter into a contaminated soil relocation agreement with

- (a) the owner or operator of a site proposed to receive contaminated soil, and
  - (b) a responsible person of the contaminated site from which the contaminated soil is proposed to be removed
- if, in the view of the manager, having regard to the suitability of the receiving site, quality of the soil to be relocated and existing and future uses of the receiving site, the relocation would not cause a significant potential for adverse effects on human health or for pollution of the environment.
- (3) The contaminated soil relocation agreement must ensure that prescribed standards and procedures are adhered to and that
    - (a) the quality of the soil at the location of deposit is suitable for the use intended based on prescribed numerical standards, or
    - (b) the conditions at the location of deposit are suitable for the use intended as documented by a risk assessment and environmental impact assessment conducted in accordance with the regulations and to the satisfaction of a manager.
  - (4) A manager may, as a condition of entering into a contaminated soil relocation agreement, require the person requesting the agreement to provide
    - (a) information pertaining to the source site, the receiving site and the quantity and quality of material being relocated, and any other prescribed information, and
    - (b) security in an amount and form, which may include real and personal property, subject to conditions the manager specifies.
  - (5) Nothing in this Part prevents a person from depositing soil from a contaminated site at another site if the deposit is authorized by
    - (a) a valid and subsisting permit or approval,
    - (b) an order,
    - (c) a waste management plan approved by the minister and its associated operational certificate, or
    - (d) the regulations.
  - (6) A municipality, including its employees or elected officials, does not incur any liability and must not be considered a responsible person under this Act as a result of any bylaw, permit, licence, approval or other document issued under the *Community Charter*, the *Islands Trust Act*, the *Local Government Act* or the *Vancouver Charter* that authorizes the removal or deposit of contaminated soil in the municipality.
  - (7) Despite section 25 (5), subsection (6) of this section does not apply if
    - (a) a bylaw of a municipality, or
    - (b) a permit, licence, approval or other document issued under the authority of a municipal bylaw

establishes standards or procedures for testing, excavating, storing, removing, relocating or depositing contaminated soil that conflict with this Act, the regulations, a permit, approval, order, contaminated soil relocation agreement or an approved waste management plan.
  - (8) Subsection (6) does not give immunity to any municipality from obligations the municipality may have under this Act with respect to
    - (a) a contaminated site owned by the municipality,
    - (b) contaminated soil that originated from property owned by the municipality, or

- (c) activities of the municipality, other than regulatory activities, that caused or contributed to property becoming a contaminated site.
- (9) A manager who enters into a contaminated soil relocation agreement must provide notice of the agreement to the municipality from which the soil is removed and to the municipality in which the receiving site is located.  
RS1996(Supp)-482-3; 1993-25-2; 2000-7-191, Sch.; 2003-52-521.

### **Selection of remediation options**

- 28.2** (1) A person conducting or otherwise providing for remediation must give preference to remediation alternatives that provide permanent solutions to the maximum extent practicable, taking into account the following factors:
- (a) any potential for adverse effects on human health or for pollution of the environment;
  - (b) the technical feasibility and risks associated with alternative remediation options;
  - (c) remediation costs associated with alternative remediation options and the potential economic benefits, costs and effects of the remediation options;
  - (d) other prescribed factors, if any.
- (2) When issuing an approval in principle, a certificate of compliance or a conditional certificate of compliance, a manager must consider whether permanent solutions have been given preference to the maximum extent practicable as determined in accordance with the guidelines, if any, set out in the regulations.

RS1996(Supp)-482-3; 1993-25-2.

## **Part 4: Division 5 – Delegation**

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

- 28.3** (1) The minister and a municipality may enter into an agreement enabling the municipality to exercise powers and functions described in subsection (3), except when those powers and functions apply to a contaminated site that is owned by a municipality or for which a municipality is a responsible person.
- (2) The minister and any other minister of the government may, to enhance coordination of Provincial regulatory activities, enter into an arrangement enabling the ministry of the other minister to exercise one or more powers and functions described in this Part, except when those powers and functions apply to a contaminated site that is owned by that ministry or for which that ministry is a responsible person.
- (3) If an agreement or arrangement under subsection (1) or (2) has been entered into, the director may delegate to one or more officials at a municipality or another ministry the powers and functions of a manager respecting any or all of the following:
- (a) site profiles;
  - (b) site investigations;
  - (c) remediation orders;

- (d) voluntary remediation agreements;
  - (e) public consultations or reviews;
  - (f) approvals in principle;
  - (g) certificates of compliance;
  - (h) contaminated soil relocation agreements.
- (4) The director must not delegate under subsection (3) any of the powers or functions with respect to any of the following:
- (a) determinations as to whether a site is a contaminated site;
  - (b) issuance of conditional certificates of compliance;
  - (c) determinations as to whether a responsible person is a minor contributor.
- (5) If a power or function is delegated to a municipality or another ministry under this section, it may assess the fees prescribed in the regulations with respect to that power or function.
- (6) If a power or function has been delegated to an official of a municipality or a ministry, any decision of the official is a decision which may be appealed to the appeal board under Part 7.

RS1996(Supp)-482-3; 1993-25-2.

## **Part 4: Division 6 – Ministry Authority**

### **Powers of minister**

- 28.4** (1) A manager may determine in accordance with the regulations whether
- (a) a contaminated site is an orphan site, and
  - (b) an orphan site is a high risk orphan site.
- (2) The minister may declare, in writing, that it is necessary for the protection of human health or the environment for the government to undertake remediation at
- (a) a contaminated site that is not otherwise being adequately remediated, or
  - (b) a high risk orphan site
- and if a declaration has been made, the minister may carry out remediation and recover reasonably incurred costs of remediation.
- (3) If the minister makes a declaration under subsection (2), the minister or an officer authorized in writing by the minister may order any person to
- (a) provide labour, services, material, equipment or facilities, or
  - (b) allow the use of land for the purpose of undertaking the remediation,
- even though the ordered action interferes with or abrogates property rights.
- (4) If the minister makes a declaration under subsection (2), the manager or any officer or any person delegated by an officer may enter property and carry out remediation, even though the entry or remediation interferes with or abrogates property rights.
- (5) A person affected by an order made under subsection (3) must comply with the order despite any other enactment.

- (6) If the minister certifies that money is required to undertake remediation under this section, the amount the minister certifies to be required may be paid out of the consolidated revenue fund.
- (7) A certificate signed by the minister and showing an amount of money spent by the government under this section is conclusive as to the amount spent.
- (8) If the minister makes a declaration under subsection (2) or an order under subsection (3), the registrar must make a notation of the declaration on the site registry.

RS1996(Supp)-482-3; 1993-25-2.

## Cost recovery

- 28.5** (1) The manager may attempt to recover all or a portion of the cost of remediation by
- (a) seeking to identify and recover costs from responsible persons during or after remediation,
  - (b) arranging to sell or selling the property, or
  - (c) seeking contributions from available cost sharing agreements with government bodies or other persons.
- (2) The amount shown on the certificate under section 28.4 (6) is a debt due to the government and, subject to subsection (3) of this section, recoverable
- (a) from any responsible person, by action in the Supreme Court, or
  - (b) by order of the minister directing any person who has purchased any land subject to remediation under this section to pay to the minister instead of to the vendor an amount not exceeding the amount owing to the vendor in respect of the amounts spent in remediation, and if the purchaser pays the specified amount to the minister, the purchaser is discharged from any obligation to pay that amount to the vendor.
- (3) If the Supreme Court is satisfied that the expenditure incurred by the government under this section was either
- (a) excessive, taking into consideration the requirements of the regulations governing remediation, or
  - (b) unnecessary, taking into consideration the regulations governing remediation,
- the Supreme Court may reduce or extinguish the amount of the judgment that it would otherwise have ordered to be entered against the person against whom the action has been brought.
- (4) The minister may register a lien at the land title office for the costs of remediation incurred by the government at a contaminated site that has been remediated under this section.
  - (5) A lien under subsection (4) is payable in priority over all liens, charges or mortgages of every person, whenever created or to be created, with respect to the site or proceeds of the site, except for liens for wages due to workers by their employer and liens under section 52 of the *Workers Compensation Act*.
  - (6) The exception in subsection (5) does not apply in respect of a lien for wages that is, by section 87 (5) of the *Employment Standards Act*, postponed to a mortgage or debenture.
  - (7) If the minister makes an order under subsection (2) (b), the registrar must make a notation of the order on the site registry.

RS1996(Supp)-482-3; 1993-25-2; 1995-38-140.



## Immunity

- 28.6** (1) In this section, “**protected person**” means
- (a) the government,
  - (b) the minister,
  - (c) a municipality,
  - (d) a current or former approving officer,
  - (e) a current or former employee or agent of the government,
  - (f) a current or former elected official of the government,
  - (g) a current or former “municipal public officer” as defined in section 287 (1) of the *Local Government Act*, and
  - (h) a current or former “civic public officer” as defined in section 294 (4) of the *Vancouver Charter*.
- (2) Subject to subsection (3), no action lies and no proceedings may be brought against a protected person because of
- (a) any
    - (i) act, advice, including pre-application advice, or recommendation, or
    - (ii) failure to act, failure to provide advice, including pre-application advice, or failure to make recommendations
 in relation to this Part, regulations under this Part, section 85.1 of the *Land Title Act*, section 946.1 or 946.2 of the *Local Government Act*, section 571B of the *Vancouver Charter* or section 34.1 of the *Islands Trust Act*, or
  - (b) any
    - (i) purported exercise or performance of powers, duties or functions, or
    - (ii) failure to exercise or perform any powers, duties or functions
 arising under this Part, regulations under this Part, section 85.1 of the *Land Title Act*, section 946.1 or 946.2 of the *Local Government Act*, section 571B of the *Vancouver Charter* or section 34.1 of the *Islands Trust Act*.
- (3) Subsection (2) does not provide a defence if, in relation to the subject matter of the action or proceedings,
- (a) the protected person is a responsible person, or
  - (b) the conduct of the protected person was dishonest, malicious or wilful misconduct.
- (4) Without limiting subsection (2), if a municipality, or its approving officer, employees, officers or elected officials, relies honestly and without malice or wilful misconduct on the contents of
- (a) a preliminary determination or final determination,
  - (b) a certificate of compliance or conditional certificate of compliance, or
  - (c) an approval in principle,
- those protected persons are not liable for damages arising from reliance on the determination, approval or certificate.
- (5) Without limiting subsection (2), if a municipality enters into an agreement under section 28.3 enabling the municipality to issue an approval in principle or a

certificate of compliance, the municipality, its approving officer, employees, officers and elected officials are not liable for damages if they rely on an approval in principle or a certificate of compliance where the contents of the approval in principle or the certificate of compliance have been prepared honestly and without malice or wilful misconduct.

1997-25-218; 1998-34-316; 2000-7-191, Sch.

**Government retains right to take future action**

- 28.7** A manager may exercise any of the manager’s powers or functions under this Part, even though they have been previously exercised and despite any voluntary remediation agreement, if
- (a) additional information relevant to establishing liability for remediation becomes available, including information that indicates that a responsible person does not meet the requirements of a minor contributor,
  - (b) standards under the regulations have been revised so that conditions at a site exceed or otherwise contravene the new standards,
  - (c) activities occur on a site that may change its condition or use,
  - (d) information becomes available about a site that leads to a reasonable inference that a site poses a threat to human health or the environment,
  - (e) a responsible person fails to exercise due care with respect to any contamination at the site, or
  - (f) a responsible person directly or indirectly contributes to contamination at the site after the previous action.

RS1996(Supp)-482-3; 1993-25-2.

## PART 4.1 – Remediation of Mineral Exploration Sites and Mines

**Definitions and interpretation**

**28.8 (1)** In this Part:

**"advanced exploration site"** means an area for the purpose of

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

where

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

**"core area"** means an area at an advanced exploration site or at a producing or past producing mine site and includes

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

**"dispute resolution process"** means a process to resolve disputes established in an agreement between the deputy ministers of the Ministry of Energy and Mines and the Ministry of Water, Land and Air Protection concerning the administration of mines under the *Mines Act* and the *Waste Management Act*;

**"exploration site"** means an area for the purpose of

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

where

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

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

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

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

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

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

where

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

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

- (2) This Part does not restrict the powers of a manager to issue and enforce a permit or approval for a discharge to air, land or water associated with an advanced exploration site or producing or past producing mine site.
- (3) This Part does not apply to exploration, mine development or the production of placer minerals, marl, earth, soil, peat, sand, gravel, dimension stone, rock or any natural substance that is used for a construction purpose on land.
- (4) If there is a conflict between anything in Part 4 and sections 31 and 33 that are otherwise provided for in this Part, the provisions of this Part apply.

2002-34-7.

### Exploration sites

- 28.9** (1) Despite section 26.5, the following persons who carried out mineral or coal exploration activities at an exploration site are not responsible for remediation at the site:
- (a) a previous owner or operator;
  - (b) a current owner or operator who holds a valid and subsisting bond for the exploration site under the *Mines Act*.
- (2) A manager must not issue a remediation order under section 27.1 to a current or previous owner or operator of an exploration site.
  - (3) A manager must not issue a pollution abatement order under section 31 or a pollution prevention order under section 33 to a previous owner or operator of an exploration site.
  - (4) A manager must not obtain security under this Act for remediation at an exploration site.
  - (5) Fees prescribed in relation to an exploration site under Part 4 are payable only with respect to the remediation of spills of substances.

2002-34-7.

### Advanced exploration sites

- 28.91** (1) A manager must not issue a remediation order under section 27.1 to a current or previous owner or operator of a core area within an advanced exploration site.
- (2) Despite section 26.5, a previous owner or operator of an advanced exploration site is not responsible for remediation at the site if the owner or operator
    - (a) obtains a transfer agreement that excludes the owner or operator from liability for the contaminated site, or
    - (b) obtains indemnification under the *Financial Administration Act*.

- (3) A manager must not obtain security under this Act for remediation at an advanced exploration site.
- (4) Fees prescribed in relation to an advanced exploration site under Part 4 are payable only with respect to
  - (a) the remediation of spills of substances, or
  - (b) an order issued under section 27.1 for remediation at a non-core area.

2002-34-7.

### Producing or past producing mine sites

- 28.92**(1) Section 27.1 does not apply to remediation at a core area unless
- (a) requested by the Chief Inspector of Mines under the *Mines Act*,
  - (b) agreed to in the resolution of a dispute under the dispute resolution process, or
  - (c) the land and water use at the producing or past producing mine site is formally changed from those approved in the applicable *Mines Act* permit.
- (2) Despite section 26.5, a previous owner or operator of a producing or past producing mine site is not responsible for remediation at the site if the owner or operator
- (a) obtains a transfer agreement that excludes the owner or operator from liability for the contaminated site, or
  - (b) obtains indemnification under the *Financial Administration Act*.
- (3) Subject to subsection (1), a manager must not obtain security under this Act for remediation at a producing or past producing mine site.
- (4) Fees prescribed in relation to a producing or past producing mine site under Part 4 are payable only with respect to
- (a) the remediation of spills of substances,
  - (b) a transfer agreement involving a core area,
  - (c) an order issued under section 27.1 for remediation at a non-core area, or
  - (d) a formal change in land or water use from those uses approved in the applicable *Mines Act* permit.

2002-34-7.

### Historic mine sites

- 28.93** A person is not responsible for remediation at a historic mine site if
- (a) indemnification has been provided to the person for that site under the *Financial Administration Act*, or
  - (b) the person has acquired the mineral or coal rights at the site for the purpose of undertaking mineral or coal exploration activities and the exploration activities have not exacerbated any contamination that existed at the site at the time the person acquired those mineral or coal rights.

2002-34-7.

## PART 5 – Enforcement

### Entry on property

- 29.** (1) An officer may at any reasonable time enter on works or land and investigate any process, works or activity that
- (a) produces or is capable of producing waste,
  - (b) causes or is capable of causing pollution, or
  - (c) is used for the storage, handling, treatment, destruction or disposal of waste,
- but nothing in this subsection authorizes entry into any structure used solely as a private residence, or into any residential accommodation in any other structure.
- (2) The powers of an officer on entry under subsection (1) include the power to
- (a) examine and take away records relating to
    - (i) the causing of pollution,
    - (ii) the production, treatment, storage, handling, transportation and discharge of waste, and
    - (iii) the characteristics of the waste produced, treated, stored, handled, transported or discharged, and
  - (b) carry out inspections, measurements and tests on the land or of any articles, substance or waste on it to ascertain the extent of the pollution or measure the quantity of waste produced, treated, stored, handled, transported or discharged and take away samples of the land, articles, substance or waste as the officer considers appropriate for the purpose, and section 24 of the *Offence Act* applies.
- (3) An officer so authorized may take with him or her on to the land those other persons and equipment that may be necessary.
- (4) If an officer enters on works or land under subsection (1), the officer, on request, must provide proof of identity to a person present at the works or land.
- 1982-41-21; 1987-51-8; 1989-62-6; 1990-74-8.

### Inspection of vehicles

- 30.** (1) In this section, “**officer**” includes a peace officer.
- (2) For the purpose of ensuring compliance with this Act or the regulations made under this Act or with a permit, order, waste management plan, licence or approval issued or given under this Act, an officer may, at any reasonable time,
- (a) request the opening and inspection of, or open and inspect any road vehicle or rail vehicle and any container or package carried by the vehicle that the officer believes, on reasonable and probable grounds, is being used for the handling or transportation of special waste, and
  - (b) inspect and test anything carried by the vehicle and the contents of any package or container carried by the vehicle.
- (3) If as a result of a search, inspection or test carried out under this section it appears to the officer making the search, inspection or test that the vehicle was transporting special waste in contravention of this Act or the regulations or any licence, permit, order, waste management plan or approval issued or given under this Act, the officer may require the driver to drive the motor vehicle to a place the officer specifies, and the officer may do one or more of the following:
- (a) order

- (i) the owner of any special waste found on or in the motor vehicle, or
  - (ii) the person operating the vehicle or the owner of the vehicle
- to deal with the special waste in a manner the officer considers necessary;
- (b) seize and, in accordance with the regulations, dispose of
    - (i) any special waste found on or in the motor vehicle, and
    - (ii) any package or container holding the special waste;
  - (c) detain the motor vehicle for any period that the officer considers necessary in order to exercise his or her powers under paragraphs (a) and (b).
- (4) The owner of the special waste, package or container and the owner of the vehicle that was transporting the special waste, package or container are jointly and severally liable to the government for the cost of disposing of the special waste, package or container under subsection (3) (b), and that cost is recoverable from them by the government as a simple contract debt.
- 1982-41-21.1; 1987-51-9; 1989-62-6; 1990-74-9.

### **Pollution abatement orders**

- 31.** (1) If a manager is satisfied on reasonable grounds that a substance is causing pollution, the manager may order any of the following persons to do any of the things referred to in subsection (2):
- (a) the person who had possession, charge or control of the substance at the time it escaped or was emitted, spilled, dumped, discharged, abandoned or introduced into the environment;
  - (b) the person who owns or occupies the land on which the substance is located or on which the substance was located immediately before it escaped or was emitted, spilled, dumped, discharged, abandoned or introduced into the environment;
  - (c) a person who caused or authorized the pollution.
- (2) An order under subsection (1) must be served on the person to whom it applies and may require that person, at his or her own expense, to do one or more of the following:
- (a) provide to the manager information that the manager requests relating to the pollution;
  - (b) undertake investigations, tests, surveys and any other action the manager considers necessary to determine the extent and effects of the pollution and to report the results to the manager;
  - (c) acquire, construct or carry out any works or measures that are reasonably necessary to control, abate or stop the pollution;
  - (d) adjust, repair or alter any works to the extent reasonably necessary to control, abate or stop the pollution;
  - (e) abate the pollution;
  - (f) carry out remediation in accordance with any criteria established by the director and any additional requirements specified by the manager.
- (3) An order under subsection (1) may authorize any persons designated by the manager to enter land for the purpose of controlling, abating or stopping the pollution or to carry out remediation.
- (4) A manager may amend or cancel an order made under this section.

- (5) The powers given by this section may be exercised even though the introduction of the substance into the environment is not prohibited under section 3 and despite
  - (a) the terms of any permit or approval, and
  - (b) the abandonment of any permit or approval, under section 16.
- (6) For the purposes of this section, “**person**” does not include a municipality.

1982-41-22; 1990-74-11.

### **Powers of minister respecting municipal pollution**

- 32.** If the minister considers that a municipality is causing pollution, the minister may, with respect to the municipality, exercise the powers that a manager may exercise under section 31 in relation to other persons.

1982-41-22.1; 1992-25-9.

### **Pollution prevention order**

- 33.** (1) In this section, “**person**” does not include a municipality.
- (2) If a manager is satisfied on reasonable grounds that an activity or operation has been or is being performed by a person in a manner that is likely to release a substance that will cause pollution of the environment, the manager may order a person referred to in subsection (3), at that person’s expense, to do any of the following:
- (a) provide to the manager information the manager requests relating to the activity, operation or substance;
  - (b) undertake investigations, tests, surveys or any other action the manager considers necessary to prevent the pollution and report the results to the manager;
  - (c) acquire, construct or carry out any works or measures that are reasonably necessary to prevent the pollution;
  - (d) adjust, repair or alter any works to the extent reasonably necessary to prevent the pollution.
- (3) An order made under subsection (2) may be served on one or more of the following persons:
- (a) a person who previously had or now has possession, charge or control of the substance;
  - (b) a person who previously did anything, or who is now doing anything, which may cause the release of the substance;
  - (c) a person who previously owned or occupied, or now owns or occupies, the land on which the substance is located.
- (4) An order made under subsection (2) may authorize a person or persons designated by the manager to enter land for the purpose of preventing the pollution.
- (5) The powers of a manager under this section may not be exercised in relation to any part of an activity or operation that is in compliance with the regulations or a permit, approval, order, waste management plan or operational certificate or an authorization made under the regulations.

1982-41-22.2; 1993-13-15.



### **Minister's power respecting municipal pollution**

- 34.** If the minister is satisfied on reasonable grounds that an activity or operation has been or is being performed by a municipality in a manner that is likely to release a substance that will cause pollution of the environment, the minister may, with respect to the municipality, exercise the powers that a manager may exercise under section 33 (2) in relation to other persons.

1982-41-22.3; 1993-13-15.

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

- 35.** (1) A municipality may, on giving notice to the director, administer regulations made under this Act respecting tanks used to store petroleum products or other substances.
- (2) No action or other proceeding for damages lies or may be instituted against a municipality or a member of its council, board or other governing body or an officer or employee of the municipality for anything done or omitted to be done in good faith and without negligence in the exercise or intended exercise of any authority conferred on it by subsection (1).

1982-41-22.4; 1993-13-15; 2003-52-522.

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

- 36.** (1) Subject to this section, the minister or a manager may, by notice served on the holder of a permit or approval,
- (a) suspend the permit or approval for any period, or
  - (b) cancel the permit or approval.
- (2) A notice served under subsection (1) must state the time at which the suspension or cancellation is to take effect.
- (3) The authority conferred by subsection (1) may be exercised by the minister in any of the following circumstances:
- (a) a holder of a permit
    - (i) fails to complete construction of works specified in the permit within the time specified in the permit or, if no time is specified in the permit, within 3 years after issuance of the permit, or
    - (ii) does not exercise any rights under the permit for a period of 3 years;
  - (b) a holder of a permit or approval fails to pay money owing to the government under the permit or approval;
  - (c) a holder of a permit or approval fails to comply with the terms of the permit or approval;
  - (d) a holder of a permit or approval fails to comply with an order issued under this Act and related to the subject matter of the permit or approval;
  - (e) a holder of a permit or approval or the holder's agent has made or makes a material misstatement or misrepresentation in the application for the permit or approval or in the information required under this Act or the regulations with respect to the permit or approval;
  - (f) a holder of a permit or approval fails to comply with any other requirements of this Act or the regulations;
  - (g)

- a permit or approval conflicts with or is replaced by a waste management plan approved by the minister;
- (h) a permit or approval is replaced by a regulation;
- (i) a permit or approval is not, in the opinion of the minister, in the public interest.
- (4) The authority conferred by subsection (1) may be exercised by a manager in any of the circumstances referred to in subsection (3) (a), (b), (g) and (h).
- (5) In addition to the authority conferred by subsection (1), a manager may, without notice to the holder,
  - (a) suspend a permit or approval for the length of time requested if the holder requests that the permit or approval be suspended, or
  - (b) cancel a permit or approval if the holder of the permit or approval
    - (i) dies,
    - (ii) is a corporation that is liquidated, dissolved or otherwise wound up or is an extraprovincial company within the meaning of the *Business Corporations Act* that has had its registration cancelled under Part 11 or 12 of that Act,
    - (iii) is a partnership that is dissolved,
    - (iv) requests that the permit or approval be cancelled, or
    - (v) has given notice of abandonment under section 16.
- (6) For certainty, a permit or approval that is suspended or cancelled is not a valid and subsisting permit or approval.

1997-18-19; 2003-70-304.

### Restraining orders

- 37. (1) If a person by carrying on any activity or operation contravenes section 3, 8 or 9, or a suspension or cancellation made under section 36, or an order made under Part 4, the activity or operation may be restrained in a proceeding brought by the minister in the Supreme Court.
- (2) The making of an order under subsection (1) does not prevent the imposition of a penalty in respect of an offence under section 3, 8 or 9, or a suspension or cancellation made under section 36, or an order made under Part 4.

RS1996(Supp)-482-4; 1993-25-3.

## PART 6 – Clean Air Provisions

### Definitions

- 38. In sections 39 to 41:

"**emission control system**" means a system or device to prevent or reduce the emission of an air contaminant;

"**engine**" includes a motor vehicle engine and a propulsion system;

"**fuel**" means any fuel used in an engine;

"**jurisdiction**" includes a foreign jurisdiction;

**"manufacturer"** , in relation to a product, means a manufacturer who produces such a product that is offered for sale in British Columbia;

**"motor vehicle"** means a motor vehicle as defined in the *Motor Vehicle Act*, and includes a motor assisted cycle as that term is defined in that Act;

**"sell"** means to sell, lease or otherwise dispose of a thing or to offer to do any of those things.

1982-41-24.1; 1994-33-1; 1995-53-45; 2000-16-8 (B.C.Reg. 150/2002).

### Control of air contaminants

- 39.** (1) A person must not sell, display for sale or deliver over to a purchaser an engine or new motor vehicle that is required by the regulations
- (a) to have an emission control system installed or incorporated, or
  - (b) to meet specified design requirements,
- unless the engine or motor vehicle complies with the applicable regulations under section 41.
- (2) A person must not sell, deliver over or provide to a purchaser a fuel of a class or type required by the regulations to meet prescribed standards, specifications and availability, unless the fuel complies with those regulations.

1982-41-24.2; 1994-33-1; 1995-53-46.

### Fuel emission regulations

- 40.** (1) The Lieutenant Governor in Council may make regulations for the purpose of preventing and reducing emissions from fuels and their combustion including, without limiting that power, regulations for one or more of the following:
- (a) prescribing standards for and specifications of fuels, providing for their testing and certification and specifying the quantities for and areas in British Columbia where fuels must be made available;
  - (b) prescribing fees and charges to be paid in respect of any matter for which the ministry provides a service or performs a duty in relation to the testing and certification of fuels for compliance with the regulations, and prescribing by whom the fees and charges are to be paid;
  - (c) requiring manufacturers and persons who test, certify or sell fuels to record and report specified information at the times and in the manner provided in the regulations;
  - (d) specifying the areas in British Columbia to which the regulations apply and specifying the date on which the regulations become effective in those areas;
  - (e) classifying fuels for the purpose of a regulation and exempting a class of fuel from a regulation.
- (2) Regulations under this section may be different for different classes of fuels.

1982-41-24.3; 1994-33-1; 1995-53-47.

### Motor vehicle and engine emission regulations

- 41.** (1) The Lieutenant Governor in Council may make regulations for the purpose of preventing and reducing emissions from new motor vehicles and from engines including, without limiting that power, regulations for one or more of the following:

- (a) requiring motor vehicles or engines to have installed on or incorporated in them one or more emission control systems;
- (b) requiring motor vehicles, engines or emission control systems to meet prescribed standards, specifications and design requirements;
- (c) prescribing standards, specifications and design requirements for the purposes of paragraph (b);
- (d) providing for the testing and certification of motor vehicles, engines and emission control systems for compliance with prescribed standards, specifications and design requirements;
- (e) requiring motor vehicles or engines to meet design requirements that are certified in a specified jurisdiction to conform to the emission control standards of that jurisdiction;
- (f) prohibiting the sale of a new motor vehicle or engine unless it meets prescribed requirements for labelling as to
  - (i) the emission control performance of the motor vehicle or engine,
  - (ii) compliance with requirements under this Act and the regulations, and
  - (iii) maintenance specifications in relation to emission control;
- (g) prescribing the form, content and manner of placement for labels required under paragraph (f);
- (h) prohibiting, if a manufacturer produces within the same motor vehicle product line, or within a class within that product line, motor vehicles with different designs certified in a specified jurisdiction to conform to different emission control standards, the sale of motor vehicles within that product line or class that meet the less stringent emission control standards;
- (i) requiring manufacturers of new motor vehicles or engines to deliver and have available for sale in British Columbia a model of motor vehicle or engine that meets specified emission control standards;
- (j) establishing a scheme under which, for each manufacturer of new motor vehicles, the motor vehicles that are produced and delivered for sale in British Columbia during a specified time period must be a mix of motor vehicles determined in accordance with a specified formula;
- (k) requiring each manufacturer of new motor vehicles to
  - (i) develop, submit and have approved by the minister a plan for reducing emissions from motor vehicles in British Columbia that, in the opinion of the minister, meets the prescribed requirements for such plans, and
  - (ii) implement and comply with the plan approved under subparagraph (i);
- (l) prescribing requirements for the contents of, and emission reduction goals that must be met by, a plan under paragraph (k);
- (m) prohibiting the sale of a class of new motor vehicles or a class of engines produced by a manufacturer if, in relation to the manufacturer, requirements established under paragraph (i), (j) or (k) are not met;
- (n) prohibiting the sale of a new motor vehicle or engine unless it is sold with an emission control warranty that is provided by the manufacturer and that meets the content requirements specified in the regulation;
- (o) prescribing fees and charges to be paid in respect of any matter for which the ministry provides a service or performs a duty in relation to the testing

- and certification of motor vehicles or engines for compliance with the regulations, and prescribing by whom the fees and charges are to be paid;
- (p) requiring manufacturers and persons who test, certify or sell motor vehicles or engines to record and report specified information at the times and in the manner provided in the regulation;
  - (q) defining words and expressions used in this section that are not otherwise defined by this Act;
  - (r) classifying motor vehicles, engines, emission control systems and manufacturers for the purpose of a regulation and exempting such a class from a regulation.
- (2) Regulations under this section may be different for different classes of motor vehicles, engines, emission control systems or manufacturers.

1982-41-24.31; 1995-53-47.

### **Solid fuel burning domestic appliance regulations**

- 42.** The Lieutenant Governor in Council may make regulations for the purposes of preventing or reducing pollution from new solid fuel burning domestic appliances including, without limitation, regulations for any of the following purposes:
- (a) respecting the availability, sale, conditions of sale and lease of solid fuel burning domestic appliances for the purposes of preventing or reducing pollution;
  - (b) prescribing emission limits for solid fuel burning domestic appliances or classes of solid fuel burning domestic appliances for the purposes of preventing or reducing pollution;
  - (c) prescribing standards for and specifications of solid fuels burned in solid fuel burning domestic appliances for the purposes of preventing or reducing pollution;
  - (d) respecting the testing and certification of solid fuel burning domestic appliances;
  - (e) designating persons or organizations to test and certify solid fuel burning domestic appliances;
  - (f) prescribing the form and content of labels that may be placed on a solid fuel burning domestic appliance;
  - (g) providing for the manner of placing a prescribed label on a solid fuel burning domestic appliance that conforms to the prescribed standards of operation;
  - (h) prescribing fees and charges to be paid in respect of any matter for which the ministry provides a service or performs a duty in relation to solid fuel burning domestic appliances, and prescribing by whom the fees and charges are to be paid;
  - (i) exempting any solid fuel burning domestic appliance or class of solid fuel burning domestic appliance from any provision of this Act or the regulations;
  - (j) providing for the recording and reporting of information by persons who manufacture, test, certify, offer for sale, sell, lease or otherwise dispose of solid fuel burning domestic appliances, including the frequency, time and manner for reporting.

1982-41-24.4; 1994-33-1.

## **PART 7 – Appeals**

### Definition of “decision”

- 43.** For the purpose of this Part, “**decision**” means
- (a) the making of an order,
  - (b) the imposition of a requirement,
  - (c) an exercise of a power,
  - (d) the issue, amendment, renewal, suspension, refusal or cancellation of a permit, approval or operational certificate, and
  - (e) the inclusion in any order, permit, approval or operational certificate of any requirement or condition.
- 1997-18-20.

### Appeals to Environmental Appeal Board

- 44.** (1) Subject to this Part, a person aggrieved by a decision of a manager, director or district director may appeal the decision to the appeal board.
- (2) Nothing in this section is to be construed as applying in respect of a decision made by the minister under this Act or by the Lieutenant Governor in Council.
- 1997-18-20.

### Time limit for commencing appeal

- 45.** The time limit for commencing an appeal is 30 days after notice of the decision being appealed is given
- (a) to the person subject to the decision, or
  - (b) in accordance with the regulations.
- 1997-18-20.

### Procedure on appeals

- 46.** (1) An appeal under this Part
- (a) must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the *Environment Management Act*, and
  - (b) subject to this Act, must be conducted in accordance with the *Environment Management Act* and the regulations under that Act.
- (2) The appeal board may conduct an appeal by way of a new hearing.
- 1997-18-20.

### Powers of appeal board in deciding appeal

- 47.** On an appeal, the appeal board may
- (a) send the matter back to the person who made the decision, with directions,
  - (b) confirm, reverse or vary the decision being appealed, or
  - (c)

make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.  
1997-18-20.

### **Appeal does not operate as stay**

- 48.** An appeal taken under this Act does not operate as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.  
1997-18-20.

## **PART 8 – Miscellaneous**

### **Confidentiality**

- 49.** (1) If, under this Act, information relating to any trade secret or any other process or technique that the user keeps confidential is disclosed to or obtained by any person engaged in the administration of this Act, a person who has access to the information so disclosed or obtained must not communicate it to any other person except
- (a) as may be required in connection with the administration of this Act or the regulations or any proceeding under this Act or the regulations,
  - (b) to his or her counsel, or
  - (c) with the consent of the person rightfully possessing or using the trade secret, process or technique to which the information relates.
- (2) Except in a proceeding under this Act or the regulations, a person is not required to give testimony, other than testimony in respect of the deposit, addition, emission or discharge of a contaminant into the natural environment, in any civil suit or proceeding with regard to information obtained by or in the course of any investigation, survey, examination, test or inquiry under this Act or the regulations.  
1982-41-31.

### **Waste ownership**

- 50.** (1) The ownership of waste that is accepted at a waste management facility by the owner of the facility is transferred to the owner of the facility on acceptance.
- (2) If, at a waste management facility, waste is stored or introduced into the environment without having been accepted by the owner of the facility, the ownership of the waste is deemed to be transferred to the owner of the facility immediately before the waste was stored or introduced into the environment.
- (3) Subsections (1) and (2) apply only in respect of a waste management facility that is authorized in accordance with this Act and the regulations.
- (4) Subsection (1) applies only in the absence of a contract to the contrary.
- (5) Subsections (1) to (4) do not relieve any person from liability except liability as owner of waste that is delivered to and accepted by the owner of a waste management facility in accordance with law.
- (6) If the owner of a waste management facility is not the owner of the land on which the facility is located, subsections (1) and (2) do not prevent the ownership of waste that is accepted or deposited at the site from being transferred to the owner

of the land.

1982-41-31.1; 1987-51-12.

### Service of notice

- 51.** (1) A notice of a decision or order under this Act may be served on a person by registered mail sent to the last known address of the person.
- (2) Any notice under this Act may be given by registered mail sent to the last known address of the person.
- (3) If a notice under this Act is sent by registered mail to the last known address of the person, the notice is conclusively deemed to be served on the person to whom it is addressed on
- (a) the 14th day after the notice was deposited with Canada Post, or
- (b) the date on which the notice was actually received by the person, whether by mail or otherwise,
- whichever is earlier.

1997-18-21.

### Charges, fees and costs to be paid to the government

- 52.** A person who is
- (a) a holder of a permit or approval,
- (b) the holder of a licence for the transportation of special wastes, or
- (c) the subject of an order under this Act,
- and a municipality in respect of which a waste management plan has been approved under Part 3, must pay to the government, at the time and in accordance with the regulations, the fees and charges that are established by the regulations.

1982-41-33.

### Waste Management Trust Fund

- 53.** (1) The minister may establish a fund to be known as the Waste Management Trust Fund.
- (2) The Waste Management Trust Fund is not a special fund within the meaning of the *Financial Administration Act*, but money of the fund is trust funds within the meaning of that Act.
- (3) The object of the Waste Management Trust Fund is to provide money for the purposes of
- (a) environmental clean up necessitated by inadequate closure of waste management facilities, and
- (b) long term care and maintenance of waste management facilities.
- (4) There must be paid into the Waste Management Trust Fund money collected or received under the regulations for the purposes of the fund.
- (5) Money may be paid out of the Waste Management Trust Fund on the requisition of the minister in a manner the minister considers appropriate for the purposes of the fund.
- (6) If money of the Waste Management Trust Fund is spent for the purpose referred to in subsection (3) (a), a certificate signed by the minister and showing the



amount spent is conclusive as to the amount spent.

- (7) An amount shown by a certificate referred to in subsection (6) is a debt due to the government recoverable, subject to subsection (8), by action in the Supreme Court from the person who was the owner of the waste management facility immediately before its closure.
- (8) If the Supreme Court is satisfied that the expenditure incurred by the government under this section was either
  - (a) excessive, taking into consideration the reasons for the clean up and the results achieved by the expenditure, or
  - (b) unnecessary, taking into consideration the unlikelihood of significant material damage to any person had the government not acted under this section,
 the court may reduce or extinguish the amount of the judgment that it would otherwise have ordered be entered against the person against whom the action has been brought.
- (9) Money recovered under subsection (7) must be paid into the Waste Management Trust Fund and may be spent for the purposes of that fund.

1982-41-33.1; 1987-51-13.

### Offences and penalties

54. (1) A person who contravenes section 9.1 or 9.2 commits an offence and is liable to a penalty not exceeding \$2 000.
- (2) A person who contravenes section 7, 8 (3), 9 (1) or (2), 12 (5), 39 or 49 (1) or a regulation under section 41 (1) (i), (j) or (k) commits an offence and is liable to a penalty not exceeding \$200 000.
- (3) A person who contravenes section 3 (2), (3) or (4), 4 (1) or (2), 5 or 8 (1) or (4) commits an offence and is liable to a penalty not exceeding \$1 000 000.
- (4) A person who inserts in a manifest required by section 9 information that he or she knows to be untrue or misleading information commits an offence and is liable to a penalty not exceeding \$200 000.
- (5) A person who obstructs or resists an officer who is exercising duties under section 30 or fails to comply with a requirement of an officer under that section commits an offence and is liable to a penalty not exceeding \$200 000.
- (6) A person who, holding a permit or approval issued to the person under this Act to introduce waste into the environment, introduces waste into the environment without having complied with the requirements of the permit or approval commits an offence and is liable to a penalty not exceeding \$1 000 000.
- (7) A person who, holding a permit or approval issued under this Act to introduce waste into the environment, fails to comply with the requirements of the permit or approval commits an offence and is liable to a penalty not exceeding \$300 000.
- (8) A person who, holding a permit or approval issued to the person under this Act to store a special waste, stores the special waste without having complied with the requirements of the permit or approval commits an offence and is liable to a penalty not exceeding \$1 000 000.
- (9) A person who contravenes section 9 (3) commits an offence and is liable,
  - (a) if the contravention arises from a failure to comply with the requirement in section 9 (3) (a) or (b), to a penalty not exceeding \$200 000, or
  - (b) if the contravention arises from a failure to comply with the requirement in section 9 (3) (c), to a penalty not exceeding \$300 000.

- (10) A person who contravenes an order or requirement, other than an order under section 8 (3), that is given, made or imposed under this Act by a sewage control manager, a manager, a district director, the director, the minister or the appeal board commits an offence and is liable to a penalty not exceeding \$300 000, but an order or requirement is not contravened unless it
  - (a) was given in writing, and
  - (b) specified a reasonable period of time for compliance and that period has expired.
- (11) A municipality that
  - (a) fails to submit to the minister a waste management plan as required by section 18, or
  - (b) contravenes an approved waste management plan
 commits an offence and is liable to a fine not exceeding \$300 000.
- (12) A person who contravenes a requirement of the regulations respecting special wastes commits an offence and is liable to a fine not exceeding \$1 000 000.
- (13) A person who contravenes a requirement of a regulation that specifies the quantity or characteristics of waste that may be introduced into the environment commits an offence and is liable to a penalty not exceeding \$1 000 000.
- (13.1) A person who contravenes an order under section 56.1 or 56.2 commits an offence and is liable to the penalties provided for the offence in relation to which the order was made.
- (14) If a corporation commits an offence under this Act, an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the offence commits the offence even though the corporation is convicted.
- (15) In a prosecution for an offence under or arising out of a contravention of section 8 (1) or 9 (1) or (3), or of a regulation made with respect to special wastes, 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 his or her knowledge or consent or that he or she exercised all due diligence to prevent its commission.
- (16) Sections 4 and 5 of the *Offence Act* do not apply in respect of
  - (a) this Act, or
  - (b) the regulations.
- (17) If an offence under this section continues for more than one day, separate fines, each not exceeding the maximum fine for that offence, may be imposed for each day the offence continues.
- (18) *Repealed.* [1997-21-14]
- (19) A person who is liable to a monetary penalty specified in this section is also liable to imprisonment for not more than 6 months.
- (20) A person who
  - (a) fails to submit a site profile under section 26.1 (1), (2), (3), (4), (7), (8) or (9),
  - (b) fails to undertake a preliminary site investigation or a detailed site investigation and to prepare a report of the investigation under section 26.2 (1) or (2),
  - (c) fails to comply with a remediation order under section 27.1,

- (d) diminishes or reduces assets the person knows or reasonably should know will be used to comply with the terms and conditions of an order under section 27.1 (7),
- (e) fails to seek an opinion from an allocation panel if required to do so under section 27.2 (4),
- (f) fails to comply with the terms and conditions required by a manager in a voluntary remediation agreement under section 27.4 (1),
- (g) fails to notify a manager of independent remediation under section 28 (2),
- (h) fails to comply with requirements of a manager regarding independent remediation under section 28,
- (i) relocates contaminated soil without a contaminated soil relocation agreement if required under section 28.1 (1), or
- (j) fails to comply with a provision of the regulations under section 58

commits an offence and is liable to a penalty not exceeding \$200 000.

- (21) A proceeding, conviction or penalty for an offence under this Act or the regulations does not relieve a person from any other liability.

1982-41-34; 1985-52-97; 1987-51-14; 1989-62-9; 1990-74-12; 1992-25-13; 1994-33-2; 1995-53-49; RS1996(Supp)-482-5; 1993-25-4, 1997-21-14.

### Time limit for bringing charges

- 54.1** (1) The time limit for laying an information respecting an offence under this Act or the regulations is 2 years after the facts on which the information is based first came to the knowledge of the minister.
- (2) A document purporting to have been issued by the minister, certifying the day on which he or she became aware of the facts on which an information is based, is admissible without proof of the signature or official character of the individual appearing to have signed the document and, in the absence of evidence to the contrary, is proof of the matter certified.

1997-21-15.

### Additional fine

- 55.** (1) If a person is convicted of an offence under this Act and the court is satisfied that, as a result of the commission of the offence, the person acquired any monetary benefits or that monetary benefits accrued to the person, the court may order the person to pay a fine equal to the court's estimation of the amount of those monetary benefits.
- (2) A fine under subsection (1) is in addition to and not in place of a fine under section 54 or 56.

1982-41-34.1; 1989-62-10.

### Intentional damage

- 56.** A person who, in contravention of this Act,
  - (a) intentionally causes damage to or loss of the use of the environment, or
  - (b) shows wanton or reckless disregard for the lives or safety of other persons causing a risk of death or harm to other persons

commits an offence and is liable to a fine of not more than \$3 000 000 or to imprisonment for not more than 3 years, or to both.

1982-41-34.2; 1989-62-10.

## Creative sentencing

- 56.1** (1) If a person is convicted of an offence under this Act, in addition to any punishment imposed, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing one or more of the following prohibitions, directions or requirements:
- (a) prohibiting the person from doing any act or engaging in any activity that may, in the opinion of the court, result in the continuation or repetition of the offence;
  - (b) directing the person to take any action the court considers appropriate to remedy or avoid any harm to the environment that resulted or may result from the commission of the offence;
  - (c) directing the person to pay the government an amount of money as compensation, in whole or in part, for the cost of any remedial or preventive action taken by or caused to be taken on behalf of the government as a result of the commission of the offence;
  - (d) directing the person to perform community service;
  - (e) directing the person to pay the Habitat Conservation Trust Fund an amount of money the court considers appropriate;
  - (f) directing the person to post a bond or pay into court an amount of money the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement under this section;
  - (g) directing the person to submit to the minister, on application by the minister within 3 years after the date of the conviction, any information respecting the activities of the person that the court considers appropriate in the circumstances;
  - (h) directing the person to publish, in any manner the court considers appropriate, the facts relating to the commission of the offence;
  - (i) requiring the person to comply with any other conditions that the court considers appropriate for securing the person's good conduct and for preventing the person from repeating the offence or committing other offences under this Act.
- (2) If a person fails to comply with an order referred to in subsection (1) (h) directing the person to publish the facts relating to the commission of an offence, the minister may publish those facts and recover the costs of publication from the person.
- (3) If
- (a) an order under this section or section 56.2 directs a person to pay an amount of money as compensation or for any other purpose, or
  - (b) the minister incurs publication costs under subsection (2) of this section,
- the amount and any interest payable on that amount constitute a debt due to the government and may be recovered as such in any court of competent jurisdiction.

1997-21-16; 2002-7-21.

## Variation of section 56.1 orders

- 56.2** (1) An application for variation of an order under section 56.1 may be made to the court that made the order by
- (a) the Attorney General, or
  - (b) the person against whom the order under section 56.1 was made.
- (2) Before hearing an application under subsection (1), the court may order the applicant to give notice of the application in accordance with the directions of the court.
- (3) On an application under subsection (1), if the court considers variation appropriate because of a change in circumstances, the court may make an order doing one or more of the following:
- (a) changing the original order or any conditions specified in it;
  - (b) relieving the person referred to in subsection (1) (b) absolutely or partially from compliance with all or part of the original order;
  - (c) reducing the period for which the original order is to remain in effect;
  - (d) extending the period for which the original order is to remain in effect, subject to the limit that this extension must not be longer than one year.
- (4) If an application under subsection (1) has been heard by a court, no other application may be made in respect of the order under section 56.1 except with leave of the court.

1997-21-16; 1999-24-33.

### Power to make regulations

- 57.** (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.
- (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:
- (a) establishing an area of British Columbia as a waste management region, abolishing and varying boundaries and names of waste management regions and consolidating waste management regions;
  - (b) respecting the development, content, amendment, approval and review of waste management plans and operational certificates;
  - (c) establishing municipal solid waste reduction targets;
  - (d) prescribing the form and content of any notice;
  - (e) designating wastes as special wastes and setting conditions under which a waste is a special waste;
  - (f) designating substances to be biomedical wastes and setting conditions under which a substance is a biomedical waste;
  - (g) prescribing the duties of hospitals, laboratories, clinics and other persons or agencies to manage, control, treat and dispose of biomedical waste or establish biomedical waste facilities;
  - (h) requiring applicants to pay fees on the making of the application, and prescribing the amount of those fees;
  - (i) requiring persons to pay fees with respect to services provided by the government relating to the assessment and remediation of contaminated sites under Part 4;
  - (j) governing certificates of compliance under section 27;
  - (k)

- governing procedures and criteria for assessment and remediation of contaminated sites;
- (l) requiring persons to whom a permit, approval, operational certificate, exemption or other licence or privilege is issued under this Act or the regulations to pay to the government charges in respect of the permit, approval, operational certificate, exemption, licence or privilege, establishing the amount of those charges or the method of their determination and requiring that they be paid yearly or otherwise;
  - (m) respecting the procedure for the making of applications, and establishing the information to be submitted on the making of applications;
  - (n) requiring consultations among ministries before an application is disposed of, setting time limits for those consultations and authorizing managers to extend those time limits;
  - (o) requiring managers to notify applicants of the disposition of their applications, and requiring managers to publish notice of their decisions;
  - (p) respecting the control and disposal of litter including the sale of beverage containers or a class of beverage container and the return and reuse of beverage containers and packaging materials or a class of beverage container or packaging material;
  - (q) requiring prescribed classes of persons to pay refunds in the amounts established for beverage containers or classes of beverage containers returned to them;
  - (r) requiring persons in prescribed circumstances to accept empty beverage containers or classes of beverage containers and handle, store and transport beverage containers or classes of beverage containers received by them in the manner required;
  - (s) respecting the size, shape, features and composition of beverage containers and their packaging, labelling and use;
  - (t) prescribing the form and content of manifests, and the procedures for completing and filing manifests;
  - (u) respecting the licensing of persons to transport special waste, biomedical waste or other class of waste and prohibiting the transportation of special waste, biomedical waste or other class of waste without a licence;
  - (v) for the issue, suspension, cancellation and amendment of licences for the transportation of special waste, biomedical waste or other class of waste;
  - (w) respecting the rebate of fees or charges under this Act or the regulations to foster expenditures in or contributions towards projects or purposes that the Lieutenant Governor in Council considers to be in the interest of the environment.
- (3) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:
- (a) prescribing a material as a recyclable material and for this purpose may set conditions and circumstances when a prescribed material is a recyclable material;
  - (b) respecting the transportation, labelling, handling, treatment, recycling, storage, disposal and destruction of recyclable materials or wastes or a class of wastes, and the selling, giving or otherwise transferring the ownership or possession of recyclable materials or wastes or a class of wastes;
  - (c) respecting the siting, planning, construction and operation of facilities for the treatment, recycling, storage, disposal and destruction of recyclable

- materials or wastes;
- (c.1) prescribing the basis for setting fees for the purposes of section 19.1 (2) (b) (iii);
- (d) regulating and restricting any activity, operation or industry that creates or produces a special waste and requiring persons who operate any industry or process that produces special waste to register with the ministry;
- (e) empowering the minister or the director to substitute, in any individual case where the minister or director considers it necessary to protect the public or the environment, another requirement for a requirement contained in a regulation respecting special waste;
- (f) requiring that, as a condition of permission under this Act to operate a waste management facility, the owner make adequate arrangements to maintain the facility after it has been closed and, if required by the government, to transfer to the government ownership of the facility after its closure;
- (g) requiring that, as a condition of permission under this Act to operate a waste management facility, the owner of the facility make contributions to the Waste Management Trust Fund, the amount of such contributions to be prescribed or established by agreement or both;
- (h) designating a substance as a waste and for this purpose may set conditions and circumstances when a substance designated will be a waste;
- (i) respecting the quantity of wastes and the characteristics and components of wastes discharged into sewage facilities owned by a municipality;
- (j) prohibiting, regulating or restricting the use, supply, storage, transportation, handling, treatment or disposal of any substance specified in the regulations, whether natural or artificial and whether in a solid or liquid or other form, if the Lieutenant Governor in Council considers it appropriate to do so for the purpose of preventing the substance from causing damage to persons, animals or plants or pollution of air, water or land;
- (k) exempting any operation, activity, industry, waste or works or any class of persons, operation, activity, industry, waste or works from any or all of the provisions of this Act or the regulations in circumstances and on conditions that the Lieutenant Governor in Council prescribes;
- (l) prescribing for the purpose of section 3 (3) activities, operations and classes of persons;
- (m) prescribing conditions that must be met and controls that must be provided for the burning of material derived from land clearing, land grading or tilling;
- (n) respecting how notice of a decision may be given for the purposes of section 45 (b);
- (o) prescribing for a contravention of the regulations a penalty not exceeding \$200 000;
- (p) respecting requirements and procedures for the reporting of matters referred to in section 12 (5);
- (p.1) in relation to section 12.1,
  - (i) respecting the determination of reasonable costs of spill response actions under that section, and
  - (ii) respecting the apportionment of reasonable costs of spill response actions among persons who may be liable to pay those costs;

- (q) respecting the keeping and inspection of records;
  - (r) requiring, on request of the minister, that a person or a class of persons involved in the manufacture, distribution, sale, transportation or importation of empty or filled beverage containers of a prescribed type, or a person or association on behalf of that class of persons, supply information respecting the use, reuse and wastage of a prescribed type of beverage container;
  - (s) respecting the design, siting and operation of any works, activities or operations that produce waste;
  - (t) respecting the installation of septic tanks, the siting and performance standards to be met if sewage disposal systems using septic tanks are installed, and respecting the use and operation of systems using septic tanks;
  - (u) requiring a municipality designated by the minister to administer regulations under this section relating to special wastes as they apply to effluent discharged by an industry connected to the municipal sewer system;
  - (v) authorizing a municipality designated under paragraph (u) to collect fees from industries for the purpose of administering the regulations relating to special wastes and respecting the amount of those fees;
  - (w) respecting the registration, siting, installation, testing, use and removal of tanks used to store petroleum products, or used to store any other prescribed substance, and prescribing performance and operating standards for those tanks;
  - (x) respecting the certification or licensing of persons who install the tanks described under paragraph (w);
  - (y) requiring persons to pay fees with respect to services provided by the government or a municipality with respect to the tanks described under paragraph (w), and prescribing the amount of those fees;
  - (z) authorizing a municipality to collect and retain the fees prescribed under paragraph (y).
- (4) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:
- (a) respecting the minimum content of material, derived from recyclable material, in types or classes of packaging and products sold in British Columbia;
  - (b) prescribing packaging, product containers or products or classes of products for which a charge, including a deposit, handling fee, levy or core charge, must be paid or for which a refund must be given, and prescribing the amount of the charge or refund and the circumstances in which the charge or refund applies;
  - (c) requiring the use of standardized definitions, terms, logos, symbols and other representations on packaging, and prescribing those definitions, terms, logos, symbols and other representations;
  - (d) prohibiting or restricting the use of packaging or classes of packaging or product containers or classes of product containers;
  - (e) respecting the content, shape, weight, nature and volume of packaging used per unit of product, and requiring the use of standardized packaging;
  - (f) requiring prescribed industrial, commercial and institutional operations or classes of operations to develop and implement a waste reduction and



- prevention plan for packaging, product containers or any other material or substance, and prescribing the contents of the plan;
  - (g) requiring prescribed industrial, commercial and institutional operations or classes of operations to develop and maintain an infrastructure for the reuse or recycling of packaging, product containers or any other material or substance;
  - (h) requiring prescribed industrial, commercial and institutional operations or classes of operations to conduct periodic packaging or other waste audits, and prescribing the terms and conditions of the audits including to whom reports should be made and other reporting requirements;
  - (i) requiring prescribed manufacturers, distributors or users of packaging, product containers or any other materials or substances to conduct environmental life cycle profiles using a model approved by a manager.
- (5) A regulation made under subsection (2), (3) or (4) may delegate to the director, an officer or a manager those powers and functions that the Lieutenant Governor in Council considers desirable.
- (6) For the purposes of subsections (2) and (3), “**applicant**” means a person applying for any permit, approval or other licence, exemption or privilege under the Act or regulations, or for any amendment or variation of or exemption from them.
- (7) The regulations may establish different charges, different bases for rebate, and different administrative costs for different persons, permits, approvals or orders or different classes of persons, permits, approvals or orders.
- (7.1) If authorized by a regulation under subsection (2) (w), the minister may pay money out of the Sustainable Environment Fund continued under the *Sustainable Environment Fund Act* for the issuance of any rebate authorized under the regulation.
- (8) If a regulation under this Act may establish a code, standard or rule, the regulation may adopt by reference, in whole or in part and with any changes the Lieutenant Governor in Council considers appropriate, a code, standard or rule
- (a) published by a national or international standards association, or
  - (b) enacted as or under a law of another jurisdiction, including a foreign jurisdiction.
- (9) A code, standard or rule referred to in subsection (8) may be adopted as amended from time to time.

1982-41-35; 1983-10-22; 1984-25-68; 1987-51-15; 1989-62-11; 1990-74-13; 1992-25-14, 15; 1993-13-16; 1995-53-50; 1997-18-22; 1998-21-8; 2000-22-97.

### Contaminated site remediation regulations

- 58.** (1) Without limiting section 57, the Lieutenant Governor in Council may make regulations as follows:
- (a) prescribing other action for the purpose of the definition of “remediation” in section 1, including but not limited to routine procedures applicable to remediation of contamination associated with underground storage tanks;
  - (b) respecting the content and procedures for site profiles and site investigations;
  - (c) respecting the duty to provide a site profile, including criteria for assessment, the circumstances in which a site profile must be provided, deadlines for submitting a site profile and a manager’s powers respecting site profiles;
  - (d)

- respecting disclosures by persons not specified in section 26.1, including without limitation disclosures by lessors and lessees;
- (e) prescribing fees authorized by Parts 4 and 4.1 including, without limitation, fees for assessing or reviewing site profiles, site investigations and studies and reports of remediation and for making determinations under section 26.4;
  - (f) respecting the content of the site registry and the management of and procedures relating to the site registry, including requirements for persons to submit information to the registrar;
  - (g) designating classes of persons as responsible persons in addition to those referred to in section 26.5;
  - (h) designating classes of persons who are not responsible persons in addition to those referred to in section 26.6;
  - (i) respecting modifications, interpretive guidelines and procedures for any exemptions set out in section 26.6;
  - (j) respecting the duties and rights of vendors and purchasers of property that may be contaminated;
  - (k) respecting remediation orders, voluntary remediation agreements and voluntary remediation procedures;
  - (l) respecting remediation, including guidelines for preparation of remediation studies and plans and guidelines for assessing whether permanent solutions have been used to the maximum extent possible;
  - (m) respecting review of remediation by a manager;
  - (n) respecting the establishment of the allocation panel, the conduct of and procedures at the panel deliberations, fees for panel members and factors that must be considered in allocating responsibility;
  - (o) respecting procedures governing minor contributors;
  - (p) respecting approvals in principle, certificates of compliance and conditional certificates of compliance;
  - (q) respecting a manager's power with respect to a person who fails to comply with an order made under Part 4;
  - (r) prescribing assessment and remediation standards including standards to be used for the purpose of the definition of "contaminated site";
  - (s) respecting compensation payable under Part 4;
  - (t) setting out the requirements for public notice and the opportunity for public comment that apply to particular initiatives under Part 4;
  - (u) establishing substantive and procedural requirements for the planning, conduct and reporting of remediations of particular types of contamination;
  - (v) prescribing procedures and standards applicable to contaminated soil relocation and contaminated soil relocation agreements under section 28.1 (3);
  - (w) requiring a person who moves soil from a contaminated site to another location to provide to the ministry prescribed information in a format suitable for inclusion in the site registry;
  - (x) establishing transitional requirements for remediation that has begun before the coming into force of this section;
  - (y) prescribing other activities and uses for the purpose of the definition of "core area" in section 28.8 (1);
  - (z) prescribing the content of and criteria for transfer agreements for the

purposes of Part 4.1.

- (2) A regulation made under subsection (1) may delegate to the director, an officer or a manager those powers and functions that the Lieutenant Governor in Council considers desirable.

RS1996(Supp)-482-6; 1993-25-5; 2002-34-8.