CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No. 500-11-036133-094

SUPERIOR COURT

Commercial Division
(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended)

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:

ABITIBIBOWATER INC.

and

ABITIBI-CONSOLIDATED INC.

and

BOWATER CANADIAN HOLDINGS INC. and the other Petitioners listed on Schedules A, B, and C

Debtors

and

ERNST & YOUNG INC.

Monitor

and

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEWFOUNDLAND AND LABRADOR

Petitioner

AFFIDAVIT OF AARON WELCH

I, Aaron Welch, of Suite 601, 1175 Douglas Street, in the City of Victoria, in the Province of British Columbia, MAKE OATH AND SAY THAT:

1. I am a lawyer with the Legal Services Branch of the British Columbia Ministry of Attorney General (the "Ministry"), and as such have personal knowledge of the facts set out in this affidavit except where stated to be based upon information and belief, and where so stated, I verily believe the same to be true.

2. I and my assistant, Edythe Beyer, under my guidance and direction, photocopied the official printed versions, produced by Crown Publications, Queen's Printer, of the statutes and regulations referred to in the Affidavit of Maureen Bilawchuk, sworn February 4, 2010, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89 and *Interpretation Act*, R.S.B.C. 1996, c. 238. We obtained the official printed versions from the Ministry's Law Library. I have attached to this my affidavit the photocopies of the official printed versions of the statutes and regulations as noted in paragraphs 3 to 11 below.

3. Attached hereto and marked as Exhibit "1" to this my Affidavit is a copy of the *Environmental Management Act*, S.B.C. 2003, c. 53, effective as of February 7, 2008.

4. Since that time, the *Environmental Management Act* has been amended by the following Bills:

   a. the *Environmental (Species and Public Protection) Statutes Amendment Act*, S.B.C. 2008, c. 33, attached hereto and marked as Exhibit "2", the relevant sections of which became effective May 29, 2008;

   b. the *Greenhouse Gas Reductions (Emissions Standards) Statutes Amendment Act*, S.B.C. 2008, c. 20, attached hereto and marked as Exhibit "3", parts of which became effective on January 1, 2009 (see B.C. Reg. 391/2008, an excerpt of which is attached as Exhibit "4"); and

c. the *Final Agreement Consequential Amendments Act*, S.B.C. 2007, c. 36, attached hereto and marked as Exhibit "5", parts of which became effective on February 27, 2009 (see B.C. Reg. 55/2009, attached hereto as Exhibit "6");

5. Since those amendments, there have been other minor changes to the *Environmental Management Act*, but they are not significant or material to this application.

6. Attached hereto and marked as Exhibit "7" to this my Affidavit is a copy of the *Contaminated Sites Regulation*, B.C. Reg. 375/96, including Schedules 1, 1.1 and 2, but not Schedules 3 to 11, current as of September 18, 2009. I searched the B.C. Regulations Bulletins up to January 19, 2010 and did not locate any changes to this regulation that are material to this application.

7. Attached hereto and marked as Exhibit "8" to this my Affidavit is a copy of the *Hazardous Waste Regulation*, B.C. Reg. 63/88, not including any Schedules, current as of September 18, 2009. I searched the B.C. Regulations Bulletins up to January 19, 2010 and did not locate any changes to this regulation that are material to this application.

8. Attached hereto and marked as Exhibit "9" to this my Affidavit is a copy of the *Spill Reporting Regulation*, B.C. Reg. 263/90, including the Schedule, current as of September 18, 2009. I searched the B.C. Regulations Bulletins up to January 19, 2010 and did not locate any changes to this regulation that are material to this application.

9. Attached hereto and marked as Exhibit "10" to this my Affidavit is a copy of the *Waste Discharge Regulation*, B.C. Reg. 320/2004, including Schedules, current as of September 18,

2009. I searched the B.C. Regulations Bulletins up to January 19, 2010 and did not locate any changes to this regulation that are material to this application.

10. Attached hereto and marked as Exhibit "11" to this my Affidavit is a copy of the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89 that is current as of February 7, 2008. There have been no significant or material changes to that Act since that time.

11. Attached hereto and marked as Exhibit "12" to this my Affidavit is a copy of the *Interpretation Act*, R.S.B.C. 1996, c. 238 that is current as of February 7, 2008. There have been no significant or material changes to that Act since that time.

SWORN BEFORE ME at the City of Victoria, in the Province of British Columbia, this 4th day of February, 2010.	)	
A Notary Public in and for the Province of British Columbia (Affix Seal) DAVID K. POORE 250.356.0020	)	AARON WELCH

SUPERIOR COURT
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In the matter of the Plan of Compromise or Arrangement of:

ABITIBIBOWATER INC., *et al*

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- and -

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Monitor

AFFIDAVIT

Richard Butler **Phone (250) 356-6559**
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MINISTRY OF ATTORNEY GENERAL
LEGAL SERVICES BRANCH
PO BOX 9289 STN PROV GOVT
6th Floor, 1001 Douglas Street
Victoria, BC V8W 9J7

This is Exhibit "1"
referred to in the Affidavit
of Aaron Welch
sworn before me this 4th day of
February, 2010.

A Notary Public in and for the Province of
British Columbia

Exhibit 1

ENVIRONMENTAL MANAGEMENT ACT

CHAPTER 53

[Updated to February 7, 2008] *Assented to October 23, 2003*

Contents

Section

PART 1 – INTRODUCTORY PROVISIONS

Definitions

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 designated by order of the Lieutenant Governor in Council;

"air contaminant" means a substance that is introduced 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 with or is capable of interfering with visibility,

(d) interferes with 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 continued under section 93 *[environmental appeal board]*;

"approval" means an approval under section 15 *[approvals]* or under a regulation;

"auxiliary conservation officer" means a person designated as an auxiliary conservation officer under section 106 (3) *[conservation officer service]*;

"biomedical waste" has the prescribed meaning;

"chief conservation officer" means the person appointed as chief conservation officer under section 106 (2) *[conservation officer service]*;

"code of practice", except in Part 3 *[Municipal Waste Management]*, means a code of practice established by the minister under section 22 *[minister's regulations – codes of practice]*;

"conservation officer" means a person described in section 106 (2) (a) or (b) *[conservation officer service]* and includes, in relation to a specific power or duty, an auxiliary conservation officer and a special conservation officer who has been authorized under section 106 (3) (b) (iv) to exercise the power or perform the duty;

"Conservation Officer Service" means the Conservation Officer Service established under section 106 *[conservation officer service]*;

"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 32 *[disposal of municipal solid waste in Greater Vancouver]* and 33 *[disposal of municipal solid waste in other regional districts]*, a person appointed under section 31 *[control of air contaminants in Greater Vancouver]* as district director by the board of the Greater Vancouver Regional District,

(b) for the purpose of section 32 *[disposal of municipal solid waste in Greater Vancouver]*, a person appointed under section 32 (3) as district director by the Administration Board of the Greater Vancouver Sewerage and Drainage District, and

(c) for the purpose of section 33 *[disposal of municipal solid waste in other regional districts]*, a person appointed under section 33 as district director by a regional district;

"effluent" means a substance that is introduced 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 with or is capable of interfering with visibility,

(d) interferes with 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 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;

"hazardous waste" has the prescribed meaning;

"introduce into the environment", in relation to waste, includes discharge, emit, dump, abandon, spill, release and allow to escape into the environment;

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

"manager" means a person appointed under the *Public Service Act* as a manager in the ministry and designated in writing by the minister as a regional manager or as an acting, assistant or deputy regional manager;

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

(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 a director as an officer, or

(b) a conservation officer;

"operational certificate" means a certificate issued under section 28 *[operational certificates]* for the design, operation, maintenance, performance and closure of sites or facilities used for the storage, treatment or disposal of waste or recyclable material;

"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 14 *[permits]* 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, and satisfies at least one of the following criteria:

(a) is organic material 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 waste management plan;

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

"registered mail" includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available;

"remediation" means action to eliminate, limit, correct, counteract, mitigate or remove any contaminant or the adverse 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, 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 a director;

(f) other activities prescribed by the minister;

"special conservation officer" means a person designated as a special conservation officer under section 106 (3) *[conservation officer service]*;

"waste" includes

(a) air contaminants,

(b) litter,

(c) effluent,

(d) refuse,

(e) biomedical waste,

(f) hazardous waste, and

(g) any other substance prescribed by the Lieutenant Governor in Council, or the minister under section 22 *[minister's regulations – codes of practice]*, or, if either of them prescribes circumstances in which a substance is a waste, a substance that is present in those circumstances,

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

"waste management facility" means a facility for the treatment, recycling, storage, disposal or destruction of a waste;

"waste management plan" means a plan that contains provisions or requirements for the management of recyclable material or other waste or a class of waste within all or a part of one or more municipalities;

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

"works" includes

(a) a drain, ditch and sewer,

(b) a waste disposal system including a sewage treatment plant, pumping station and outfall,

(c) a device, equipment, land and a structure that is used to

(i) measure, handle, transport, store, treat or destroy waste or a substance that is capable of causing pollution, or

(ii) introduce into the environment waste or a substance that is capable of causing pollution,

(d) 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

(e) an installation, plant, machinery, equipment, land or a process that is used to monitor or clean up pollution or waste.

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

(3) For the purposes of the definition 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 introduction, 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 a life form that, is capable of being harmed or injured by the introduction of the air contaminant or effluent.

(4) If a regulation under this Act authorizes the minister or a director to substitute a different requirement for any requirement in the regulations, a reference to the regulations includes a reference to the substituted requirement.

Powers conferred on included officials

2 A provision of this Act or the regulations that confers powers on an officer also confers them on a director and a manager.

Director includes delegate

3 (1) Subject to the limitations in section 57 *[delegation of responsibilities to municipalities or other ministries]*, a director may delegate any of his or her powers, duties or functions under this Act, except the power to establish protocols, to any person, subject to the terms and conditions the director considers necessary or advisable.

(2) In this Act a reference to the director includes a reference to a delegate of the director.

Conflicts with other enactments

4 If there is a conflict between this Act or its regulations or an approval, a licence, an order, a permit or an approved waste management plan under this Act and

(a) the *Geothermal Resources Act* or the regulations under that Act, or a permit, a licence, a lease, an authorization, an order or an agreement under that Act, or

(b) the *Transport of Dangerous Goods Act* or the regulations under that Act,

this Act, its regulations and an approval, a licence, an order, a permit or an approved waste management plan subsisting under this Act prevail.

Minister's authority

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

(a) planning, research and investigation in relation to the environment;

(b) development of policies for the management, protection and use of the environment;

(c) planning, design, construction, operation and maintenance of works and undertakings for the management, protection or enhancement of the environment;

(d) providing information to the public about the quality and use of the environment;

(e) preparing and publishing policies, strategies, objectives, guidelines and standards for the protection and management of the environment;

(f) preparing and publishing environmental management plans for specific areas of British Columbia which may include, but need not be limited to, measures with respect to the following:

(i) flood control, flood hazard management and development of land that is subject to flooding;

(ii) drainage;

(iii) soil conservation;

(iv) water resource management;

(v) fisheries and aquatic life management;

(vi) wildlife management;

(vii) waste management;

(viii) air management.

PART 2 – PROHIBITIONS AND AUTHORIZATIONS

Waste disposal

6 (1) For the purposes of this section, **"the conduct of a prescribed 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 in relation to the prescribed industry, trade or business.

(2) Subject to subsection (5), a person must not introduce or cause or allow waste to be introduced into the environment in the course of conducting a prescribed industry, trade or business.

(3) Subject to subsection (5), a person must not introduce or cause or allow to be introduced into the environment, waste produced by a 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 (2) or (3) prohibits any of the following:

(a) the disposition of waste in compliance with this Act and with all of the following that are required or apply in respect of the disposition:

(i) a valid and subsisting permit;

(ii) a valid and subsisting approval;

(iii) a valid and subsisting order;

(iv) a regulation;

(v) a waste management plan approved by the minister;

(b) the discharge into the air of an air contaminant from an incinerator operated under an 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 31 (3) (d) *[control of air contaminants in Greater Vancouver]*;

(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 *Integrated Pest Management Act*, the *Pest Control Products Act* (Canada) and any other Act and regulation governing their use;

(g) 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 fires for training purposes,

(ii) carrying out fire control under section 9 of the *Wildfire Act*, or

(iii) if the fires are resource management open fires under the *Wildfire Act* and are lit, fuelled or used in accordance with that Act and the regulations under that Act;

(h) emissions from steam powered or internal combustion engines in compliance, if applicable, with the *Motor Vehicle Act* and regulations;

(i) emission into the air of soil particles or grit in the course of agriculture or horticulture;

(j) 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;

(k) 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;

(l) emission of an air contaminant from food preparation in

(i) residential premises, or

(ii) retail food outlets;

(m) an owner, agent or manager, as those terms are defined in the *Mines Act*, from carrying out an activity related to mineral and coal exploration if that activity is exempted under section 10 (2.1) of that Act.

(6) Nothing in subsection (5) (b) or (k) authorizes the use of an incinerator or domestic, institutional or commercial heating equipment for the purpose of destroying hazardous waste by means of combustion.

(7) In subsection (5) (l):

"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.

Hazardous waste – confinement

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

(2) Except to the extent expressly authorized by a permit, an approval, an order, a waste management plan or the regulations, a person must not release a hazardous waste from the confinement required by subsection (1).

Hazardous waste management facility

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

Hazardous waste storage and disposal

9 (1) A person must not store more than a prescribed amount of a hazardous waste except in accordance with any of the following that apply:

(a) the regulations in relation to storing hazardous waste;

(b) an order that requires the person to store that kind of hazardous waste;

(c) an approved waste management plan that provides for storage of hazardous waste.

(2) A person who is storing a quantity of a substance at the time that the substance is prescribed to be a hazardous waste does not contravene subsection (1) by continuing to store the same or a different quantity of that substance if the person notifies a director, in accordance with the regulations, of the location, quantity and type of substance that the person is storing.

(3) Despite subsection (2), a director may serve a person referred to in that subsection with a written order to comply with the regulations or the approved waste management plan, and, if a director does so, subject to subsection (4), the person must comply with the order within the period the director specifies in that order.

(4) If a person who is served with an order under subsection (3) does not comply with the regulations in the period specified by the director, the person must dispose of the hazardous waste as directed by a director.

Transportation of hazardous waste

10 (1) A person who produces or stores a hazardous waste

(a) must not cause or allow more than a prescribed quantity of the hazardous waste to be transported from the property where he or she produces or stores the hazardous waste 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 quantity of the hazardous 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 quantity of the hazardous waste to be transported to a place unless

(i) an order, waste management plan or regulation authorizes or requires it to be stored at that place,

(ii) a permit, approval, order, waste management plan or regulation authorizes or requires it to be introduced into the environment or treated at that place, or

(iii) storage of the hazardous waste at that place is otherwise not prohibited under section 9 *[hazardous waste storage and disposal]*.

(2) A person must not transport more than a prescribed quantity of a hazardous 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 quantity of a hazardous 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 an approval authorizing the person to introduce into the environment that kind and quantity of hazardous waste, is authorized under the regulations to treat or recycle that kind and quantity of hazardous waste or is not prohibited under section 9 (1) *[hazardous waste storage and disposal]* from storing that kind and quantity of hazardous waste.

(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.

Packaging, product containers and disposable products

11 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.

Littering

12 (1) In this section, **"public place"** means

(a) a place that is open to the air, including a covered place that is open to the air on at least one side, and to which the public is entitled or permitted to have access without payment, and

(b) a park or public campground.

(2) A person must not throw down, drop or otherwise deposit, and leave litter in a public place.

(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 burden of establishing that subsection (3) applies is on the defendant.

Discharge of waste from recreational vehicles

13 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, an approval, an order, a waste management plan or a regulation, or

(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.

Permits

14 (1) A director may issue a permit authorizing the introduction of waste into the environment subject to requirements for the protection of the environment that the director considers advisable and, without limiting that power, may do one or more of the following in the permit:

(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 director specifies;

(c) require the permittee to monitor, in the manner specified by the director, the waste, the method of handling, treating, transporting, discharging and storing the waste and the places and things that the director 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 director in the manner specified by the director;

(e) specify procedures for monitoring and analysis, and 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 hazardous waste into the environment unless it specifies the characteristics and quantity of hazardous waste that may be introduced.

(3) Despite subsection (1), a director may not issue or, subject to subsection (4), amend, a permit authorizing the introduction of waste into the environment if the introduction is governed by

(a) a code of practice that is established in the regulations in relation to the industry, trade or business that applies for the permit or amendment,

(b) a code of practice that is established in the regulations in relation to the activity or operation in respect of which the permit or amendment is applied for, or

(c) a regulation, unless the regulation requires that a permit be obtained in relation to the discharge of the industry, trade, or business, activity or operation.

(4) A director, on receipt of an application or on his or her own initiative, may amend a permit authorizing an introduction of waste described in subsection (3) (a), (b) or (c), if

(a) in the opinion of the director, the amendment is necessary for the protection of the environment, or

(b) the amendment is for one or more or the following purposes:

(i) a change of ownership or name;

(ii) a change of address;

(iii) a decrease in the authorized quantity of the discharge, emission or stored material;

(iv) an increase of not more than 10% in the authorized quantity of the discharge, emission or stored material;

(v) a change in the authorized quality of the discharge, emission or stored material such that, in the opinion of the director, the change has resulted in or will result in an equal or lesser impact on the environment;

(vi) a change in a monitoring program;

(vii) a change to the works, method of treatment or any other condition of a permit or an approval such that, in the opinion of the director, the change has resulted in or will result in an equal or lesser impact on the environment.

Approvals

15 (1) A director may approve the introduction of waste into the environment for a period of up to 15 months without issuing a permit.

(2) A director may issue his or her approval subject to requirements for the protection of the environment that the director considers advisable and, without restricting that power, may include as a requirement anything referred to in section 14 (1) *[permits]*.

Amendment of permits and approvals

16 (1) A director may, subject to section 14 (3) *[permits]*, this section and the regulations, for the protection of the environment,

(a) on the director's own initiative if he or she considers it necessary, or

(b) on application by a holder of a permit or an approval,

amend the requirements of the permit or approval.

(2) A director may, after consultation with the minister, amend a permit or approval issued by the Lieutenant Governor in Council.

(3) If a permit or an approval is subject to conditions imposed pursuant to a decision made in an appeal to the appeal board under Division 2 *[Appeals under this Act]* of Part 8, 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 director's power to amend a permit or an 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 or renewing the permit or approval;

(e) authorizing or requiring a change in the characteristics or components of waste discharged, treated, handled or transported;

(f) authorizing or requiring a change in the quantity of waste discharged, treated, handled or transported;

(g) authorizing or requiring a change in the location of the discharge, treatment, handling or transportation of the waste;

(h) altering the time specified for the construction of works or the time in which to meet other requirements imposed on the holder of the permit or approval;

(i) authorizing or requiring a change in the method of discharging, treating, handling or transporting the waste;

(j) changing or imposing any procedure or requirement that was imposed or could have been imposed under section 14 *[permits]* or 15 *[approvals]*.

(5) A director may renew an approval before or after the end of the term of the approval.

(6) A director 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 director amends a permit or approval, the director

(a) may require that the holder of the permit or approval supply the director with plans, specifications and other information the director 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 director may give the notice by electronic means to an address provided by the holder of the permit or approval.

Transfers of permits, approvals, etc.

17 (1) A transfer of a permit or approval is without effect unless a director has consented in writing to the transfer.

(2) Despite subsection (1), the director may consent to a transfer by electronic means to an address provided by the holder of the permit or approval.

(3) A licence referred to in section 10 *[transportation of hazardous waste]* is not transferable.

Suspension or cancellation of permits and approvals

18 (1) Subject to this section, the minister or a director, by notice served on the holder of a permit or approval, may

(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 takes effect.

(3) The minister may exercise the authority under subsection (1) 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 an approval fails to pay money owing to the government under the permit or approval;

(c) a holder of a permit or an approval fails to comply with the terms of the permit or approval;

(d) a holder of a permit or an 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 an 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 with respect to the permit or approval;

(f) a holder of a permit or an approval fails to comply with any other requirements of this Act or the regulations;

(g) a permit or an approval conflicts with or is replaced by a waste management plan approved by the minister;

(h) a permit or an approval is replaced by a regulation;

(i) a permit or an 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 director 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 director 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 20 *[abandonment]*.

(6) For certainty, a permit or an approval that is suspended or cancelled is not a valid and subsisting permit or approval.

Variance orders

19 (1) If the minister considers that a person should have temporary relief from a requirement of an order, a permit, an approval, a licence or a waste management plan, the minister may issue a variance order with respect to a requirement of the order, permit, approval, licence or waste management plan.

(1.1) If the minister considers that a person should have temporary relief from a requirement of a code of practice, the minister may issue a variance order relieving the person in relation to the requirement of the code of practice.

(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) Despite subsection (2), the minister may

(a) cancel a variance order, or

(b) renew or extend a variance order.

Abandonment

20 (1) A person to whom a permit or an approval has been issued, but who has not exercised any right under it to discharge waste, may abandon the permit or approval by sending or delivering to a director notice that the person elects to abandon the permit or approval.

(2) A person who elects under subsection (1) to abandon a permit or an approval does not commit an offence merely because he or she has not complied with a requirement of the permit or approval.

(3) Subject to subsection (4), a person to whom a permit or an approval has been issued and who has exercised a right under it to discharge waste may abandon the permit or approval by sending or delivering to a director notice that the person elects to abandon the permit or approval.

(4) A notice under subsection (3) is not effective until it is received by a director.

(5) A person who elects under subsection (3) to abandon a permit or an 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) despite the abandonment, is bound by those additional requirements that the director 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.

Regulations for the purposes of Part 2

21 (1) Without limiting section 138 (1) *[general authority to make regulations]*, the Lieutenant Governor in Council may make regulations as follows:

(a) prescribing the meaning of biomedical waste;

(b) prescribing the meaning of hazardous waste;

(c) prescribing the duties of hospitals, laboratories, clinics and other persons or agencies to manage, control, treat and dispose of biomedical waste or to establish biomedical waste management facilities;

(d) prescribing the form and content of manifests and the procedures for completing and filing manifests;

(e) requiring the licensing of persons who transport hazardous waste, biomedical waste or another specified class of waste and prohibiting the unlicensed transportation of hazardous waste, biomedical waste or another specified class of waste;

(f) authorizing the issue, suspension, cancellation and amendment of licences for the transportation of hazardous waste, biomedical waste or another specified class of waste;

(g) regulating and restricting any activity, operation or industry that creates or produces a hazardous waste, a biomedical waste or another specified class of waste and requiring persons who operate any industry or process that creates or produces hazardous waste to register with the ministry;

(h) prescribing for the purpose of section 6 (2) *[waste disposal]*, industries, trades and businesses;

(i) prescribing for the purposes of section 6 (3) *[waste disposal]*, activities operations and classes of persons;

(j) regulating litter including the sale, return and reuse of beverage containers and packaging materials or classes of beverage containers and packaging materials which may

(i) require classes of persons to pay refunds in the amounts established for beverage containers,

(ii) require persons 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, and

(iii) regulate the size, shape, features and composition of beverage containers and their packaging, labelling and use;

(k) 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 another person or association on behalf of the person or class of persons, supply information respecting the use, reuse and wastage of a prescribed type of beverage container;

(l) respecting the minimum content of material derived from recyclable material that must be contained in types or classes of packaging and products sold in British Columbia;

(m) 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;

(n) requiring the use of standardized definitions, terms, logos, symbols and other representations on packaging, and prescribing those definitions, terms, logos, symbols and other representations;

(o) prohibiting or restricting the use of packaging or classes of packaging or product containers or classes of product containers;

(p) prescribing for the purposes of section 11 *[packaging, product containers and disposable products]* the content, shape, weight, nature and volume of packaging used per unit of product;

(q) 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;

(r) 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;

(s) 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;

(t) 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 director;

(u) authorizing a director to require a person who stores hazardous waste to give security in the amount and form, and subject to the conditions, the director may specify.

(2) Section 139 *[regulations – general rules]* applies for the purpose of making regulations under this section.

Minister's regulations – codes of practice

22 (1) The minister may make regulations establishing codes of practice for industries, trades, businesses, activities or operations, or classes of industries, trades, businesses, activities or operations, for the purposes of section 138 (2) (s) *[general authority to make regulations – exemptions]*.

(2) For the purposes of establishing codes of practice under subsection (1), the minister may make regulations as follows:

(a) prescribing the form and content of a notice;

(b) 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 management facilities;

(c) establishing procedures for making applications under a code of practice, and establishing the information that must be submitted in those applications;

(d) regulating and imposing requirements and prohibitions respecting the transportation, labelling, handling, treatment, recycling, storage, disposal and destruction of recyclable materials or wastes or a class of wastes, and, subject to section 132 *[ownership of waste]*, the selling, giving or otherwise transferring the ownership or possession of recyclable materials or wastes or a class of wastes;

(e) regulating and imposing requirements and prohibitions respecting the siting, planning, construction and operation of facilities for the treatment, recycling, storage, disposal and destruction of recyclable materials or wastes;

(f) requiring that, as a condition of obtaining a permit under this Act to discharge waste, the owner of a waste management facility make adequate arrangements to maintain the waste management facility after it has been closed and, if required by the government, to transfer to the government ownership of the waste management facility after its closure;

(g) prescribing a substance as a waste and prescribing circumstances in which a substance is a waste;

(h) regulating and imposing requirements and restrictions respecting the use, supply, storage, transportation, handling, treatment or disposal of any substance specified in the regulations, whether natural or artificial and whether in solid, liquid or other form, if the minister 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;

(i) prescribing conditions that must be met and controls that must be provided for the burning of materials derived from land clearing, land grading or tilling;

(j) requiring the keeping of records and authorizing the inspection of records;

(k) regulating and imposing requirements and prohibitions for the design, siting and operating of any works, activities or operations that produce waste;

(l) regulating and imposing requirements and prohibitions for 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;

(m) regulating and imposing requirements and prohibitions for 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;

(n) requiring and imposing requirements for the certification or licensing of a person who installs tanks described in paragraph (m);

(o) respecting the minimum content of material derived from recyclable material that must be contained in types or classes of packaging and products sold in British Columbia;

(p) requiring the use of standardized definitions, terms, logos, symbols and other representations on packaging, and prescribing those definitions, terms, logos, symbols and other representations;

(q) prohibiting or restricting the use of packaging or classes of packaging or product containers or classes of product containers;

(r) prescribing for the purposes of section 11 *[packaging, product containers and disposable products]* the content, shape, weight, nature and volume of packaging used per unit of product;

(s) 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;

(t) 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;

(u) 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 prescribing to whom reports should be made and other reporting requirements;

(v) 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 director;

(w) requiring a person to comply with a regulation made under this Act;

(x) imposing monitoring and reporting requirements, including requirements for publication of information, in relation to

  (i) waste,

  (ii) handling, treating, transporting, discharging or storing waste, and

  (iii) places and things that the minister considers may be affected by the handling, treatment, transportation, discharge or storage of waste;

(y) prescribing sampling, analytical, quality control and reporting procedures that must be followed by a person required to monitor or report under a code of practice.

(3) Section 139 *[regulations – general rules]* applies for the purpose of making regulations under this section.

PART 3 – MUNICIPAL WASTE MANAGEMENT

Definitions

23 In this Part:

"code of practice" means a code of practice attached to and forming part of a bylaw made under section 25 *[authority to manage municipal solid waste and recyclable material in regional districts]*;

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

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

"municipal liquid waste" means

(a) effluent that originates from any source and is discharged into a municipal sewer system,

(b) effluent from residential sources that is discharged to the ground, or

(c) effluent specified by a director 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 director to be included in a waste management plan;

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

Waste management plans

24 (1) A municipality, alone or with one or more other municipalities, may submit for approval by the minister a waste management plan, that complies with the regulations respecting the management of municipal liquid waste.

(2) On the written request of the minister, a regional district must submit for approval by the minister a waste management plan that

(a) is for the benefit of the whole area of the regional district,

(b) complies with the regulations, and

(c) is in respect of biomedical waste.

(3) Despite any other requirement of this Act, the minister, by notice in writing, may

(a) direct a municipality to prepare a waste management plan that complies with the regulations or revise a waste management plan and submit it to the minister for approval on or before a date specified by the minister, or

(b) specify a date by which a municipality must provide 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) Subject to section 27 (2) *[public consultation process]*, the minister may, at any time, with or without conditions, approve all or part of a waste management plan or an amendment to a waste management plan.

(6) 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.

(7) 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 (5),

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 or the approval of the electors.

(8) 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 18 (1) *[suspension or cancellation of permits and approvals]*.

(9) Despite subsection (8), if a provision of a permit or approval conflicts with a requirement of an approved waste management plan, that provision has no force or effect after the waste management plan is approved.

(10) Despite subsection (8), if an operational certificate is issued under section 28 (1) *[operational certificates]* in respect of a site or facility for which a permit or approval authorizing the discharge of waste was previously issued, the permit or approval is cancelled.

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

25 (1) In this section and sections 26 *[municipal solid waste disposal fees]*, 31 *[control of air contaminants in Greater Vancouver]* and 32 *[disposal of municipal solid waste in Greater Vancouver]*:

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

"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 or facility, including those identified specifically or by class in an approved waste management plan 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 approved waste management plan for the site,

(b) any requirements or conditions that a director includes in an operational certificate or permit issued for the site, and

(c) any applicable bylaw made under subsection (3) of this section or section 31 *[control of air contaminants in Greater Vancouver]* or 32 *[disposal of municipal solid waste in Greater Vancouver]*.

(3) For the purpose of implementing an approved waste management plan, a regional district may make bylaws to regulate the management of municipal solid waste or recyclable material including, without limitation, 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 waste management 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) respecting fees, including

(i) setting fees and charges that may vary according to

(A) the quantity, volume, composition or type of municipal solid waste or recyclable material, or

(B) the class of persons, sites, operations, activities, municipal solid wastes or recyclable materials, and

(ii) 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 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 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 an owner of municipal solid waste or recyclable material, the deposit of which has been prohibited by bylaw, to pay 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 109 *[entry on property]* and 111 (2) *[inspection of vehicles]* apply to a designated person as if the designated person is an officer referred to in those sections, 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) indicate in its waste management plan its intention to undertake consultations with affected stakeholders in accordance with section 27 (1) *[public consultation process]*, and

(b) undertake the consultations.

(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 waste management plan,

solely because it holds security as required under a bylaw made under this Part.

Municipal solid waste disposal fees

26 (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 persons who use the services of a waste hauler or by generators of municipal solid waste;

(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 criteria 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 waste haulers for this service;

(f) establishing fines for failure to comply with a bylaw made under this section.

Public consultation process

27 (1) A municipality must provide for 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 that applies to that municipality.

(2) The minister may not approve a waste management plan 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.

Operational certificates

28 (1) If a waste management plan is approved by the minister, a director may, in accordance with the regulations, issue an operational certificate, with or without conditions, to the municipality or to any person who is the owner of a site or facility covered by the waste management plan.

(2) An operational certificate issued under subsection (1) forms part of and must not conflict with the approved waste management plan.

(3) A director 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.

(4) At least 14 days before issuing an operational certificate, a director must give notice of his or her intention to issue the operational certificate

(a) in writing to the person named in the operational certificate, and

(b) to the public in accordance with the regulations.

(5) A director who gives notice under subsection (4) must allow any person who has been given notice under that subsection to

(a) inspect the proposed operational certificate, and

(b) provide comments to the director respecting the requirements or conditions of the proposed operational certificate.

Sewage control areas

29 (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 109 *[entry on property]*.

(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 Division 2 *[Appeals from Decisions under this Act]* of Part 8 in the same manner as if the order were a decision of the director, and Part 8 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.

Sewage in regional districts

30 (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 sewerage 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 under this section 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 persons or classes of persons.

Control of air contaminants in Greater Vancouver

31 (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 109 *[entry on property]* 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 director under this Act.

(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 6 (2) and (3) *[waste disposal]*, 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 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.

Disposal of municipal solid waste in Greater Vancouver

32 (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 6 (2) and (3) *[waste disposal]*, 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 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 directors 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 director under this Act, 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 109 *[entry on property]* and 111 *[inspection of vehicles]* 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 a person 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 authorizing the designated person to carry out the duties associated with those powers.

(5) After the 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) Division 2 *[Appeals from Decisions under this Act]* of Part 8 and section 133 *[service of notice]* 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.

Disposal of municipal solid waste in other regional districts

33 (1) The Lieutenant Governor in Council, on receipt of a written request from a regional district, other than a regional district that is within the area of the Greater

Vancouver Sewerage and Drainage District, and after appropriate consultation with the regional district and affected stakeholders, may 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 terms and conditions respecting the collection of fees, to which the authority under paragraph (a) is subject.

(2) Section 32 (2) to (8) *[disposal of municipal solid waste in Greater Vancouver]* applies in relation to a regional district in respect of which the Lieutenant Governor in Council has made regulations under subsection (1).

Bylaw approval or amendment

34 (1) A bylaw made by a regional district under the authority of section 25 *[authority to manage municipal solid waste and recyclable material in regional districts]*, 26 *[municipal solid waste disposal fees]* or 33 *[disposal of municipal solid waste in other regional districts]* or made by the Administration Board of the Greater Vancouver Sewerage and Drainage District under the authority of section 25, 26 or 32 *[disposal of municipal solid waste in Greater Vancouver]*, may not be adopted without the prior written approval 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 a bylaw or part of a bylaw, or any authorization given under a bylaw made under section 25 *[authority to manage municipal solid waste and recyclable material in regional districts]*, 26 *[municipal solid waste disposal fees]*, 32 *[disposal of municipal solid waste in Greater Vancouver]* or 33 *[disposal of municipal solid waste in other regional districts]*.

Delegation of powers

35 (1) For the purposes of sections 25 *[authority to manage municipal solid waste and recyclable material in regional districts]*, 26 *[municipal solid waste disposal fees]*, 32 *[disposal of municipal solid waste in Greater Vancouver]* and 33 *[disposal of municipal solid waste in other regional districts]*, a regional district may, by bylaw, delegate to an officer or employee of the regional district the power to perform the functions and duties of the regional district in bylaws made under those sections.

(2) For the purpose of sections 25 *[authority to manage municipal solid waste and recyclable material in regional district]*, 26 *[municipal solid waste disposal fees]* and 32 *[disposal of municipal solid waste in Greater Vancouver]*, 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 perform 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.

Municipal administration of storage tanks

36 (1) A municipality may, on giving notice to a 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 or an officer or employee of the municipality for anything done or omitted to be done in the exercise or intended exercise of any authority conferred on it by subsection (1) unless the person acted negligently or in bad faith.

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

37 (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 30 *[sewage in regional districts]*, 31 *[control of air contaminants in Greater Vancouver]*, 32 *[disposal of municipal solid waste in Greater Vancouver]* or 33 *[disposal of municipal solid waste in other regional districts]*, 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 30 *[sewage in regional districts]*, 31 *[control of air contaminants in Greater Vancouver]*, 32 *[disposal of municipal solid waste in Greater Vancouver]* or 33 *[disposal of municipal solid waste in other regional districts]* 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 30 *[sewage in regional districts]*, 31 *[control of air contaminants in Greater Vancouver]*, 32 *[disposal of municipal solid waste in Greater Vancouver]* or 33 *[disposal of municipal solid waste in other regional districts]*, is without effect to the extent of the conflict.

(4) A bylaw of a municipality that conflicts with a bylaw under section 30 *[sewage in regional districts]*, 31 *[control of air contaminants in Greater Vancouver]*, 32

[disposal of municipal solid waste in Greater Vancouver] or 33 *[disposal of municipal solid waste in other regional districts]*, 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, 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.

Regulations for purposes of Part 3

38 (1) Without limiting section 138 (1) *[general authority to make regulations]*, the Lieutenant Governor in Council may make regulations as follows:

(a) respecting the development, content, amendment, approval and review of waste management plans and operational certificates;

(b) establishing municipal solid waste reduction targets for the purpose of assessing waste management plans;

(c) prescribing the criteria for setting fees for the purposes of section 26 (2) (b) (iii) *[municipal solid waste disposal fees]*.

(2) Section 139 *[regulations – general rules]* applies for the purpose of making regulations under this section.

PART 4 – CONTAMINATED SITE REMEDIATION

Division 1 – Interpretation

Definitions and interpretation

39 (1) In this Part and Part 5 *[Remediation of Mineral Exploration Sites and Mines]*:

"allocation panel" means an allocation panel appointed under section 49 (2) *[allocation panel]*;

"approval in principle" means an approval in principle under section 53 *[approvals in principle and certificates of compliance]*;

"approved professional" means a person who is named on a roster established under section 42 (2) *[approved professionals]*;

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

"certificate of compliance" means a certificate of compliance under section 53 *[approvals in principle and certificates of compliance]*;

"commission" has the same meaning as in the *Petroleum and Natural Gas Act*;

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

(a) a hazardous waste, or

(b) another prescribed substance

in quantities or concentrations exceeding prescribed risk based or numerical criteria or standards or conditions;

"contaminated soil relocation agreement" means a contaminated soil relocation agreement under section 55 *[contaminated soil relocation]*;

"contamination" means the presence in soil, sediment, water or groundwater of

(a) a hazardous waste, or

(b) a substance prescribed for the purposes of paragraph (b) of the definition of "contaminated site"

in quantities or concentrations exceeding the criteria, standards or conditions prescribed for the purposes of the definition of "contaminated site";

"detailed site investigation" means a detailed site investigation and report under section 41 *[site investigations]* that complies with the regulations;

"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 under section 58 *[orphan sites]* to be a high risk orphan site ;

"minor contributor" means a responsible person determined under section 50 *[minor contributors]* to be a minor contributor;

"municipality" means a municipality as defined in section 1 but including the Islands Trust and not including 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 45 (3) *[persons responsible for remediation of contaminated sites]*;

"orphan site" means a contaminated site determined under section 58 *[orphan sites]* to be an orphan site;

"owner" means a person who

(a) is in possession,

(b) has the right of control, or

(c) occupies or controls the use

of real property, and includes, without limitation, a person who has an 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 45 (3) *[persons responsible for remediation of contaminated sites]*;

"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 and report under section 41 *[site investigations]* that complies with the regulations;

"protocol" means a protocol established by a director under section 64 *[director's protocols]*;

"registrar" means the registrar appointed under section 43 *[site registry]*;

"remediation order" means a remediation order under section 48 *[remediation orders]*;

"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 45 *[persons responsible for remediation of contaminated sites]*;

"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 that person;

"site investigation" means a detailed or preliminary site investigation referred to in section 41 *[site investigations]*;

"site profile" means a site profile referred to in section 40 *[site profiles]*;

"site registry" means the site registry established under section 43 *[site registry]*;

"subdivision" means

(a) a subdivision as defined in the *Land Title Act*, or

(b) a subdivision under the *Strata Property Act*;

"summary of site condition" means a document that complies with subsection (3);

"voluntary remediation agreement" means a voluntary remediation agreement referred to in section 51 *[voluntary remediation agreements]*.

(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 of a contaminated site, or

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

(3) A summary of site condition must be

(a) prepared

(i) by an approved professional,

(ii) in the form established in a protocol, and

(iii) in accordance with the requirements prescribed by the minister, and

(b) signed by the approved professional.

Division 2 – Identification of Contaminated Sites

Site profiles

40 (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 the director 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 the commission 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) A municipality, an approving officer or the commission, as applicable, must

(a) assess a site profile received under subsection (1), (2) or (3) in accordance with the regulations,

(b) if the assessment of the site profile under paragraph (a) indicates that a director should review the site profile to determine if a site investigation is required, forward a copy of the site profile to a director, and

(c) forward a copy of the site profile to any other person specified in the regulations.

(5) A municipality, an approving officer and the commission may impose reasonable fees for an assessment under subsection (4) (a).

(6) A vendor of real property who knows or reasonably should know that real property has been used for

(a) a prescribed 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 director in accordance with the regulations.

(7) 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 a director immediately on taking possession or control if the real property has been used for

(a) an industrial or commercial purpose prescribed for the purpose of subsection (6) (a), or

(b) a purpose or activity prescribed for the purpose of subsection (6) (b).

(8) A director may order a person to prepare and provide to the director a site profile if that person

(a) owns or occupies land that, in the opinion of the director, 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 (7) and fails to provide a satisfactorily completed site profile.

(9) If the director orders the preparation of a site profile respecting land that is subsequently determined not to be a contaminated site, the director is not liable for any costs incurred by a person in preparing the site profile.

(10) Except for the duty of a vendor to provide a site profile to a prospective purchaser under subsection (6), the duty to provide a site profile does not apply if a person

(a) has been ordered to undertake a site investigation under section 41 *[site investigations]*,

(b) seeks and obtains a determination that the site is a contaminated site under section 44 (3) *[determination of contaminated sites]* if before the determination the affected person notifies in writing the applicable municipality or approving officer or the commission, as applicable, of his or her request for a determination, or

(c) has already provided a site profile for the site under subsection (1).

Site investigations

41 (1) A director 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 and any applicable protocol if the director 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 director orders a preliminary site investigation or a detailed site investigation respecting a site that is subsequently determined not to be a contaminated site, the director is not liable for any costs incurred by a person for completing the investigation and the related report.

(3) On receipt of a report of a preliminary site investigation or a detailed site investigation submitted under this section, the director

(a) must determine whether the report and investigation comply with any applicable regulations and orders,

(b) must give notice to the owner or operator of the site of the determination under paragraph (a), and

(c) may require the additional investigation and reporting the director considers necessary for the report and investigation to comply with any applicable regulations or orders.

(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 44 (3) *[determination of contaminated sites]*.

Approved professionals

42 (1) A director may designate classes of persons who are qualified to perform classes of activities, prepare classes of reports and other documents or make classes of recommendations that under this Act may be or are required to be performed, prepared or made by an approved professional.

(2) The director may establish a roster of persons who are in a class designated under subsection (1).

(3) A director may

(a) make changes to the roster that are necessitated by the removal of a designation, and

(b) add and remove names from the roster.

(4) If a qualified professional has performed activities in a manner that a director has reasonable grounds to believe does not satisfy the applicable protocol established under section 64 *[director's protocols]*, the director may suspend the qualified professional from the roster on terms and conditions.

Site registry

43 (1) The minister must

(a) establish a site registry, and

(b) appoint a registrar to manage the site registry.

(2) A director 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 director receives,

(b) all orders, approvals, voluntary remediation agreements and decisions, including determinations under section 44 (3) *[determination of contaminated sites]*, made by the director under this Part,

(c) pollution abatement orders under section 83 *[pollution abatement orders]* that impose a requirement for remediation,

(d) notifications under section 54 *[independent remediation procedures]* respecting independent remediation,

(e) declarations and orders made by the minister under section 58 *[orphan sites]*, and

(f) other information required by the regulations.

(3) A director may request the registrar to enter in the site registry information that

(a) is already available to the director, and

(b) would normally be obtained through a site profile or site investigation,

if, before requesting the registrar to do so, the director provides

(c) notice to the owners or operators of the site, if known to the director, of the intention to make the request, and

(d) an opportunity for those owners or operators to show cause to the director 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 must provide for reasonable public access to information in the site registry.

Determination of contaminated sites

44 (1) A director may determine whether a site is a contaminated site and, if the site is a contaminated site, the director may determine the boundaries of the contaminated site.

(2) Subject to subsection (3), in determining whether a site is a contaminated site, the director 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 who submitted the site profile, preliminary site investigation or detailed site investigation for the site,

(ii) any of a municipality, an approving officer or the commission that has received and forwarded to the director 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 director searches the land title records, and

(iv) any person known to the director who may be a responsible person under section 45 *[persons responsible for remediation of contaminated sites]* 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 who submitted the site profile, preliminary site investigation or detailed site investigation for the site,

(ii) any of a municipality, an approving officer or the commission that received, assessed and forwarded to the director 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 director who may be a responsible person under section 45 *[persons responsible for remediation of contaminated sites]*, and

(v) any person who has commented under paragraph (c);

(f) carry out any other procedures specified in the regulations.

(3) A director, on request by any person, may omit 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.

(5) In addition to a site in respect of which a director makes a determination under subsection (1), a site is considered to be or to have been a contaminated site if a director has done any of the following:

(a) appointed an allocation panel with respect to the site under section 49 *[allocation panel]*;

(b) determined that a responsible person is a minor contributor with respect to the site under section 50 *[minor contributors]*;

(c) entered into a voluntary remediation agreement with respect to the site under section 51 *[voluntary remediation agreements]*;

(d) issued an approval in principle with respect to a proposed remediation plan for the site under section 53 (1) *[approvals in principle and certificates of compliance]*;

(e) issued a certificate of compliance with respect to remediation of the site under section 53 (3) *[approvals in principle and certificates of compliance]*.

(6) A final determination made under this section is a decision that may be appealed under Division 2 *[Appeals from Decisions under this Act]* of Part 8.

Division 3 – Liability for Remediation

Persons responsible for remediation of contaminated sites

45 (1) Subject to section 46 *[persons not responsible for remediation]*, the following persons are responsible for remediation of 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 of 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 of 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.

(4) A secured creditor is not responsible for remediation if it acts primarily to protect its security interest, including, without limitation, if the secured creditor

(a) participates only in purely financial matters related to the site,

(b) has the capacity or ability to influence any operation at the contaminated site in a manner that would have the effect of causing or increasing contamination, but does not exercise that capacity or ability in such a manner as to cause or increase contamination,

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

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

Persons not responsible for remediation

46 (1) The following persons are not responsible for remediation of a contaminated site:

(a) a person who would become a responsible person only because of an act of God that occurred before April 1, 1997, 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;

(b) a person who would become a responsible person only because of an act of war 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;

(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) if 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

(i) owned or occupied a site that at the time of acquisition was not a contaminated site, and

(ii) during the ownership or operation, 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 45 (1) (c) or (d) or (2) (c) or (d) *[persons responsible for remediation of contaminated sites]* who

(i) transported or arranged to transport the substance to the site, if the owner or operator of the site was authorized under an Act to accept the substance at the time of its deposit, and

(ii) received permission from the owner or operator described in subparagraph (i) to deposit the substance;

(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 respecting remediation work at a contaminated site, unless the assistance is carried out in a negligent fashion;

(i) a person who provides advice respecting remediation work at a contaminated site unless the advice is negligent;

(j) 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;

(k) 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;

(l) subject to subsection (2), a government body that possesses, owns or operates a roadway, highway or right of way for sewerage or waterworks on a contaminated site, to the extent of the possession, ownership or operation;

(m) a person who was a responsible person for a contaminated site for which 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;

(n) a person who is in a class designated in the regulations as not responsible for remediation.

(2) Subsection (1) (l) does not apply with respect to contamination placed or deposited below a roadway, highway or right of way for sewerage or waterworks by the government body that possesses, owns or operates the roadway, highway or right of way for sewerage or waterworks.

(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.

General principles of liability for remediation

47 (1) A person who is responsible for remediation of a contaminated site is absolutely, retroactively and jointly and separately 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) Subsection (1) must not be construed as prohibiting the apportionment of a share of liability to one or more responsible persons by the court in an action or proceeding under subsection (5) or by a director in an order under section 48 *[remediation orders]*.

(3) 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 44 *[determination of contaminated sites]* 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 director, a municipality, an approving officer or the commission under this Part.

(4) 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.

(5) Subject to section 50 (3) *[minor contributors]*, any person, including, but not limited to, a responsible person and a director, who incurs costs in carrying out remediation of a contaminated site may commence an action or a proceeding to recover the reasonably incurred costs of remediation from one or more responsible persons in accordance with the principles of liability set out in this Part.

(6) Subject to subsections (7) and (8), a person is not required to obtain, as a condition of an action or proceeding under subsection (5) being heard by a court,

(a) a decision, determination, opinion or apportionment of liability for remediation from a director, or

(b) an opinion respecting liability from an allocation panel.

(7) In all cases, the site that is the subject of an action or proceeding must be determined or considered under section 44 *[determination of contaminated sites]* to be or to have been a contaminated site before the court can hear the matter.

(8) Despite subsection (7), if independent remediation has been carried out at a site and the site has not been determined or considered under section 44 *[determination of contaminated sites]* to be or to have been a contaminated site, the court must determine whether the site is or was a contaminated site.

(9) The court may determine in accordance with the regulations, unless otherwise determined or established under this Part, any of the following:

(a) whether a person is responsible for remediation of a contaminated site;

(b) whether the costs of remediation of a contaminated site have been reasonably incurred and the amount of the reasonably incurred costs of remediation;

(c) the apportionment of the reasonably incurred costs of remediation of a contaminated site among one or more responsible persons in accordance with the principles of liability set out in this Part;

(d) such other determinations as are necessary to a fair and just disposition of these matters.

Remediation orders

48 (1) A director may issue a remediation order to any responsible person.

(2) A remediation order may require a person referred to in subsection (1) to do any or all of the following:

(a) undertake remediation;

(b) contribute, in cash or in kind, towards the costs of another person who has reasonably incurred costs of remediation;

(c) give security, which may include real and personal property, in the amount and form the director specifies.

(3) For the purpose of deciding whether to require a person to undertake remediation under subsection (2), a director may consider whether remediation should begin promptly, and must consider each of 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 the 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 the commission, the adequacy of remediation being undertaken under section 84 of the *Petroleum and Natural Gas Act*;

(f) other factors prescribed in the regulations.

(4) For the purpose of deciding who will be ordered to undertake or contribute to remediation under subsections (1) and (2), a director, to the extent feasible without jeopardizing remediation requirements, must

(a) take into account private agreements between or among responsible persons respecting liability for remediation, if those agreements are known to the director, and

(b) on the basis of information known to the director, name one or more persons whose activities, directly or indirectly, contributed most substantially to the site becoming a contaminated site, taking into account such factors 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 a 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 under section 83 *[pollution abatement orders]* that imposes a requirement for remediation, is issued in respect of a site, and the director has not yet determined under section 44 *[determination of contaminated sites]* whether the site is a contaminated site, as soon as reasonably possible after the issuance of the order, the director must determine

(a) whether the site is a contaminated site, in accordance with section 44 *[determination of contaminated sites]*, and

(b) whether the person named in the order is a responsible person under section 45 *[persons responsible for remediation of contaminated sites]*.

(7) If a person named in an order referred to in subsection (6) is determined not to be a responsible person, the government must compensate the person, in accordance with the regulations, for any costs directly incurred by the person in complying with the order.

(8) A person who receives a remediation order under subsection (1) or notice of a remediation order under subsection (13) must not, without the consent of the director, 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 director despite any other remedy sought, may commence an action against the person to recover the amount of the diminishment or reduction.

(9) The director may provide in a remediation order that a responsible person is not required to begin remediation of a contaminated site 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.

(10) A person who has submitted a site profile under section 40 (7) *[site profiles of trustee, receiver, etc.]* must not directly or indirectly diminish or reduce assets at a site designated in the site registry as a contaminated site, including, without limitation, by

(a) disposing of real or personal assets, or

(b) subdividing land

unless he or she first requests and obtains written notice from a director that the director does not intend to issue a remediation order.

(11) If a director issues or gives notice of the intention to issue a remediation order to a person referred to in subsection (10), subsection (8) applies.

(12) A director may amend or cancel a remediation order.

(13) A director, on making a remediation order must, within a reasonable time, provide notice of the order in writing to every person holding an interest in the contaminated site if the interest is registered in the land title office at the time of issuing the order.

(14) A remediation order may authorize, subject to the terms and conditions a director considers necessary and reasonable, any person designated by the director to enter specified land for the purpose of ensuring that the remediation order is carried out according to its terms.

(15) If a remediation order authorizes a person to enter specified land, the person who owns or occupies the land must allow the authorized person to enter in accordance with the authorization.

(16) Subsections (14) and (15) do not authorize any person to enter any structure or part of a structure that is used solely as a private residence.

Allocation panel

49 (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 director, on request by any person, may appoint an allocation panel consisting of 3 allocation advisors to provide an opinion as to any or all 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 the contamination and, if the costs of remediation are known or reasonably ascertainable, the share of those costs attributable to that contamination.

(3) For the purpose of providing an opinion under subsection (2) (b) and (c), the allocation panel must, to the extent of available information, consider the following:

(a) the information available to identify a person's relative contribution to the contamination;

(b) the nature and quantity 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 contamination;

(e) the degree of diligence exercised by the responsible person, compared with one or more other responsible persons, with respect to the generation, transportation, treatment, storage or disposal of 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 harm to human health or the environment;

(g) in the case of a minor contributor, factors set out in section 50 (1) (a) and (b) *[minor contributors]*;

(h) other factors considered by the panel to be relevant to apportioning liability.

(4) A director may require, as a condition of entering a voluntary remediation agreement with a responsible person, that the responsible person, at his or her own expense, seek and provide to the director the opinion of an allocation panel under subsection (2).

(5) If a director appoints an allocation panel with respect to a site, the site is considered to be a contaminated site at the time the allocation panel is appointed, despite the absence of a determination under section 44 (1) *[determination of contaminated sites]*.

(6) A director may consider, but is not bound by, the opinion of an allocation panel.

(7) Work performed by the allocation panel must be paid for by the person who requests the opinion.

Minor contributors

50 (1) A director 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 separate liability to the person would be unduly harsh.

(2) If a director makes a determination under subsection (1) that a responsible person is a minor contributor, the director 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 liable for remediation costs in an action or proceeding brought by another person or the government under section 47 *[general principles of liability for remediation]* only up to the amount or portion specified by the director in the determination under subsection (2).

(4) If a director 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 determi-

nation, despite the absence of a determination under section 44 (1) *[determination of contaminated sites]*.

Division 4 – Implementation of Remediation

Voluntary remediation agreements

51 (1) On the request of a responsible person, including a minor contributor, a director may enter into a voluntary remediation agreement in accordance with the regulations, 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 or control regarding site conditions and the person's activities respecting that site,

(c) security, which may include real and personal property, in the amount and form, and subject to the conditions the director specifies,

(d) a schedule of remediation acceptable to the director, and

(e) requirements that the director considers to be reasonably necessary to achieve remediation.

(2) If a responsible person enters into and performs a voluntary remediation agreement according to its terms,

(a) the responsible person is discharged from further liability,

(b) other responsible persons not named in the voluntary remediation agreement are not discharged from liability,

(c) the total potential liability of other responsible persons is reduced by any amount specified in the voluntary remediation agreement,

(d) the right of any person 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, is not affected or modified in any way, and

(e) the director is not prevented from entering into another voluntary remediation agreement in respect of the same site.

(3) A director may stipulate in a voluntary remediation agreement that a responsible person is not required to begin remediation of a contaminated site 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 director 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 44 (1) *[determination of contaminated sites]*.

Public consultation and review

52 (1) A director may order that a responsible person, at the person's own expense, provide, in accordance with any regulations, for public consultation on a proposed remediation or a public review of remediation activities.

(2) For the purpose of deciding whether to make an order under subsection (1), the director may take into account any factors the director considers relevant, including without limitation, 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) the remediation methods proposed to be used and the potential for long term health, environmental or financial impacts;

(g) opportunities for public involvement provided 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.

Approvals in principle and certificates of compliance

53 (1) For the purposes of exercising powers and performing duties under this section, a director may rely on any information the director considers sufficient for the purpose, including, but not limited to, a preliminary site investigation, a detailed site investigation, a risk assessment, a remediation plan or a summary of site condition.

(1.1) On application by a responsible person, a director, in accordance with the regulations, may issue an approval in principle stating that a remediation plan for a contaminated site

(a) has been reviewed by the director,

(b) has been approved by the director, and

(c) may be implemented in accordance with conditions specified by the director.

(2) For the purpose of subsection (1.1), if a director 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 44 (1) *[determination of contaminated sites]*.

(3) A director, 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) the numerical or risk based standards prescribed for the purposes of the definition of "contaminated site",

(ii) any orders under this Act,

(iii) any remediation plan approved by the director, and

(iv) any requirements imposed by the director,

(b) [Repealed 2004-18-8.]

(c) a plan has been prepared for the purposes of containing, controlling and monitoring any substances remaining on the site and, if required by the director, works have been installed to implement the plan,

(d) any security in relation to the management of contamination, which security may include real and personal property in the amount and form and subject to the conditions specified by the director, has been provided in accordance with the minister's regulations, and

(e) the responsible person, if required by the director in prescribed circumstances or for prescribed purposes, has prepared and provided to the director proof of registration of a restrictive covenant under section 219 of the *Land Title Act* acceptable to the director.

(4) For the purpose of subsection (3) if a director has issued a 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 44 (1) *[determination of contaminated sites]*.

(5) A director may withhold or rescind an approval in principle or a certificate of compliance if

(a) conditions imposed on the approval or certificate are not complied with, or

(b) any fees payable under this Part or the regulations are outstanding.

(6) A director may issue an approval in principle or a certificate of compliance for a part of a contaminated site.

Independent remediation procedures

54 (1) A responsible person may carry out independent remediation in accordance with the minister's regulations whether or not

(a) a determination has been made as to whether the site is a contaminated site,

(b) a remediation order has been issued with respect to the site, or

(c) a voluntary remediation agreement with respect to the site has been entered into.

(2) Any person undertaking independent remediation of a contaminated site must
(a) notify a director in writing promptly on initiating remediation, and
(b) notify the director in writing within 90 days of completing remediation.

(3) A director 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 52 *[public consultation and review]*, or
(d) impose requirements that the director considers are reasonably necessary to achieve remediation.

(4) On request of a person carrying out independent remediation and on receiving adequate information respecting the independent remediation, a director 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 or a certificate of compliance under section 53 *[approvals in principle and certificates of compliance]*.

(5) The director may assess against a person, in accordance with the regulations, the prescribed fees for carrying out the actions referred to in subsection (4).

Contaminated soil relocation

55 (1) Subject to subsection (5), a person must not relocate contaminated soil from a contaminated site unless
(a) the person enters into a contaminated soil relocation agreement, and
(b) complies with terms and conditions of the contaminated soil relocation agreement.

(2) If, in the opinion of a director, after giving consideration to
(a) the suitability of the receiving site,
(b) the quality of the contaminated soil to be relocated, and
(c) the existing and future uses of the receiving site,

the relocation of the contaminated soil will not cause a significant potential for adverse effects on human health or for pollution of the environment, the director may enter into a contaminated soil relocation agreement with
(d) the owner or operator of the site proposed to receive contaminated soil, and
(e) a responsible person for the contaminated site from which the contaminated soil is proposed to be removed.

(3) The contaminated soil relocation agreement must provide that prescribed standards and procedures apply in respect of the relocation and deposit and that
(a) the quality of the soil at the receiving site is suitable for the use intended based on prescribed standards, or

(b) the conditions at the receiving site are suitable for the use intended as documented by a risk assessment conducted in accordance with the regulations and to the satisfaction of the director.

(4) A director may require, as a condition of entering into a contaminated soil relocation agreement, that the person requesting the agreement 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, which may include real and personal property, in the amount and form and subject to conditions the director 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 adopted or 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 37 (5) *[conflicts between this Act and bylaws, permits, etc. issued by a municipality]*, 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) If a director enters into a contaminated soil relocation agreement, the director 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.

Selection of remediation options

56 (1) A person conducting or otherwise providing for remediation of a site 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.

(2) When issuing an approval in principle or a certificate of compliance, a director must consider whether permanent solutions have been given preference to the maximum extent practicable as determined in accordance with any guidelines set out in the regulations.

Division 5 – Delegation

Delegation of responsibilities to municipalities or other ministries

57 (1) The minister and a municipality may enter into an agreement authorizing the municipality to exercise powers and perform functions described in subsection (3), except in relation to a contaminated site that is owned by a municipality or for which a municipality is a responsible person.

(2) For the purpose of enhancing coordination of Provincial regulatory activities, the minister and any other minister of the government may enter into an arrangement enabling officials of the ministry of the other minister to exercise or perform one or more powers and functions described in this Part, except in relation 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, a director may delegate to one or more officials of a municipality or another ministry the powers and functions of a director 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) A director may not delegate under subsection (3) any of the powers or functions with respect to the following:

(a) determining whether a site is a contaminated site;

(b) determining 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, the municipality or other minister 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, a decision of the official is a decision that may be appealed to the appeal board under Division 2 *[Appeals of Decisions under this Act]* of Part 8.

Division 6 – Ministry Authority

Orphan sites

58 (1) A director 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 of

(a) a contaminated site that is not otherwise being adequately remediated, or

(b) a high risk orphan site.

(3) If the minister has made a declaration under subsection (2), the minister may carry out remediation and recover the reasonably incurred costs of the remediation and the minister, or an officer authorized in writing by the minister, may, even though the ordered action interferes with or abrogates property rights, 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.

(4) If the minister has made a declaration under subsection (2), a director, an officer or any person directed to do so by the 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 proof of 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 or order on the site registry.

Cost recovery if minister carries out remediation

59 (1) A director may recover all or a portion of the cost of remediation by

(a) taking steps to identify and recover costs from responsible persons during or after remediation,

(b) arranging to sell or selling any property comprising all or part of the site, or

(c) seeking contributions from available cost sharing agreements with government bodies or other persons.

(2) The amount shown on the certificate under section 58 (7) *[orphan sites]* is a debt due to the government and, subject to subsection (3) of this section, is recoverable

(a) from any responsible person, by action in the Supreme Court, or

(b) by order of the minister directing a person who is purchasing or otherwise acquiring an interest in land that is subject to remediation under section 58 *[orphan sites]* to pay to the minister, in respect of the amounts spent in remediation, instead of to the vendor, an amount not exceeding the amount owing to the vendor, and the purchaser is discharged in the amount paid to the minister from the obligation to pay the vendor.

(3) If the Supreme Court is satisfied that the expenditure incurred by the government under section 58 *[orphan sites]* is 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 against a contaminated site for the costs of remediation incurred by the government at the contaminated site that has been remediated under section 58 *[orphan sites]*.

(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.

Government retains right to take future action

60. A director may exercise any of a director'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) activities occur on a site that may change its condition or use,

(c) information becomes available about a site or a contaminating substance at the site that leads to a reasonable inference that the site poses a threat to human health or the environment,

(d) a responsible person fails to exercise due care with respect to any contamination at the site, or

(e) a responsible person directly or indirectly contributes to contamination at the site after previous action.

Division 7 – General Provision Respecting Contaminated Sites

Immunity in relation to contaminated sites

61 (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

(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 57 *[delegation of responsibilities to municipalities or other ministries]* 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.

Contaminated site regulations

62 (1) Without limiting section 138 (1) *[general authority to make regulations]*, the Lieutenant Governor in Council may make regulations as follows:

(a) requiring disclosures by persons not specified in section 40 *[site profiles]*, including, without limitation, disclosures by lessors and lessees;

(b) prescribing fees for the purposes of this Part and Part 5 *[Remediation of Mineral Exploration Sites and Mines]* including, without limitation, fees for assessing or reviewing site profiles, site investigation reports and remediation plans and reports, whether or not prepared under a remediation order;

(c) governing the content of the site registry and the management of and procedures relating to the site registry, including requirements for public access to the registry and for persons to submit information to the registrar;

(d) prescribing the information required for the purposes of section 43 (2) (f) *[site registry]*;

(e) designating classes of persons as responsible persons in addition to those referred to in section 45 *[persons responsible for remediation of contaminated sites]*;

(f) designating classes of persons who are not responsible persons in addition to those referred to in section 46 *[persons not responsible for remediation]*;

(g) prescribing purposes or activities for the purposes of section 40 (6) (b) *[site profiles]* and requirements respecting the obligation of a vendor to provide a site profile under section 40 (6);

(h) respecting allocation panels, including, without limitation,

   (i) governing the procedures and deliberations of an allocation panel, and

   (ii) establishing the fees payable to allocation panel members;

(i) prescribing the information that must be provided to, and the procedures to be followed by, a director making a determination under section 50 *[minor contributors]*;

(j) establishing requirements for the purposes of section 52 *[public consultation and review]*, including without limitation, requirements that consultations in respect of prescribed classes of remediation be facilitated by a medical health officer;

(k) 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;

(l) establishing transitional requirements for remediation that began before April 1, 1997;

(m) authorizing a director to require a report of a qualified professional and specify the requirements of the report before exercising the director's authority under this Part;

(n) prescribing factors that must be considered in determining reasonable costs of remediation, circumstances in which costs of remediation are considered reasonable and evidentiary matters for the purposes of an apportionment of remediation costs by a court under section 47 *[general principles of liability for remediation]* or by the director in a remediation order under section 48 *[remediation orders]*;

(o) respecting compensation payable by the government under section 48 (7) *[remediation orders]*;

(p) prescribing procedures that must be followed and criteria that must be considered by a director under section 58 (1) *[orphan sites]*;

(q) exempting any person from any requirement under this Part in circumstances and on conditions that the Lieutenant Governor in Council may prescribe;

(r) respecting modifications, interpretive guidelines and procedures for any exemptions set out in section 46 *[persons not responsible for remediation]*.

(2) Section 139 *[regulations – general rules]* applies for the purpose of making regulations under this section.

Minister's regulations – contaminated sites

63 (1) The minister may make regulations in relation to contaminated site remediation as follows:

(a) prescribing other activities for the purpose of the definition of "remediation" in section 1 (1), including but not limited to routine procedures applicable to remediation of contamination associated with underground storage tanks;

(b) respecting site profiles, including, without limitation,

(i) prescribing the information that must be provided in a site profile,

(ii) prescribing circumstances in which a specified person must provide a site profile to another specified person,

(iii) prescribing procedures for providing a site profile,

(iv) prescribing procedures for assessing a site profile, and

(v) prescribing when a site profile must be provided by a specified person;

(c) and (d) [Repealed 2004-18-14.]

(e) prescribing procedures for undertaking, and the content of, a site investigation and a site investigation report;

(f) [Repealed 2004-18-14.]

(f.1) respecting summaries of site conditions, including, without limitation,

(i) prescribing the information that must be provided in a summary of site condition,

(ii) prescribing circumstances in which a specified person must provide a summary of site condition to another specified person,

(iii) prescribing circumstances in which a director may order a person to provide to the director or another person a summary of site condition,

(iv) prescribing procedures for providing a summary of site condition, and

(v) prescribing when a summary of site condition must be provided by a specified person;

(g) and (h) [Repealed 2004-18-14.]

(i) respecting a determination under section 44 *[determination of contaminated sites]*, including, without limitation,

(i) prescribing procedures for making a determination,

(ii) prescribing the persons to whom a director must give notice of a determination under section 44 *[determinations of contaminated sites]*,

(iii) prescribing circumstances in which a director may make a determination that a site is contaminated without following the procedures prescribed under subparagraph (i), and

(iv) prescribing circumstances in which a site is considered to be a contaminated site without a determination under section 44 (1);

(j) prescribing factors for the purposes of section 48 (3) (f) *[remediation orders]*;

(k) prescribing procedures for entering into a voluntary remediation agreement and requirements of voluntary remediation agreements;

(l) prescribing factors for the purposes of section 56 (1) (d) *[selection of remediation options]* and guidelines for the purposes of section 56 (2);

(m) governing the issuance of approvals in principle and certificates of compliance under section 53 *[approvals in principle and certificates of compliance]*, including, without limitation

(i) prescribing requirements for the purposes of section 53 (3) (d),

(ii) prescribing circumstances in which and purposes for which a director may require a covenant under section 53 (3) (e), and

(iii) prescribing circumstances in which a covenant under section 53 (3) (e) must be discharged;

(n) prescribing substances and risk based or numerical criteria, standards and conditions for the purposes of the definition of "contaminated site" in section 39 *[definitions and interpretation]*;

(o) prescribing standards and procedures for the purpose of section 55 (3) *[contaminated soil relocation]*;

(p) prescribing matters for the purposes of section 64 (2) (p) *[director's protocols]*;

(q) exempting any person from any requirement under this Part in circumstances and on conditions that the minister may prescribe;

(r) prescribing the manner of publication for the purposes of section 64 (2).

(2) Section 139 *[regulations – general rules]* applies for the purposes of making regulations under this section.

Director's interim standards

63.1 (1) A director may make regulations prescribing substances and risk based or numerical criteria, standards and conditions for the purpose of the definition of "contaminated site" in section 39 *[definitions and interpretation]* if the director considers it necessary in the public interest.

(2) In the event of a conflict between a regulation under this section and a regulation under section 63 (1) (n), the regulation under this section prevails.

(3) A regulation under subsection (1) ceases to have effect one year after the date it was made.

Director's protocols

64 (1) A director may establish protocols, consistent with this Act and the regulations, in relation to any of the following:

(a) providing procedures of an allocation panel established under section 49 *[allocation panel]*;

(b) specifying information required in support of a public community based consultation process facilitated by the local medical health officer under section 52 *[public consultation and review]*;

(c) specifying requirements for any investigation, analysis and interpretation, assessment, preparation of a remediation plan or any other activity included in the definition of "remediation" in section 1 (1);

(d) establishing substantive and procedural requirements for persons planning, conducting or reporting on the remediation of a contaminated site, which may be different for sites contaminated with particular types of contamination;

(e) establishing procedures in respect of requiring, and establishing conditions for, security.

(2) For the purposes of protocols established under subsection (1), a director may establish protocols in respect of the following:

(a) choosing the substances for which field or laboratory analyses are required;

(b) sampling soil, water and other media;

(c) testing or analyzing soil, water and other media, including tests to estimate the bioavailability of substances to plants and animals;

(d) carrying out statistical designs, analyses and evaluations of data;

(e) carrying out risk assessment consisting of various steps and processes;

(f) modelling physical, chemical or biological processes;

(g) evaluating site conditions;

(h) setting requirements relating to assessment and control of environmental impacts, including monitoring;

(i) classifying sites as low, moderate, medium, intermediate or high risk sites based on an evaluation of risk to human health and the environment;

(j) endorsing certain remediation approaches as the preferred alternatives for a certain type of site;

(k) providing procedures for determining the timing, nature and extent of public consultation or review of remediation;

(l) providing procedures for establishing the local background concentration of substances at a site, class of sites or geographical area;

(m) establishing formats for summaries of site investigations and remediation plans for the purposes of their entry into the site registry;

(n) developing soil, sediment and water numerical standards;

(o) establishing standards for qualified professionals in relation to

(i) the performance of activities under this Act, and

(ii) conflict of interest;

(o.1) summarizing or specifying activities, including the preparation of specified reports or documents, that may or must be performed by an approved professional;

(p) a matter prescribed by the minister.

(3) Section 41 of the *Interpretation Act* and the *Regulations Act* do not apply in relation to a protocol under this section.

(4) On and after the date that a protocol under this section is published in accordance with the minister's regulations, a director may refuse to accept anything governed by the protocol that is not in compliance with it.

PART 5 – REMEDIATION OF MINERAL EXPLORATION SITES AND MINES

Definitions and interpretation

65 (1) In this Part:

"advanced exploration site" means

(a) an area described by a valid and subsisting mineral title as defined under the *Mineral Tenure Act* where mineral exploration activities have been undertaken,

(b) an area described by a valid and subsisting Crown granted claim under the *Land Act* where mineral exploration activities have been undertaken, or

(c) a valid and subsisting location as defined under the *Coal Act* where coal exploration activities have been undertaken,

if

(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 any of the following areas at an advanced exploration site or at a producing or past producing mine site:

(a) an area where waste rock or mine tailings are placed;

(b) an area where there is disturbance of the ground by mechanical means including, without limitation, trenches, open pits and underground workings;

(c) an area where there has been construction, modification, deactivation or reclamation of an access road;

(d) an area where prescribed activities take place or that is used for a prescribed use;

"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 this Act;

"exploration site" means

(a) an area described by a valid and subsisting mineral title as defined under the *Mineral Tenure Act* where mineral exploration activities have been undertaken,

(b) an area described by a valid and subsisting Crown granted claim under the *Land Act* where mineral exploration activities have been undertaken, or

(c) a valid and subsisting location as defined under the *Coal Act* where coal exploration activities have been undertaken,

if

(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, areas where facilities and operations such as maintenance shops, storage facilities, accommodation complexes, mineral crushing and processing mills and mineral treatment operations are located;

"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) in respect of which there is a valid and subsisting permit under the *Mines Act*, and

(c) that is currently producing or has produced minerals or coal, if

(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

(ii) 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 a director under this Act regarding the transfer of a *Mines Act* permit.

(2) This Part does not restrict the powers of a director 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 *[Contaminated Site Remediation]* or sections 81 *[pollution prevention orders]* and 83 *[pollution abatement orders]* that are otherwise provided for in this Part, the provisions of this Part prevail.

(5) Despite sections 66 (5) *[exploration sites]*, 67 (4) *[advanced exploration sites]* and 68 (4) *[producing or past producing mine sites]*, a person who requests a director to issue an approval in principle or a certificate of compliance under section 53 *[approvals in principle and certificates of compliance]* or to provide any other services in relation to a contaminated site must pay the fees prescribed in the regulations for those services.

Exploration sites

66 (1) Despite section 45 *[persons responsible for remediation of contaminated sites]*, the following persons who carried out mineral or coal exploration activities at an exploration site are not responsible for remediation of 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 director may not issue a remediation order under section 48 *[remediation orders]* to a current or previous owner or operator of an exploration site.

(3) A director may not issue a pollution prevention order under section 81 *[pollution prevention orders]* or a pollution abatement order under section 83 *[pollution abatement orders]* to a previous owner or operator of an exploration site in respect of the exploration site.

(4) A director may not require or accept security under this Act for remediation of an exploration site.

(5) Fees prescribed under this Act for the purposes of Part 4 *[Contaminated Site Remediation]* in relation to an exploration site are payable only with respect to the remediation of spills of substances.

Advanced exploration sites

67 (1) Despite section 45 *[persons responsible for remediation of contaminated sites]*, a previous owner or operator of an advanced exploration site is not responsible for remediation of the site if

(a) the owner or operator obtains a transfer agreement that excludes the owner or operator from liability for the contaminated site, or

(b) indemnification has been provided to the owner or operator for that site under the *Financial Administration Act.*

(2) A director may not issue a remediation order under section 48 *[remediation orders]* to a current or previous owner or operator of a core area within an advanced exploration site.

(3) A director may not require or accept security under this Act for remediation of an advanced exploration site.

(4) Fees prescribed under this Act for the purposes of Part 4 *[Contaminated Site Remediation]* in relation to an advanced exploration site are payable only with respect to

(a) the remediation of spills of substances, or

(b) an order issued under section 48 *[remediation orders]* for remediation of a non-core area.

Producing or past producing mine sites

68 (1) Despite section 45 *[persons responsible for remediation of contaminated sites]*, a previous owner or operator of a producing or past producing mine site is not responsible for remediation of the site if

(a) the owner or operator obtains a transfer agreement that excludes the owner or operator from liability for the contaminated site, or

(b) indemnification has been provided to the owner or operator for that site under the *Financial Administration Act.*

(2) The director may not issue a remediation order under section 48 *[remediation orders]* in relation to the remediation of a core area of a producing or past producing mine unless

(a) requested to do so by the Chief Inspector of Mines under the *Mines Act*,

(b) this was 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.

(3) Subject to subsection (2), the director must not require or accept security under this Act for remediation of a producing or past producing mine site.

(4) Fees prescribed under this Act for the purposes of Part 4 *[Contaminated Site Remediation]* in relation to a producing or past producing mine site 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 48 *[remediation orders]* for remediation of a non-core area, or

(d) a formal change in land or water use from those uses approved in the applicable *Mines Act* permit.

Historic mine sites

69 Despite section 45 *[persons responsible for remediation of contaminated sites]*, a person is not responsible for remediation of 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 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.

Regulations for purposes of Part 5

70 (1) Without limiting section 138 (1) *[general authority to make regulations]*, the Lieutenant Governor in Council may make regulations as follows:

(a) prescribing other activities and uses for the purpose of the definition of "core area" in section 65 (1) *[definitions and interpretation]*;

(b) prescribing the content of and criteria for transfer agreements for the purposes of this Part.

(2) Section 139 *[regulations – general rules]* applies for the purpose of making regulations under this section.

PART 6 – CLEAN AIR PROVISIONS

Definitions

71 In this Part:

"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, other than solid fuel, used in an engine;

"jurisdiction" includes a foreign jurisdiction;

"manufacturer", in relation to a product, means a manufacturer who produces the product anywhere and offers it 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.

Control of air contaminants

72 (1) A person must not sell, display for sale or deliver 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 74 *[motor vehicle and engine emission regulations]*.

(2) A person must not sell, deliver 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.

(3) Section 139 *[regulations – general rules]* applies for the purpose of making regulations under this section.

Fuel emission regulations

73 (1) Without limiting section 138 (1) *[general authority to make regulations]*, 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) Section 139 *[regulations – general rules]* applies for the purpose of making regulations under this section.

Motor vehicle and engine emission regulations

74 (1) Without limiting section 138 (1) *[general authority to make regulations]*, 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

(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) Section 139 *[regulations – general rules]* applies for the purpose of making regulations under this section.

Solid fuel burning domestic appliance regulations

75 (1) Without limiting section 138 (1) *[general authority to make regulations]*, 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) regulating or imposing requirements or prohibitions in relation to 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) regulating and requiring 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.

(2) Section 139 *[regulations – general rules]* applies for the purpose of making regulations under this section.

Burning regulations

76 (1) Without limiting section 138 (1) *[general authority to make regulations]*, the Lieutenant Governor in Council may make regulations 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.

(2) Section 139 *[regulations – general rules]* applies for the purpose of making regulations under this Part.

PART 7 – POWERS IN RELATION TO MANAGING THE ENVIRONMENT

Division 1 – Assessment, Prevention and Abatement

Requirement to provide information

77 (1) For the purpose of determining whether there are reasonable grounds for making a pollution prevention order under section 81 *[pollution prevention orders]* or a pollution abatement order under section 83 *[pollution abatement orders]*, a director may order a person who is conducting an industry, trade or business to provide to the director the information described in subsection (2) that the director requests, whether or not

(a) the industry, trade or business is prescribed for the purposes of section 6 (2) *[waste disposal]*, or

(b) an activity or operation of the industry, trade or business is prescribed for the purposes of section 6 (3) *[waste disposal]*.

(2) An order under subsection (1) must be served on the person to whom it applies and may require the person to provide, at his or her own expense, information relating to

(a) the operations or activities of the industry, trade or business, or

(b) substances used, stored, treated or introduced or caused or allowed to be introduced into the environment in the course of the industry, trade or business.

(3) Information required by an order under this section must be provided in the time and manner specified in the order.

(4) For the purposes of this section, **"person"** does not include a municipality.

Minister may require environmental impact assessment

78 If the minister considers that

(a) something a person proposes to do will have a detrimental environmental impact, and

(b) the environmental impact cannot be assessed from information available to the minister,

the minister may require the person to provide an environmental impact assessment in respect of that thing, prepared in accordance with the regulations.

Spill prevention and reporting

79 (1) In this section, **"polluting substance"** means any substance, whether gaseous, liquid or solid that, in the opinion of the minister, is capable of causing pollution if it were to

(a) escape into the air,

(b) be spilled onto any land or into any body of water, or

(c) 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 polluting substance for which a contingency plan was prepared, a director 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 6 *[waste disposal]*, or

(b) a bylaw under section 31 *[control of air contaminants in Greater Vancouver]*,

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.

Spill response actions

80 (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 director 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 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 specify the amount payable by each person, and

(b) may specify that 2 or more of the persons identified in the certificate are jointly and separately 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) on filing in the Supreme Court, 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.

Pollution prevention orders

81 (1) If a director 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, the director may order a person referred to in subsection (2), at that person's expense, to do any of the following:

(a) provide to the director information the director requests relating to the activity, operation or substance;

(b) undertake investigations, tests, surveys or any other action the director considers necessary to prevent the pollution and report the results to the director;

(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.

(2) An order made under subsection (1) 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.

(3) An order made under subsection (1) may authorize a person or persons designated by the director to enter land for the purpose of preventing the pollution.

(4) The powers of a director 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.

(5) For the purposes of this section, **"person"** does not include a municipality.

Preventing municipal pollution

82 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 director may exercise under section 81 (1) *[pollution prevention orders]* in relation to other persons.

Pollution abatement orders

83 (1) If a director is satisfied on reasonable grounds that a substance is causing pollution, the director may order any of the following persons to do any of the things referred to in subsection (2):

(a) a person who had possession, charge or control of the substance at the time it was introduced or escaped into the environment;

(b) a person who owns or occupies the land on which the substance is located or on which the substance was located immediately before it was 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 director information that the director requests relating to the pollution;

(b) undertake investigations, tests, surveys and any other action the director considers necessary to determine the extent and effects of the pollution and to report the results to the director;

(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.

(3) An order under subsection (1) may authorize any persons designated by the director to enter land for the purpose of controlling, abating or stopping the pollution or to carry out remediation.

(4) A director 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 this Act or is authorized under this Act.

(6) For the purposes of this section, **"person"** does not include a municipality.

Abatement of municipal pollution

84 If the minister considers that a municipality is causing pollution, the minister may, with respect to the municipality, exercise the powers that a director may exercise under section 83 *[pollution abatement orders]* in relation to other persons.

Environmental protection orders

85 (1) The minister may declare that an existing or proposed work, undertaking, product use or resource use has, or potentially has, a detrimental environmental impact.

(2) A declaration under subsection (1)

(a) must be in writing,

(b) must state the facts on which it is based,

(c) is conclusive proof of those facts for the purposes of the declaration, and

(d) is binding on all persons and courts.

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

(a) restricting, modifying or prohibiting the operation of the work or undertaking or the use of the product or resource, or

(b) requiring the person to do anything that the minister requires to be done in relation to the work or undertaking or the use of the product or resource

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

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

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

(a) restricting, modifying or prohibiting the operation of the work or undertaking or the use of the product or resource, or

(b) requiring the person to do anything that the Lieutenant Governor in Council requires to be done in relation to the work or undertaking or the use of the product or resource

either permanently or for a specified period in a manner specified in the order.

(6) When an order of the Lieutenant Governor in Council under subsection (5) comes into force, an interim order in relation to the same subject matter expires.

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

(a) may not be made later than one year after the date of the minister's declaration under subsection (1), and

(b) must state the reasons for making the order.

(8) Despite any other enactment, a person to whom an order under subsection (3) or (5) is expressed to apply must comply with the order.

Environmental management plan – in relation to environmental protection order

86 (1) If the minister has made a declaration under section 85 (1) *[environmental protection orders]* respecting a detrimental environmental impact, the Lieutenant Governor in Council may direct the minister to prepare an environmental management plan for the locality that is, or would be, impacted.

(2) If an environmental management plan has been prepared under subsection (1), the Lieutenant Governor in Council may

(a) approve the plan with or without modification, and

(b) for the purpose of implementing the plan, order that

(i) no licence, permit or power under an enactment may be issued or exercised in the locality, and

(ii) no waste may be discharged in the locality

except as authorized by and in accordance with the order.

(3) A licence or permit issued, or a power exercised, contrary to an order under subsection (2) (b) has no effect.

Environmental emergency measures

87 (1) In this section and section 88 *[recovery of costs – environmental emergency]*, **"environmental emergency"** means an occurrence or natural disaster that affects the environment and includes the following:

(a) a flood;

(b) a landslide;

(c) a spill or leakage of oil or of a poisonous or dangerous substance.

(2) If the minister considers that

(a) an environmental emergency exists, and

(b) immediate action is necessary to prevent, lessen or control any hazard that the emergency presents,

the minister may make a declaration in writing that an environmental emergency under this section exists.

(3) If the minister has made a declaration under subsection (2), the minister, or a public officer authorized by the minister in writing, may order any person to

(a) provide labour, services, material, equipment or facilities, or

(b) allow the use of land

for the purpose of preventing, lessening or controlling the hazard presented by the emergency,

(4) If an order is made under subsection (3),

(a) compensation for labour or services must be paid as the Lieutenant Governor in Council provides, and

(b) compensation for material, equipment, facilities or the use of land, if not agreed on, must be set by arbitration under the *Commercial Arbitration Act*.

(5) An order under subsection (3)

(a) expires 15 days after it is made unless rescinded earlier under subsection (6), and

(b) does not require any person to supply labour who is unfit to do so or is under the age of 19.

(6) The Lieutenant Governor in Council may by order

(a) confirm, modify or rescind an order under subsection (3), and

(b) extend the term of an order under subsection (3) for a period the Lieutenant Governor in Council considers necessary.

(7) Subsection (6) (b) may not be applied to extend a requirement that a person supply labour.

(8) Despite any other enactment, a person affected by an order under subsection (3) or (6) must comply with the order.

Recovery of costs – environmental emergency

88 (1) If the minister certifies that money is required for immediate response to an environmental emergency, the amount the minister certifies to be required may be paid out of the consolidated revenue fund without an appropriation other than this section.

(2) A certificate signed by the minister and showing an amount of money expended by the government under this section is conclusive as to the amount expended.

(3) An amount shown by a certificate referred to in subsection (2) is a debt due to the government and, subject to subsection (4), is recoverable, by action in the Supreme Court from any person whose act or omission caused or who authorized the events that caused the environmental emergency in proportions the court determines.

(4) If the court is satisfied that the expenditure incurred by the government under this section was either

(a) excessive, taking into consideration the magnitude of the emergency and the results achieved by the expenditure, or

(b) unnecessary, taking into consideration the unlikelihood of significant material loss to any person had the government not acted under this section,

the court may reduce or extinguish the amount of the judgment that it otherwise would have ordered be entered against the person against whom the action has been brought.

(5) For the purpose of subsection (3), anything done or omitted by a person acting in the course of the person's employment is also the act or omission of the person's employer.

Division 2 – Area Based Management

Area based management plans – plan development

89 (1) If the minister considers it advisable for purposes of environmental management in an area, the minister may, by order,

(a) designate the area for the purpose of developing an area based management plan for the area, and

(b) establish a process for the development of the area based management plan for the designated area.

(2) An order under subsection (1) may, without limitation,

(a) establish who is to be responsible for preparing the area based management plan,

(b) establish the terms of reference for the plan or authorize the preparation of some or all of the terms of reference subject to the approval of the minister,

(c) require the establishment of a technical advisory committee in relation to the development of the plan, and

(d) require the participation in the development of the plan by specified licensees, permit holders or other persons the minister considers will be affected by the plan.

(3) The terms of reference for an area based management plan must include

(a) the purpose of the plan,

(b) the issues to be addressed in the plan,

(c) a process for public and stakeholder consultation,

(d) if a management plan under another enactment is proposed or exists in relation to the same area, directions for coordination with persons responsible for that plan, and

(e) a time limit for completing the plan.

(4) Without limiting subsection (2) (b), the terms of reference for an area based management plan may include consideration of any of the following:

(a) the impact of point and non point sources of waste;

(b) cumulative impacts of point and non point sources of waste;

(c) the economic and social costs and benefits of addressing risks to the environment through treatment;

(d) environmental management objectives and outcomes for the area;

(e) ongoing monitoring and reporting required to implement the plan.

Approval and effect of area based management plan

90 (1) The minister may approve, with or without amendment, an area based management plan ordered under section 89 *[area based management plans – plan development]*.

(2) For the purpose of implementing an approved area based management plan, the minister, by order made applicable in relation to all or part of the designated area for the plan, may require that persons making decisions or classes of decisions under this Act consider the plan in making the decisions.

Publication obligations

91 The minister must publish in the prescribed manner

(a) on the making of an order under section 89 (1) *[area based management plans – plan development]*, the order, and

(b) if an area based plan is approved under section 90 *[approval and effect of area based management plan]*, the plan and any order under section 90 (2).

Division 3 – Regulations for Part 7

Regulations for purposes of Part 7

92 (1) Without limiting section 138 (1) *[general authority to make regulations]*, the Lieutenant Governor in Council may make the following regulations:

(a) respecting requirements and procedures for the reporting of matters referred to in section 79 (5) *[spill prevention and reporting]*;

(b) in relation to section 80 *[spill response actions]*,

(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;

(c) respecting the publication required under section 91 *[publication obligations]*.

(2) Section 139 *[regulations – general rules]* applies for the purpose of making regulations under this section.

PART 8 – APPEALS

Division 1 – Environmental Appeal Board

Environmental Appeal Board

93 (1) The Environmental Appeal Board is continued to hear appeals that under the provisions of any enactment are to be heard by the appeal board.

(2) In relation to an appeal under another enactment, the appeal board has the powers given to it by that other enactment.

(3) The appeal board consists of the following individuals appointed by the Lieutenant Governor in Council after a merit based process:

(a) a member designated as the chair;

(b) one or more members designated as vice chairs after consultation with the chair;

(c) other members appointed after consultation with the chair.

(4) The *Administrative Tribunals Appointment and Administration Act* applies to the appeal board.

(5) and (6) [Repealed 2003-47-24.]

(7) The chair may organize the appeal board into panels, each comprised of one or more members.

(8) The members of the appeal board may sit

(a) as the appeal board, or

(b) as a panel of the appeal board.

(9) If members sit as a panel of the appeal board,

(a) 2 or more panels may sit at the same time,

(b) the panel has all the jurisdiction of and may exercise and perform the powers and duties of the appeal board, and

(c) an order, decision or action of the panel is an order, decision or action of the appeal board.

(10) The Lieutenant Governor in Council, by regulation, may establish the quorum of the appeal board or a panel.

(11) For the purposes of an appeal, sections 34 (3) and (4), 48, 49 and 56 of the *Administrative Tribunals Act* apply to the appeal board.

Parties and witnesses

94 (1) In an appeal, the appeal board or panel

(a) may hear the evidence of any person, including a person the appeal board or a panel invites to appear before it, and

(b) on request of

(i) the person,

(ii) a member of the body, or

(iii) a representative of the person or body,

whose decision is the subject of the appeal or review, must give that person or body full party status.

(2) A person or body, including the appellant, that has full party status in an appeal may

(a) be represented by counsel,

(b) present evidence,

(c) if there is an oral hearing, ask questions, and

(d) make submissions as to facts, law and jurisdiction.

(3) A person who gives oral evidence may be questioned by the appeal board, a panel or the parties to the appeal.

Costs and security for costs

95 (1) The appeal board may require the appellant to deposit with it an amount of money it considers sufficient to cover all or part of the anticipated costs of the respondent and the anticipated expenses of the appeal board in connection with the appeal.

(2) In addition to the powers referred to in section 93 (2) *[environmental appeal board]* but subject to the regulations, the appeal board may make orders as follows:

(a) requiring a party to pay all or part of the costs of another party in connection with the appeal, as determined by the appeal board;

(b) if the appeal board considers that the conduct of a party has been vexatious, frivolous or abusive, requiring the party to pay all or part of the expenses of the appeal board in connection with the appeal.

(3) An order under subsection (2) may include directions respecting the disposition of money deposited under subsection (1).

(4) If a person or body given full party status under subsection 94 (2) *[parties and witnesses]* is an agent or representative of the government,

(a) an order under subsection (2) may not be made for or against the person or body, and

(b) an order under subsection (2) (a) may be made for or against the government.

(5) The costs payable by the government under an order under subsection (4) (b) must be paid out of the consolidated revenue fund.

Decision of appeal board

96 If the appeal board or a panel makes an order or decision with respect to an appeal the chair must send a copy of the order or decision to the minister and to the parties.

Varying and rescinding orders of appeal board

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

Appeal board power to enter property

98 The members of the appeal board have, for the purposes of an appeal, the right to enter any property except a private residence.

Division 2 – Appeals from Decisions under this Act

Definition of "decision"

99 For the purpose of this Division, **"decision"** means

(a) making an order,

(b) imposing a requirement,

(c) exercising a power except a power of delegation,

(d) issuing, amending, renewing, suspending, refusing, cancelling or refusing to amend a permit, approval or operational certificate,

(e) including a requirement or a condition in an order, permit, approval or operational certificate,

(f) determining to impose an administrative penalty, and

(g) determining that the terms and conditions of an agreement under section 115 (4) *[administrative penalties]* have not been performed.

Appeals to Environmental Appeal Board

100 (1) A person aggrieved by a decision of a director or a district director may appeal the decision to the appeal board in accordance with this Division.

(2) For certainty, a decision under this Act of the Lieutenant Governor in Council or the minister is not appealable to the appeal board.

Time limit for commencing appeal

101 The time limit for commencing an appeal of a decision is 30 days after notice of the decision is given.

Procedure on appeals

102 (1) An appeal under this Division

(a) must be commenced by notice of appeal in accordance with the prescribed practice, procedure and forms, and

(b) must be conducted in accordance with Division 1 of this Part and the regulations.

(2) The appeal board may conduct an appeal under this Division by way of a new hearing.

Powers of appeal board in deciding appeal

103 On an appeal under this Division, 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 appeal board considers appropriate in the circumstances.

Appeal does not operate as stay

104 The commencement of an appeal under this Division does not operate as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.

Division 3 – Regulations in Relation to Appeal Board

Regulations in relation to the appeal board

105 (1) Without limiting section 138 (1) *[general authority to make regulations]*, the Lieutenant Governor in Council may make regulations as follows:

(a) prescribing a tariff of fees to be paid with respect to a matter within the jurisdiction of the appeal board;

(b) prescribing practices, procedures and forms to be followed and used by the appeal board;

(c) establishing restrictions on the authority of the board under section 95 (1) to (4) *[costs and security for costs]* including, without limiting this,

(i) prescribing limits, rates and tariffs relating to amounts that may be required to be paid or deposited, and

(ii) prescribing what are to be considered costs to the government in relation to an appeal and how those are to be determined;

(d) respecting how notice of a decision under section 96 *[decision of appeal board]* may be given.

PART 9 – COMPLIANCE

Division 1 – Conservation Officers

Conservation Officer Service

106 (1) The Conservation Officer Service is continued.

(2) The Conservation Officer Service consists of

(a) a person employed in the ministry who is appointed by the minister as the chief conservation officer, and

(b) the persons designated under subsection (3) (b) (i).

(3) Subject to the direction of the minister,

(a) the chief conservation officer has general supervision over the Conservation Officer Service, and

(b) the chief conservation officer, or a member of the Conservation Officer Service designated by the chief conservation officer for the purpose, may do all the following:

(i) designate persons employed in the ministry, each of whom the chief conservation officer considers suitable, as members of the Conservation Officer Service;

(ii) designate persons, or a class of persons, employed in the ministry as auxiliary conservation officers;

(iii) designate persons, or a class of persons, as special conservation officers;

(iv) impose and confer on an auxiliary or a special conservation officer, or on a class of auxiliary or special conservation officers, any of the duties imposed and powers conferred on a member of the Conservation Officer Service under this Act or another enactment;

(v) establish standards and procedures, including, but not limited to, establishing training and retraining standards and specifying operational procedures for the efficient discharge of duties and functions by the Conservation Officer Service and its members;

(vi) specify equipment, including, but not limited to, uniform apparel, vehicles and firearms to be used by members of the Conservation Officer Service;

(vii) establish rules for the prevention of neglect and abuse by members of the Conservation Officer Service.

(4) An auxiliary or a special conservation officer may perform and exercise the duties and powers imposed and conferred on the officer under subsection (3) (b) (iv).

(5) Members of the Conservation Officer Service

(a) may exercise the powers and perform the duties of a conservation officer under this Act or any other enactment,

(b) are peace officers for the purposes of

(i) exercising the powers and performing the duties of a conservation officer under this Act or another enactment,

(ii) exercising the powers and performing the duties of a prescribed official under an enactment prescribed for the purposes of section 107 (1) (a), and

(iii) enforcing an enactment prescribed for the purposes of section 107 (1) (b), and

(c) have the immunities, and are authorized to exercise the powers and perform the duties, of a peace officer exclusively for the purpose of

(i) exercising the powers and performing the duties of a conservation officer under this Act or another enactment,

(ii) exercising the powers and performing the duties of a prescribed official under an enactment prescribed for the purposes of section 107 (1) (a), and

(iii) enforcing an enactment prescribed for the purposes of section 107 (1) (b).

Enforcement powers of the Conservation Officer Service

107 (1) A member of the Conservation Officer Service may

(a) exercise the powers and perform the duties of

(i) an officer under this Act, and

(ii) a prescribed official under a prescribed enactment, and

(b) enforce the prohibitions or requirements of prescribed enactments.

(2) On information on oath that there are reasonable grounds to believe that an offence under an enactment referred to in section 106 (5) (b) has occurred or is occurring, a justice, on being satisfied that an entry and a search are likely to provide evidence of such an offence, may issue a warrant authorizing a conservation officer

(a) to enter and search the real or personal property specified in the warrant,

(b) to seize and remove anything that the conservation officer has reasonable grounds for believing is evidence of an offence, and

(c) to take other actions as the justice considers appropriate in the circumstances and authorizes in the warrant.

(3) A person required by an enactment in respect of which a conservation officer has enforcement authority to keep records must submit the records to a conservation officer for inspection on request.

(4) If a person refuses to submit records for inspection as required under this section, a justice, on being satisfied that an inspection of the records is necessary for the administration of the enactment that requires them to be kept, may issue a warrant authorizing a conservation officer to enter property specified in the warrant and to seize the records.

(5) A conservation officer who enters on property in accordance with a warrant issued under subsection (2) or (4) may take with him or her persons and equipment that may be necessary for the purpose of the entry.

(6) and (7) [Repealed 2006-15-6.]

(8) Despite subsection (2), a member of the Conservation Officer Service may

(a) search real or personal property, including premises or a part of premises occupied solely as a private residence, and

(b) seize and remove anything that the member has reasonable or probable grounds for believing may provide evidence of the commission of an offence under an enactment referred to in section 106 (5) (b),

without a warrant, if the conditions for obtaining a warrant exist but because of exigent circumstances it is not practicable to obtain the warrant.

(9) For the purposes of subsection (8), **"exigent circumstances"** means circumstances in which the delay necessary to obtain the warrant would result in danger to human life or safety or the loss or destruction of evidence.

Disposition of items seized by a conservation officer

107.1 (1) The forms referred to in section 21 of the *Offence Act*, and sections 22 to 24.2 of that Act, apply to a warrant under section 107 (2) of this Act, and to a search and anything seized by a conservation officer under section 107 (2) or (8) or 112 (1) of this Act.

(2) If, under section 24 (2) (a) of the *Offence Act*, a justice orders that something referred to in subsection (1) of this section be detained, despite section 24 (3) of the *Offence Act*, the thing may be detained for up to one year before an order under section 24 (5) of that Act, authorizing its continued detention, is required.

(3) Despite subsections (1) and (2) or anything to the contrary in the enactment authorizing the inspection, if the chief conservation officer, or a member of the Conservation Officer Service designated by the chief conservation officer for the purpose, considers anything seized in a search under section 107 (2) or (8) or in an inspection under an enactment referred to in section 106 (5) (b)

(a) to be a pollutant or an environmental hazard, it must not be returned and the person claiming it is not entitled to compensation, or

(b) to be contaminated by a pollutant, it must not be returned unless it is decontaminated at the expense of the person entitled to it.

Conservation officers entering land

108 Despite any other enactment, a conservation officer performing duties under an enactment may

(a) enter any land, whether enclosed or not,

(b) enter any structure, including, if the conservation officer has a warrant authorizing the entry, a structure or a part of a structure used solely as a private residence,

but, at the request of the owner or occupier of the land or structure, the conservation officer must provide proof of identity.

Certificate evidence of the chief conservation officer

108.1 A certificate purporting to have been signed by the chief conservation officer certifying

(a) the manner and content of an exercise of the chief conservation officer's powers under section 106 (3),

(b) a decision of the chief conservation officer under section 107.1 (3), or

(c) the content of an agreement the chief conservation officer has entered into under section 135 *[interagency agreements]*,

is admissible in a proceeding in relation to, or in a prosecution under, an enactment referred to in section 106 (5) (b) without proof of the signature or official character of the person appearing to have signed the certificate and is proof of the certified matters.

Division 2 – General Powers

Inspections

109 (1) For the purposes of ensuring compliance with this Act and the regulations, an officer may enter land or premises, except premises or a part of premises occupied solely as a private residence, at any reasonable time and inspect 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.

(2) An officer may exercise powers under this section in respect of premises used as a private residence only

(a) with the consent of the occupant, or

(b) under the authority of a warrant under subsection (3) or another enactment.

(3) If satisfied by evidence on oath that access to premises or a part of premises, used solely as a private residence, is necessary for the purposes of this Act, a justice may issue a warrant authorizing a person named in the warrant to enter the premises and conduct an inspection.

(4) An officer who enters on land or premises under subsection (1), with consent under subsection (2) or under a warrant under subsection (3), may do any of the following:

(a) inspect, analyze, measure, sample or test land, and any article, substance or waste located on or in the land, and premises to ascertain

(i) whether pollution is present,

(ii) the quantity of waste produced, treated, stored, handled, transported or discharged, or

(iii) the characteristics of waste produced, treated, stored, handled, transported or discharged;

(b) take away samples of land, articles, substances or waste;

(c) examine and take away copies of records relating to

(i) the production, treatment, storage, handling, transportation and discharge of waste, and

(ii) the characteristics of the waste produced, treated, stored, handled, transported or discharged;

(d) require that anything related to the production, treatment, storage, handling, transportation or discharge of waste be operated, used or set in motion under conditions specified by the officer;

(e) use a computer system at the place that is being inspected to examine data, contained in or available to the computer system, related to the production, treatment, storage, handling, transportation or discharge of waste;

(f) record or copy by any method any information related to the production, treatment, storage, handling, transportation or discharge of waste;

(g) use any machine, structure, material or equipment in the place that is being inspected as is necessary to carry out the inspection;

(h) use copying equipment located at the place that is being inspected to make copies to take away;

(i) take photographs or make audio or video records.

(5) An officer who enters land or premises in accordance with this section

(a) may take with him or her the persons and equipment that may be necessary for the purposes of the inspection, and

(b) on request, must provide proof of identity to a person present on the land or premises entered.

(6) A person who is or was a director, receiver, receiver manager, officer, employee, banker, auditor or agent of a person who is the subject of an inspection under this section must, on request of the inspecting officer,

(a) produce, without charge or unreasonable delay, for examination by the inspecting officer

(i) any approval, licence, order, permit or waste management plan related to waste produced, treated, stored, handled, transported or discharged on or from the land or premises, and

(ii) any other record that touches on any matter relating to the production, treatment, storage, handling, transport or discharge of waste on or from the land or premises, and

(b) provide the inspecting officer with information relevant to the purposes of the inspection.

Minister may enter on private land

110 The minister and other persons the minister designates in writing have for the purposes of this Act the right to enter any property except a private residence.

Inspection of vehicles

111 (1) In this section:

"officer" includes a peace officer as defined in the *Motor Vehicle Act*;

"vehicle" includes a vehicle as defined in the *Motor Vehicle Act*, an all terrain vehicle as defined in the *Motor Vehicle (All Terrain) Act*, a rail vehicle as defined in the *Transport of Dangerous Goods Act* and a vessel.

(2) For the purposes of ensuring compliance with this Act or the regulations, including with a permit, licence, order, waste management plan or approval, if an officer has reasonable grounds for believing that a vehicle is being used for the transportation or handling of waste, the officer may, at any reasonable time,

(a) require a person operating the vehicle to stop the vehicle and provide identification, and

(b) carry out an inspection in accordance with this section.

(2.1) When requested or signalled to do so by an officer who is readily identifiable as a conservation officer, or as a peace officer as defined in the *Motor Vehicle Act*, the operator of a motor vehicle must immediately

(a) stop the vehicle, and

(b) provide identification and the information that the officer or peace officer considers necessary to determine whether this Act and the regulations are being complied with.

(2.2) For the purposes of carrying out an inspection under this section, an officer may

(a) require that any compartment of the vehicle or any container in or on the vehicle be opened, and

(b) exercise any of the powers under section 109 (4) *[inspections]*.

(3) If, as a result of an inspection or a test carried out under this section, it appears to the officer that the vehicle is transporting hazardous waste in a manner that creates a risk of harm to the public or the environment, the officer may require the driver to drive the vehicle to a place the officer specifies and the officer may do one or more of the following:

(a) order one or more of the following persons to deal with the hazardous waste in accordance with the officer's directions:

(i) the owner of the hazardous waste;

(ii) the person operating the vehicle;

(iii) the owner of the vehicle;

(b) seize and, in accordance with the regulations, dispose of

(i) the hazardous waste, and

(ii) any package or container holding the hazardous waste;

(c) detain the 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 hazardous waste, package or container and the owner of the vehicle that was transporting the hazardous waste, package or container are jointly and separately liable to the government for the cost of disposing of the hazardous waste, package or container under subsection (3) (b), and that cost is recoverable from them by the government as a simple contract debt.

Seizures and prevention orders

112 (1) If an officer concludes in the course of an inspection under this Act that the officer has reasonable grounds to believe that a person has contravened or is contravening this Act or the regulations, the officer may

(a) order a person to do anything the officer considers necessary to stop the contravention or prevent another contravention, and

(b) seize anything validly inspected by the officer that the officer believes on reasonable grounds

(i) was used or is being used in the contravention, or

(ii) will afford evidence of the contravention.

(2) Sections 23 (4) and 24 to 24.2 of the *Offence Act* apply in respect of anything seized under subsection (1) of this section and, for the purposes of section 23 (4) of the *Offence Act*, an officer is deemed to be a peace officer.

(3) If, under section 24 (2) (a) of the *Offence Act*, a justice orders that something referred to in subsection (2) of this section be detained, despite section 24 (3) of the *Offence Act*, the thing may be detained for up to one year before an order under section 24 (5) of that Act, authorizing its continued detention, is required.

(4) If a director considers that a thing seized in an inspection or, despite subsections (2) and (3), under subsection (1), is

(a) a pollutant or an environmental hazard, it must not be returned, or

(b) contaminated by a pollutant, it must not be returned unless it is decontaminated at the expense of the person entitled to it.

(5) Compensation is not payable by the government in respect of anything lawfully seized, detained or destroyed under this Act.

(6) Sections 23 to 24.2 of the *Offence Act* do not apply in relation to anything taken in the course of an inspection under section 109 or 111 of this Act unless subsection (1) of this section applies.

Inquiries

113 (1) If the minister considers it necessary, the minister may

(a) order an inquiry with respect to the environment, and

(b) appoint a person to conduct the inquiry.

(2) A person appointed under subsection (1) must conduct the inquiry in accordance with terms of reference and any procedural guidelines specified by the minister for the inquiry.

(3) For the purposes of an inquiry under this section, the minister or person appointed under subsection (1) has the powers, privileges and protection of a commission under sections 16, 17, 22 (1), 23 (a), (b) and (d) to (f) and 32 of the *Public Inquiry Act*.

Restraining orders

114 (1) If a person by carrying on any activity or operation contravenes section 6 *[waste disposal]*, 9 *[hazardous waste storage and disposal]* or 10 *[transportation of hazardous waste]*, or a suspension or cancellation made under section 18 *[suspension or cancellation of permits and approvals]*, or an order made under Part 4 *[Contaminated Site Remediation]*, 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) in relation to a matter does not interfere with the imposition of a penalty in respect of an offence under section 6 *[waste disposal]*, 9 *[hazardous waste storage and disposal]* or 10 *[transportation of hazardous waste]*, or a suspension or cancellation made under section 18 *[suspension or cancellation of permits and approvals]* or an order made under Part 4 *[Contaminated Site Remediation]*.

Division 3 – Administrative Penalties

Administrative penalties

115 (1) Subject to the regulations, if a director is satisfied on a balance of probabilities that a person has

(a) contravened a prescribed provision of this Act or the regulations,

(b) failed to comply with an order under this Act, or

(c) failed to comply with a requirement of a permit or approval issued or given under this Act,

the director may serve the person with a determination requiring the person to pay an administrative penalty in the amount specified in the determination.

(2) A determination under subsection (1) must be in the prescribed form and contain the prescribed information.

(3) A penalty imposed under this section must be paid within the prescribed time.

(4) Before the date an administrative penalty under this section is due, the director may, subject to the regulations, enter into an agreement with the person who is liable for the penalty.

(5) An agreement under subsection (4) may provide, in accordance with the regulations, for the reduction or cancellation of the penalty subject to the terms and conditions the director considers necessary or desirable.

(6) An agreement under subsection (4) must specify the time for performing the terms and conditions and if the person fails to perform those terms and conditions by the date specified, the penalty specified in the notice under subsection (1) is due and payable on that date.

(7) Neither a director's decision whether to enter into an agreement nor the terms and conditions of an agreement under subsection (4) may be appealed under Division 2 *[Appeals from Decisions under this Act]* of Part 8.

(8) If a director issues an administrative penalty notice to a person in respect of a contravention or failure referred to in subsection (1), a prosecution for an offence

under this Act in respect of the same contravention or failure may not be brought against the person.

(9) If a corporation contravenes the Act or regulation or fails to comply with an order, permit or approval as described under subsection (1), an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the contravention or failure is also liable under this section even though the corporation is liable for or pays an administrative penalty.

Effect of charging an offence

116 A person who has been charged with an offence under this Act may not be subject to an administrative penalty in respect of the circumstances that gave rise to the charge.

Recovery of administrative penalties

117 (1) Subject to a decision of the appeal board cancelling a determination under section 115 (1) *[administrative penalties]*, an administrative penalty under this Act may be recovered as a debt due to the government.

(2) If a person fails to pay an administrative penalty as required under section 115 *[administrative penalties]*, the officer who made the determination may file a certificate in a court that has jurisdiction and, upon filing, the certificate has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the court with which it is filed.

(3) A certificate under subsection (2) may be in the prescribed form, must be signed by the officer and must contain

(a) the name of the person who is liable for the penalty,

(b) the contravention or failure in relation to which the penalty is imposed, and

(c) the amount of the penalty.

Division 4 – Economic Instruments

Environmental certification

118 (1) The Lieutenant Governor in Council, by regulation, may limit the circumstances in which prescribed words, names, phrases, symbols, labels, marks or packaging may be used in relation to products or services to indicate that the product or service

(a) was produced or provided using prescribed environmental practices, or

(b) meets prescribed environmental quality or production standards.

(2) A regulation referred to in subsection (1) may adopt standards developed by a prescribed person for use of the prescribed word, name, phrase, symbol, label, mark or packaging.

Division 5 – Regulations for Part 9

Regulations for purposes of Part 9

119 (1) Without limiting section 138 (1) *[general authority to make regulations]*, the Lieutenant Governor in Council may make the following regulations:

(a) for the purposes of providing economic incentives to promote environmentally responsible behaviour,

(i) respecting the variation of fees payable by a person under this Act, including without limitation,

(A) authorizing a director to vary fees,

(B) establishing the criteria the person must satisfy to be eligible for or subject to a variation, and

(C) limiting the amount of a variation authorized by the director,

(ii) respecting agreements under which the requirements of this Act or the regulations may be varied, including by adding to, restricting the application of or eliminating requirements, in relation to that person for the term of the agreement, including without limitation

(A) authorizing the minister to enter into agreements,

(B) establishing the criteria the person must satisfy to be eligible for an agreement,

(C) specifying the provisions of the Act or regulations that may be varied under an agreement, and

(D) requiring public notification to persons affected by an agreement, and

(iii) respecting the establishment of a program of discharge monitoring, registration and trading, including offsets or credits;

(b) for the purposes of section 115 *[administrative penalties]*,

(i) prescribing procedures for making a determination including, but not limited to,

(A) prescribing the form and content of an administrative penalty notice,

(B) prescribing contraventions in relation to which an administrative penalty notice may be sent and a determination made, and

(C) establishing procedures for providing a person on whom a notice of an administrative penalty has been served with an opportunity to make representations which need not entail an oral hearing,

(ii) prescribing a schedule of monetary penalties that may be imposed and the matters that must be considered by an officer in establishing a penalty in a particular case,

(iii) authorizing administrative penalties to be imposed on a daily basis for continuing contraventions or failures,

(iv) prescribing time limits for paying administrative penalties,

(v) prescribing, in relation to a contravention or failure described in section 115 (1), whether a notice of an administrative penalty must be cancelled if the person on whom it was served demonstrates to the satisfaction of a director that the person exercised due diligence to prevent the specified contravention or failure,

(vi) respecting agreements, including prescribing terms and conditions that must be included, under section 115 (4),

(vii) prescribing a limitation period for imposing an administrative penalty and evidentiary matters in relation to that period,

(viii) prescribing for manners of paying a monetary penalty,

(ix) prescribing the consequences of failing to pay an administrative penalty which may include, but are not limited to, imposing additional penalties,

(x) providing for the publication of an officer's determination to impose an administrative penalty, and

(xi) prescribing the form of a certificate under section 117 *[recovery of administrative penalties]*;

(c) prescribing, with the prior approval of the minister responsible for the administration of the *Police Act*,

(i) officials and enactments for the purposes of section 107 (1) (a) (ii) *[enforcement powers of the Conservation Officer Service]*, and

(ii) enactments for the purposes of section 107 (1) (b).

(2) Section 139 *[regulations – general rules]* applies for the purpose of making regulations under this section.

PART 10 – GENERAL

Division 1 – Offences and Penalties

Offences and penalties

120 (1) A person who contravenes section 12 *[littering]* or 13 *[discharge of waste from recreational vehicles]* commits an offence and is liable on conviction to a fine not exceeding $2 000 or imprisonment for not more than 6 months, or both.

(2) A person who contravenes

(a) section 9 (3) *[hazardous waste storage and disposal]*,

(b) section 10 (1) (a), (b) or (c) or (2) *[transportation of hazardous waste]*,

(c) section 11 *[packaging, product containers and disposable products]*,

(d) section 72 (1) or (2) *[control of air contaminants]*,

(e) section 79 (5) *[spill prevention and reporting]*,

(f) section 131 (1) *[confidentiality]*, or

(g) a regulation under section 74 (1) (i), (j) or (k) *[motor vehicle and engine emission regulations]*

commits an offence and is liable on conviction to a fine not exceeding $200 000 or imprisonment for not more than 6 months, or both.

(3) A person who contravenes

(a) section 6 (2), (3) or (4) *[waste disposal]*,

(b) section 7 (1) or (2) *[hazardous waste – confinement]*,

(c) section 8 *[hazardous waste disposal facility]*, or

(d) section 9 (1) or (4) *[hazardous waste storage and disposal]* commits an offence and is liable on conviction to a fine not exceeding $1 000 000 or imprisonment for not more than 6 months, or both.

(4) A person who inserts in a manifest required by section 10 *[transportation of hazardous waste]* information that he or she knows to be untrue or misleading commits an offence and is liable on conviction to a fine not exceeding $200 000 or imprisonment for not more than 6 months, or both.

(5) A person who obstructs or resists an officer who is performing duties under this Act or who fails to comply with a requirement of an officer imposed under this Act commits an offence and is liable on conviction to a fine not exceeding $200 000 or imprisonment for not more than 6 months, or both.

(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 on conviction to a fine not exceeding $1 000 000 or imprisonment for not more than 6 months, or both.

(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 or imprisonment for not more than 6 months, or both.

(8) A person who contravenes section 10 (3) *[transportation of hazardous waste]* by failing to comply with a requirement of section 10 (3) (a) or (b) commits an offence and is liable on conviction to a fine not exceeding $200 000 or imprisonment for not more than 6 months, or both.

(9) A person who contravenes section 10 (3) *[transportation of hazardous waste]* by failing to comply with a requirement of section 10 (3) (c) commits an offence and is liable on conviction to a fine not exceeding $300 000 or imprisonment for not more than 6 months, or both.

(10) A person who contravenes an order or requirement, other than an order under section 9 (3) *[hazardous waste storage and disposal]*, that is given, made or imposed under this Act by a sewage control manager, a district director, a director, the minister or the appeal board commits an offence and is liable on conviction to a fine not exceeding $300 000 or imprisonment for not more than 6 months, or both, 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 requested or directed by the minister under section 24 (2) or (3) *[waste management plans]*, or

(b) contravenes a waste management plan that has been approved by the minister

commits an offence and is liable on conviction to a fine not exceeding $300 000.

(12) A person who contravenes a requirement of the regulations respecting hazardous waste commits an offence and is liable on conviction to a fine not exceeding $1 000 000 or imprisonment for not more than 6 months, or both.

(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 on conviction to a fine not exceeding $1 000 000 or imprisonment for not more than 6 months, or both.

(14) A person who contravenes an order under section 127 *[additional sentencing orders]* or 128 *[variation of section 127 orders]* commits an offence and is liable to the penalties provided for the offence in relation to which the order was made.

(15) A person who

(a) neglects or refuses to supply an environmental impact assessment if required to do so under section 78 *[environmental impact assessment]*, or

(b) contravenes section 87 (8) *[environmental emergency measures]*

commits an offence and is liable on conviction to a fine of not more than $10 000.

(16) A person who

(a) supplies an environmental impact assessment under section 78 *[environmental impact assessment]* that the person knows to be false or misleading, or to contain false or misleading information, or

(b) contravenes section 85 (8) *[environmental protection orders]*

commits an offence and is liable on conviction to a fine of not more than $100 000.

(17) A person who

(a) fails to submit a site profile as required under section 40 *[site profiles]* or the regulations or supplies a site profile that the person knows to contain false or misleading information,

(b) fails to undertake a preliminary site investigation or a detailed site investigation and to prepare a report of the investigation as required under section 41 (1) or (3) *[site investigations]*,

(c) fails to comply with a remediation order under section 48 *[remediation orders]*,

(d) contravenes section 48 (8) *[remediation orders]*,

(e) fails to seek an opinion from an allocation panel if required to do so under section 49 (4) *[allocation panel]*,

(f) fails to comply with the requirements of a director in a voluntary remediation agreement under section 51 (1) *[voluntary remediation agreements]*,

(g) fails to notify a director of initiating or completing independent remediation under section 54 (2) *[independent remediation procedures]*,

(h) fails to comply with requirements of a director under section 54 (3) *[independent remediation procedures]* regarding independent remediation,

(i) contravenes section 55 (1) *[contaminated soil relocation]*, or

(j) fails to comply with a provision of the regulations under section 62 *[contaminated site regulations]* or 63 *[minister's regulations – contaminated sites]*

commits an offence and is liable on conviction to a fine not exceeding $200 000 or imprisonment for not more than 6 months, or both.

(18) A person who contravenes a requirement that has been substituted by a director or the minister for a requirement under the regulations, including a code of practice, commits an offence and is liable on conviction to a fine not exceeding $1 000 000 or imprisonment for not more than 6 months, or both.

(19) A person who contravenes a requirement of a protocol under section 64 *[director's protocols]* commits an offence and is liable on conviction to a fine not exceeding $200 000 or imprisonment for not more than 6 months, or both.

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

Offence by a corporation

121 (1) 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 whether or not the corporation is convicted.

(2) In a prosecution for an offence under or arising out of a contravention of section 9 (1) *[hazardous waste storage and disposal]* or 10 (1) or (3) *[transportation of hazardous waste]*, or of a regulation made with respect to hazardous waste, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the accused's knowledge or consent or that the accused exercised all due diligence to prevent its commission.

Continuing offences

122 (1) If an offence under section 120 *[offences and penalties]* 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.

(2) Subsection (1) does not apply in respect of a continuing offence under section 120 (15) or (16) (a) *[offences and penalties]*.

Offence Act application

123 Sections 4 and 5 of the *Offence Act* do not apply in respect of this Act or the regulations.

Time limit for prosecuting offence

124 (1) The time limit for laying an information for an offence under this Act is

(a) 3 years after the date that the facts on which the information is based arose, or

(b) if the minister completes a certificate described in subsection (2), 18 months after the date that the facts on which the information is based first came to the knowledge of the minister.

(2) A certificate purporting to have been issued by the minister, certifying the date that the facts on which the information is based first came to the knowledge of the minister,

(a) is admissible without proof of the signature or official character of the person appearing to have signed the certificate, and

(b) is proof of the certified matters.

Additional fine

125 (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 120 *[offences and penalties]* or 126 *[intentional damage]*.

Intentional damage

126 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 by causing a risk of death or harm to other persons

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

Additional sentencing orders

127 (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 an amount of money the court considers appropriate to the trustee under Part 3 of the *Wildlife Act* for inclusion in the trust property, as that term is defined in section 118 of that Act;

(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 128 *[variation of section 127 orders]* 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.

Variation of section 127 orders

128 (1) An application for variation of an order under section 127 *[additional sentencing orders]* 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 127 *[additional sentencing orders]* 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 127 *[additional sentencing orders]* except with leave of the court.

Division 2 – Immunity

Conservation officers exempt

129 The offence provisions of an enactment do not apply to a conservation officer engaged in the performance of his or her duties under that enactment.

Division 3 – Miscellaneous

Evidence

130 (1) An order, permit, licence, approval or certificate that is issued under this Act or any other enactment administered by the minister and that purports to be signed by, or a copy that purports to be certified as a true copy and to be signed by,

(a) the minister, the chief conservation officer, a director or a manager,

(b) a public officer designated by the minister, or

(c) an analyst designated by the minister under subsection (2),

is admissible in a proceeding without proof of office or signature of the person signing, and, in the absence of evidence to the contrary, is evidence of the order, permit, licence, approval or certificate and of the matters set out in it.

(2) For purposes of this or any other enactment administered by the minister, the minister may designate as an analyst a person the minister considers qualified.

(3) A person designated as an analyst under subsection (2) may issue a certificate of analysis with respect to a sample held in the person's custody and analyzed by the person.

Confidentiality

131 (1) If, under this Act, information relating to any trade secret or any proprietary right in a 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 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, 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.

Ownership of waste

132 (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 have been 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 this section.

(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.

Service of notice

133 (1) Anything that under this Act must be served on a person, may be served 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 deemed to be served on the person to whom it is addressed on the 14th day after deposit with Canada Post unless the person received actual service before that day.

Charges, fees and costs to be paid to the government

134 Each of the following must pay to the government, in the time and manner prescribed in the regulations, the fees and charges established by the regulations:

(a) a holder of a permit or approval;

(b) the holder of a licence for the transportation of hazardous wastes;

(c) the subject of an order under this Act;

(d) a municipality in respect of which a waste management plan has been approved under Part 3 *[Municipal Waste Management]*.

Interagency agreements

135 (1) Subject to the direction of the minister, the chief conservation officer or any other person designated by the minister may enter into agreements with other agencies of government, including those of the federal government and of provincial, municipal and first nations governments, respecting

(a) law enforcement delivery related to environmental protection or natural resource use,

(b) activities that may be carried out by an officer, as defined in the *Wildlife Act*, related to wildlife-human conflict response and management, and

(c) cooperative working agreements between the Conservation Officer Service and another enforcement agency that are within the mandate of either agency.

(2) Agreements entered into under subsection (1) may contain provisions setting out requirements for compensation or other legal recourse in the event that the agreement is breached by one or more of the parties to the agreement.

Waste Management Trust Fund

136 (1) The minister may establish a fund to be known as the Waste Management Trust Fund.

(2) The money in the Waste Management Trust Fund must be held in trust by the government for the purposes specified in this section.

(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) Money collected or received under the regulations for the purposes of the Waste Management Trust Fund must be paid into the Waste Management Trust Fund.

(5) Money may be paid out of the Waste Management Trust Fund in a manner the minister considers appropriate on the requisition of the minister 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 proof 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.

Powers that Lieutenant Governor in Council may exercise

137 (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 may exercise under this Act in respect of wastes.

(2) Without limiting subsection (1), the Lieutenant Governor in Council, after any consultations the Lieutenant Governor in Council considers desirable, may 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.

(3) 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 or officer.

Division 4 – Regulation Making Authorities

General authority to make regulations

138 (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) prescribing the form and content of any notice;

(c) requiring applicants to pay fees for making applications under this Act, and prescribing the amount of those fees;

(d) requiring persons to whom a permit, approval, operational certificate, exemption or other licence or privilege is issued under this Act 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;

(e) establishing procedures for making applications under this Act, and establishing the information that must be submitted in those applications;

(f) requiring consultations among ministries before an application under this Act is disposed of, setting time limits for those consultations and authorizing a director to extend those time limits;

(g) requiring that any person who is authorized to make a decision or a determination under this Act give notice in writing and publish the decision or determination;

(h) authorizing and establishing amounts for the rebate of fees or charges under this Act 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 including authorizing the minister to pay money out of the Sustainable Environment Fund continued under the *Sustainable Environment Fund Act* for the issuance of any rebate authorized under the regulations;

(i) prescribing a material as a recyclable material and for this purpose may establish conditions and circumstances when a prescribed material is a recyclable material;

(j) regulating and imposing requirements and prohibitions 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;

(k) regulating and imposing requirements and prohibitions respecting the siting, planning, construction and operation of facilities for the treatment, recycling, storage, disposal and destruction of recyclable materials or wastes;

(l) authorizing the minister or a director, on receipt of an application or on his or her own initiative, to substitute a different requirement for a requirement contained in the regulations, including a code of practice prescribed under section 22 *[minister's regulations – codes of practice]*, if the minister or director considers that, in the individual case,

(i) the substitution is necessary to protect the public or the environment, or

(ii) the intent of the regulations will be met by the substitution;

(m) requiring the director to give or require notification to the public of an application or a decision to substitute a different requirement for a requirement in a regulation, including a code of practice;

(n) requiring that, as a condition of obtaining a permit under this Act to discharge waste, the owner of the waste management facility 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;

(o) requiring that, as a condition of obtaining a permit under this Act to discharge waste, the owner of the waste management facility make contributions to the Waste Management Trust Fund, the amount of the contributions to be prescribed or established by agreement or both;

(p) prescribing a substance as a waste and prescribing circumstances in which a substance is a waste;

(q) regulating and imposing requirements and prohibitions respecting the quantity of wastes and the characteristics and components of wastes that may be discharged into sewage facilities owned by a municipality;

(r) 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 polluting air, water or land;

(s) exempting any operation, activity, industry, waste or works or any class of persons, operations, activities, industries, wastes 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;

(t) requiring the keeping of and allowing the inspection of records;

(u) 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;

(v) regulating and imposing requirements and prohibitions for the design, siting and operation of any works, activities or operations that produce waste;

(w) regulating and imposing requirements and prohibitions for 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;

(x) requiring a municipality designated by the minister to administer regulations under this section relating to hazardous wastes as they apply to effluent discharged by an industry connected to the municipal sewer system;

(y) authorizing a municipality designated under paragraph (x) to collect fees from industries for the purpose of administering the regulations relating to hazardous wastes and respecting the amount of those fees;

(z) regulating and imposing requirements and prohibitions for 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.

(3) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

(a) requiring and establishing requirements for the certification or licensing of persons who install the tanks described under subsection (2) (z);

(b) requiring persons to pay fees with respect to services provided by the government or a municipality with respect to the tanks described under subsection (2) (z), and prescribing the amount of those fees;

(c) authorizing a municipality to collect and retain the fees prescribed under paragraph (b);

(d) prescribing for a contravention of a regulation a penalty not exceeding $200 000;

(e) regulating and imposing requirements and prohibitions respecting flood hazard management, including without limitation, requiring a diking authority as defined in the *Dike Maintenance Act*, or a local authority as defined in the *Community Charter* to develop plans or programs in accordance with those regulations or requirements for the purposes of

(i) preventing, mitigating or reducing potential flood hazards,

(ii) protecting the environment and the public from damage caused by flood waters or potential flooding, and

(iii) restoring or enhancing the environment or public safety after a flood or a series of floods;

(f) imposing monitoring and reporting requirements, including requirements for the publication of information, in relation to

(i) waste,

(ii) handling, treating, transporting, discharging or storing waste, and

(iii) places and things that the minister considers may be affected by the handling, treatment, transportation, discharge or storage of waste;

(g) prescribing sampling, analytical, quality control and reporting procedures that must be followed by a person required to monitor or report under a regulation;

(h) authorizing the minister to amend, by setting out opposite a prescribed industry, trade, business, activity or operation the title of a code of practice prescribed by the minister under section 22 *[minister's regulations – codes of practice]*, a schedule to a regulation of the Lieutenant Governor in Council that prescribes industries, trades, businesses, activities or operations for the purposes of section 6 (2) or (3) *[waste disposal]*;

(i) respecting any matter for which regulations are contemplated by this Act.

(4) The minister may make regulations as follows:

(a) respecting the sampling, analytical, quality control and reporting procedures that must be followed by a person required to submit environmental monitoring data as a requirement of an order, permit, licence, approval or certificate issued under this or any other enactment administered by the minister including imposing restrictions in relation to the facilities that may perform the procedures and prescribing and requiring the payment of fees to defray the costs to the ministry of auditing samples, analytical results, data and reports;

(b) if land is or would likely be subject to flooding, requiring

(i) a person having an interest in the land or improvements on the land, or

(ii) a person responsible for the development, sale, or other disposition of the land or improvements on the land

to disclose the information prescribed by the minister to potential transferees of the land or an interest in the land or the improvements in respect of

(iii) whether the land, any part of the land or any improvements on the land are or may be susceptible to damage by flood waters, and

(iv) steps that have been taken to mitigate that susceptibility;

(c) prescribing the form and content of a disclosure required by a regulation under paragraph (b).

(5) Section 139 *[regulations – general rules]* applies for the purpose of making regulations under this section.

Regulations – general rules

139 (1) A regulation under this Act may delegate to the minister or a director, those powers and functions that the Lieutenant Governor in Council or the minister, as applicable, considers desirable.

(2) A power to make regulations under this Act in relation to a person, thing, matter or substance, may be exercised to make regulations that are different for different classes of persons, things, matters or substances.

(3) A regulation under this Act may establish classes for the purposes of subsection (2).

(4) A regulation under this Act may be made applicable generally or in respect of a specified area of the Province.

(5) A regulation under this Act may adopt by reference, in whole or in part and with any changes considered appropriate by the Lieutenant Governor in Council or the minister, as applicable, a code, standard or rule

(a) set by a provincial, national, international or any other code or standard making body, or

(b) enacted as or under a law of another jurisdiction, including a foreign jurisdiction.

(6) A code, standard or rule referred to in subsection (5) may be adopted as amended from time to time.

(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.

PART 11 – TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS

Transitional

140 (1) If under this Act a regulation making authority that under the *Waste Management Act* was provided to the Lieutenant Governor in Council has been provided exclusively to the minister, regulations made by the Lieutenant Governor in

Council made under that previous authority that are in force on the date this Act comes into force are deemed to have been made by the minister.

(2) A decision of a manager under the *Waste Management Act* is deemed to be a decision of a director under this Act.

(3) A decision of the Environmental Appeal Board in relation to an appeal under the *Waste Management Act* is deemed to have been made under Division 2 *[Appeals from Decisions under this Act]* of Part 8 of this Act.

(4) A protocol approved or adopted by a director under the regulations to the *Waste Management Act* is deemed to be a protocol established under section 64 of this Act.

(5) A conditional certificate of compliance issued under the *Waste Management Act* that is valid and subsisting on the date this Act comes into force is deemed to be a certificate of compliance that is

(a) subject to the conditions in the conditional certificate, and

(b) issued under and in accordance with this Act.

Transitional regulations

141 (1) The Lieutenant Governor in Council may make regulations the Lieutenant Governor in Council considers necessary or advisable for the orderly transition from the application of the *Environment Management Act* and the *Waste Management Act* to their replacement by this Act.

(2) Without limiting subsection (1), the Lieutenant Governor in Council, by regulation, may waive or reduce any fee under this Act.

(3) Unless earlier repealed, a regulation under this section is repealed 2 years after it is enacted.

Consequential Amendments and Repeals

[Note: See Table of Legislative Changes for the status of these provisions.]

Section(s)	Affected Act
142	*Agricultural Land Commission Act*
143	*Commercial River Rafting Safety Act*
144	*Energy and Mines Statutes Amendment Act, 2002*
145	*Energy and Mines Statutes Amendment Act, 2003*
146	*Environment Management Act*
147	*Environment Management Act – Supplement*
148	*Farm Practices Protection (Right to Farm) Act*
149	*Firearm Act*
150	*Fisheries Act*
151	*Greater Vancouver Sewerage and Drainage District Act*
152	*Greenbelt Act*
153	*Health Act*
154	*Hydro and Power Authority Act*
155	*Islands Trust Act*
156 – 157	*Land Title Act*
158 – 162	*Local Government Act*
163	*Miscellaneous Statutes Amendment Act (No. 2), 2002*
164	*Motor Vehicle Act*
165	*Motor Vehicle (All Terrain) Act*
166	*Oil and Gas Commission Act*
167	*Park Act*
168	*Petroleum and Natural Gas Act*
169	*Property Law Act*
170	*Sustainable Environment Fund Act*
171	*Transport of Dangerous Goods Act*
172	*Trespass Act*
173	*Vancouver Charter*
174	*Waste Management Act*
175 – 176	*Water Act*
177	*Wildlife Act*

Amendments to this Act

178	*Environmental Management Act*

Commencement

179 This Act comes into force by regulation of the Lieutenant Governor in Council.

Queen's Printer for British Columbia©
Victoria, 2004

This is Exhibit "2"
referred to in the Affidavit
of Aaron Welch
sworn before me this 4th day of
February, 2010.

A Notary Public in and for the Province of
British Columbia

Exhibit 2

ENVIRONMENTAL (SPECIES AND PUBLIC PROTECTION) STATUTES AMENDMENT ACT, 2008

CHAPTER 33

Assented to May 29, 2008

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

Environmental Management Act

1 *Section 1 (1) of the Environmental Management Act, S.B.C. 2003, c. 53, is amended*

(a) in the definition of **"recyclable material"** *by adding the following paragraph:*

(e) is any other material prescribed by the Lieutenant Governor in Council, or the minister under section 22 *[minister's regulations – codes of practice]*;, ***and***

(b) in the definition of **"waste management facility"** *by adding* ", or recovery of reusable resources, including energy potential from waste" ***after*** "a waste".

2 *Section 21 (1) (u) is repealed and the following substituted:*

(u) requiring a person who manages hazardous waste or introduces waste into the environment, other than in accordance with a permit under section 14, to give security in the amount and form and subject to the conditions the Lieutenant Governor in Council may specify, or authorizing a director to require a person who manages hazardous waste or introduces waste into the environment, other than in accordance with a permit under section 14, to give security in the amount and form and subject to the conditions the director may specify.

3 *Section 22 (2) is amended*

(a) by repealing paragraph (f) and substituting the following:

(f) requiring that the owner or operator of a waste management facility 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 waste management facility after its closure;, ***and***

(b) by adding the following paragraphs:

(f.1) requiring the owner or operator of a waste management facility to give security to the minister in the amount and form and subject to the conditions specified, or authorizing a director to require the owner or operator of a waste management facility to give security in the amount and form and subject to the conditions the director may specify;

(f.2) requiring the owner or operator of a waste management facility to provide evidence that a covenant under section 219 of the *Land Title Act* has been entered into in favour of the Crown, and respecting the provisions that are to be included in the covenant, or authorizing a director to require evidence of such a covenant and specify the provisions that are to be included in the covenant;

(g.1) prescribing a substance as recyclable material, and for this purpose may establish conditions and circumstances under which a prescribed material is a recyclable material;

(g.2) requiring the owner or operator of a waste management facility to recycle certain wastes or classes of wastes, and to recover certain reusable resources, including energy potential from wastes or classes of wastes;.

4 Section 80 is amended

(a) by striking out "subsection (2)" ***wherever it appears and substituting*** "subsection (2) or (2.1)",

(b) in subsection (1) by adding the following definition:

"wildlife" means

(a) vertebrates that are mammals, birds, reptiles or amphibians and are prescribed as wildlife under the *Wildlife Act*,

(b) fish from or in non-tidal waters of British Columbia, including

(i) vertebrates of the order Petromyzoniformes (lampreys) or class Osteichthyes (bony fishes), or

(ii) invertebrates of the subphylum Crustacea (crustaceans) or phylum Mollusca (mollusks), and

(c) invertebrates or plants listed by the minister as endangered, threatened or vulnerable species,

and includes the eggs and juvenile stages of these vertebrates, invertebrates and plants., ***and***

(c) by repealing subsection (2) and substituting the following:

(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 address the perceived hazard or threat and the long term impacts on the environment resulting from the spill.

(2.1) Without limiting subsection (2), the government may carry out one or more of the following actions:

(a) assess, monitor and prevent the hazard or threat;

(b) stabilize, contain, remove and clean up the hazard or threat;

(c) evacuate persons;

(d) recover and rehabilitate wildlife;

(e) restore wildlife habitat;

(f) take other steps to address the long term impacts on the environment resulting from the spill.

5 *Section 138 is amended*

(a) by repealing subsection (2) (j) and substituting the following:

(j) regulating and imposing requirements and prohibitions respecting

(i) the transportation, labelling, handling, treatment, recycling, recovery, storage, disposal and destruction, and

(ii) the selling, giving or otherwise transferring of the ownership or possession,

of recyclable materials or wastes or classes of wastes or reusable resources, including energy potential recovered from wastes;,

(b) by repealing subsection (2) (n) and (o) and substituting the following:

(n) requiring that the owner or operator of the waste management facility 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;

(o) requiring that the owner or operator of the waste management facility make contributions to the Waste Management Trust Fund, the amount of the contributions to be prescribed or established by agreement or both;

(o.1) requiring the owner or operator of a waste management facility to give security to the minister in the amount and form and subject to the conditions specified, or authorizing a director to require the owner or operator of a waste management facility to give security in the amount and form and subject to the conditions the director may specify;

(o.2) requiring the owner or operator of a waste management facility to provide evidence that a covenant under section 219 of the *Land Title Act* has been entered into in favour of the Crown, and respecting the provisions that are to be included in the covenant, or authorizing a director to require evidence of such a covenant and specify the provisions that are to be included in the covenant;*, and*

(c) in subsection (3) (f) (ii) and (iii) by striking out "waste" ***and substituting*** "waste or recyclable material and reusable resources, including energy potential from waste".

Park Act

6 ***Section 4 (3) of the Park Act, R.S.B.C. 1996, c. 344, is amended by striking out everything after*** "enforcing compliance with" ***and substituting the following:***

(a) the *Wildlife Act* and the regulations under that Act, and

(b) this Act, the regulations and other prescribed enactments within parks, conservancies, recreation areas and any land, trail, path or waterway comprised in an order under section 6 (1).

Wildlife Act

7 ***Section 1 (1) of the Wildlife Act, R.S.B.C. 1996, c. 488, is amended***

(a) by adding the following definitions:

"controlled alien species" means

(a) a species designated by regulation under section 6.4 as a controlled alien species, and

(b) hybrid animals and fish that have an ancestor within 4 generations that is a species designated as a controlled alien species;

"developmental stage" includes larva, embryo, seed, spore, egg, sperm, pollen and asexual propagule;

"native species" means a species that

(a) is indigenous to British Columbia, or

(b) has extended its range into British Columbia from another part of North America, unless

(i) the species was introduced to North America by human intervention or activities, or

(ii) any part of the extension of its range within North America was aided by human intervention or activities;

"species" means a species, sub-species, variety or genetically or geographically distinct population of

(a) animals,

(b) fish,

(c) plants, or

(d) other organisms, except bacteria and viruses;

"species individual", in relation to a controlled alien species, means a single live member of the species, at any developmental stage;,

(b) in the definition of **"endangered species"** *by adding* ", but does not include a controlled alien species" *after* "as an endangered species",

(c) in the definition of **"fish"** *by adding* ", except in the definition of "controlled alien species" and in paragraph (b) of the definition of "species" insofar as that provision applies in relation to controlled alien species," *before* "means",

(d) in the definition of **"threatened species"** *by adding* ", but does not include a controlled alien species" *after* "as a threatened species", *and*

(e) by repealing the definition of **"wildlife"** *and substituting the following:*

"wildlife"

(a) means raptors, threatened species, endangered species, game and other species of vertebrates prescribed by regulation, and

(b) for the purposes of sections 3 to 5, 7, 8, 84 (6.1) to (6.4), 97.1 to 98.1 and 108 (2) (v), includes fish,

but does not include controlled alien species;.

8 Section 1 (1) is amended

(a) by adding the following definitions:

"guiding area", in relation to a guide outfitter, means the area described in the guide outfitter's licence issued under section 51;

"guiding territory" means

(a) an area described in a guiding territory certificate, or

(b) an area designated under section 65 (1) as a guiding territory;

"guiding territory certificate" means a certificate issued under section 59;,

(b) in the definition of **"officer"** *by repealing paragraph (a) and substituting the following:*

(a) a constable, a conservation officer, the director, an assistant director or a regional manager,

(a.1) subject to subsection (3), a park ranger appointed under the *Park Act*, or, *and* *(c) in the definition of* "**person**" *by adding* "or guiding territory certificate" *after* "limited entry hunting authorization".

9 Section 1 is amended by adding the following subsection:

(3) A park ranger may exercise the powers and perform the duties of an officer subject to

(a) any regulations under section 29 (3) (d) of the *Park Act*, and

(b) any limitations, terms and conditions imposed under section 4 (4) of the *Park Act.*

10 Section 2 (5) is amended by striking out "or" *at the end of paragraph (a) and by adding the following paragraph:*

(a.1) controlled alien species described in paragraph (a) of the definition of "species", or .

11 The following sections are added:

Controlled alien species

6.4 If the minister considers that a non-native species described in paragraph (a) or (b) of the definition of "species" poses a risk to the health or safety of any person or poses a risk to property, wildlife or wildlife habitat, the minister may make regulations designating the species as a controlled alien species.

Regulation of controlled alien species

6.5 (1) The minister may, by regulation, regulate, prohibit and impose requirements in relation to the following:

(a) the possession of a species individual of a controlled alien species;

(b) the breeding of controlled alien species;

(c) the release of a species individual of a controlled alien species;

(d) trafficking in species individuals of a controlled alien species;

(e) the shipping or transporting in British Columbia of, or the engaging of another person to ship or transport in British Columbia, a species individual of a controlled alien species.

(2) In making regulations under subsection (1), the minister may do one or more of the following:

(a) define classes of controlled alien species;

(b) make different regulations for different controlled alien species or classes of controlled alien species;

(c) delegate a matter to a person;

(d) confer a discretion on a person.

Application of this Act to controlled alien species

6.6 (1) Sections 3, 82 (4), 89, 93, 94 (1), 95 and 107 (2) apply in relation to controlled alien species as if those species were wildlife.

(2) Section 92 applies in relation to controlled alien species described in paragraph (b) of the definition of "species" as if those species were fish as defined in section 1.

(3) Subject to subsection (4), sections 76, 98 and 98.1 do not apply in relation to controlled alien species.

(4) The minister may, by regulation, apply a provision of this Act in relation to controlled alien species as if those species were wildlife, animals or fish.

(5) The minister may, by regulation, exempt controlled alien species from the application of a provision of this Act that applies in relation to animals or fish.

12 *Sections 11 (5) and 17 (1) (b), (3) and (6) to (8) are amended by striking out* "19" *wherever it appears and substituting* "18".

13 *Section 16 is amended*

(a) in subsection (1) by striking out "Lieutenant Governor in Council" *and substituting* "minister",

(b) in subsection (1) by striking out "and" *at the end of paragraph (b) and by adding the following paragraph:*

(b.1) provide for exceptions that the minister considers appropriate to the random selection among applicants in conducting a lottery or other method of random selection among applicants under paragraph (b), and*, and*

(c) by adding the following subsection:

(3) In making regulations under subsection (1), the minister may define classes of applicants and make different regulations for different classes of applicants.

14 *Section 48 (3) is amended by striking out* "guide area during substantially all the times" *and substituting* "guiding area during a majority of the time".

15 *Section 51 is amended*

(a) by repealing subsection (1) (b) and (c) and substituting the following:

(b) has public liability insurance prescribed by regulation, and

(c) has other qualifications prescribed by regulation.*, and* *(b) by adding the following subsection:*

(3) If an area is part of a guiding territory assigned in a guiding territory certificate, the regional manager may not issue a guide outfitter licence under subsection (1) authorizing a person to guide in the area unless the person provides proof, satisfactory to the regional manager, that the person has the consent of the holder of the guiding territory certificate.

16 Section 54 (1) is repealed and the following substituted:

(1) The regional manager or the regional manager's designate may issue

(a) an assistant guide licence to a person who meets the prescribed qualifications, or

(b) an assistant angling guide licence to a person who is a citizen of Canada or a permanent resident of Canada and is 19 years of age or older.

17 Section 57 is repealed.

18 Section 58 is repealed and the following substituted:

Non-use of waters or area by angling guide

58 If an angling guide does not guide or states that he or she does not intend to guide anglers in a year,

(a) the angling guide may apply to the regional manager for permission to temporarily discontinue or partially discontinue the use of the waters or area authorized by his or her angling guide licence, or

(b) the regional manager may review the angling guide's operation and, after affording him or her an opportunity to be heard, the regional manager may suspend, cancel or refuse to renew the angling guide's licence.

19 Section 59 is repealed and the following substituted:

Guiding territory certificate

59 (1) A regional manager may issue a guiding territory certificate to a person who, or to a group of persons each of whom,

(a) is a citizen of Canada or a permanent resident of Canada,

(b) is 19 years of age or older, and

(c) has other qualifications prescribed by regulation.

(2) The director may specify the form of and conditions contained in a guiding territory certificate.

(3) Subject to a permit issued under section 70 (1) (b), a guiding territory certificate grants to the holder the exclusive control over guiding privileges in the area described in the certificate for the period stated in the certificate, which may not exceed 10 years.

(4) The issuance of a guiding territory certificate to more than one person creates a tenancy in common in the rights granted by the certificate.

(5) If a guiding territory certificate is issued to more than one person, the guiding territory certificate must

(a) identify a person as the agent of the holders of the certificate, and

(b) specify the interest held in the certificate by each holder of the certificate.

(6) A regional manager may rely on information provided and an application or submission made by the agent identified in the guiding territory certificate as if that information were provided or that application or submission were made by all the holders of the certificate.

(7) After the 5th anniversary of the date of issue of a guiding territory certificate, the regional manager may issue a new certificate, on application by the holder of the certificate, for a period not exceeding 10 years.

Non-use of guiding territory

59.1 (1) On application by the holder of a guiding territory certificate who does not intend to consent to guiding in a year in the guiding territory described in the guiding territory certificate, the regional manager may give permission for the temporary or partial discontinuance of the use of that guiding territory for guiding.

(2) If, in the opinion of the regional manager, there is no guiding in a year in a guiding territory described in a guiding territory certificate,

(a) the regional manager may review the operation of the holder of the guiding territory certificate, and

(b) after affording the holder an opportunity to be heard, the regional manager may suspend, cancel or refuse to renew the guiding territory certificate.

20 ***Section 61 (1) is amended by striking out*** "guide outfitter's certificate" ***and substituting*** "guiding territory certificate".

21 ***Section 62 is repealed and the following substituted:***

Transfers subject to approval

62 The following may not be transferred without the authorization of the regional manager:

(a) the privileges conferred in a guide outfitter licence;

(b) the privileges conferred in a portion of the guiding area described in a guide outfitter licence;

(c) the privileges conferred in a guiding territory certificate;

(d) the privileges conferred in a portion of the guiding territory held under a guiding territory certificate;

(e) a guiding territory certificate or an interest in a guiding territory certificate.

22 Section 63 is repealed.

23 Section 64 is amended

(a) by repealing subsection (1) and substituting the following:

(1) An interest in a guiding territory certificate is part of the estate of the holder of that interest and, subject to section 62, the heirs or administrators of a deceased holder may transfer, within 2 years of the holder's death, the holder's interest in the guiding territory certificate to a person who qualifies under section 59 (1).

(1.1) If an interest in a guiding territory certificate is not transferred in accordance with subsection (1) after the death of a holder, the deceased holder's interest in the guiding territory certificate is forfeited to the government., *and*

(b) in subsection (4) by striking out "a guide outfitter's certificate or" *and by striking out* "the guide outfitter's certificate or the angling guide licence, as the case may be," *and substituting* "the angling guide licence".

24 Section 65 is repealed and the following substituted:

Disposal of guiding territories and interests in guiding territory certificates

65 (1) If exclusive control over guiding privileges in an area is not assigned in a guiding territory certificate, the regional manager may designate the area as a guiding territory.

(2) If

(a) the regional manager designates a new guiding territory, or

(b) a guiding territory certificate is cancelled or surrendered or forfeited to the government and the regional manager considers that the exclusive control over guiding privileges in the guiding territory described in the guiding territory certificate should be reassigned,

the exclusive control over guiding privileges in that guiding territory must be advertised for sale by the regional manager and sold by tender or by any other prescribed means to a person qualified to hold a guiding territory certificate.

(3) If the exclusive control over guiding privileges in an area is not assigned in a guiding territory certificate and the regional manager considers that the area is not by itself suitable for designation as a guiding territory, the regional manager may assign, by amendment to a guiding territory certificate and on payment of the prescribed charge, the exclusive control over guiding privileges in all or part of that area to the holder of the guiding territory certificate in respect of a guiding territory adjoining that area.

(4) If an interest in a guiding territory certificate is forfeited to the government under section 64 (1.1), the interest in that certificate must be advertised for sale by the regional manager and sold by tender or by any other prescribed means to a person qualified to hold a guiding territory certificate.

25 *Section 66 is repealed.*

26 *Section 67 is amended by striking out* "guide outfitter's certificate" *and substituting* "guiding territory certificate".

27 *Section 68 is amended by striking out* "a guide outfitter's licence or certificate" *and substituting* "a guide outfitter's licence, a guiding territory certificate".

28 *Section 84 is amended*

(a) in subsection (2) (a) by striking out "$100 000" *and substituting* "$250 000", *by striking out* "$1 000" *and substituting* "$2 500" *and by striking out* "one year," *and substituting* "2 years,",

(b) in subsection (2) (b) by striking out "$150 000" *and substituting* "$500 000", *by striking out* "$2 000" *and substituting* "$5 000" *and by striking out* "18 months," *and substituting* "3 years,",

(c) in subsection (3) (a) by striking out "$50 000" *and substituting* "$100 000" *and by striking out* "6 months," *and substituting* "one year,",

(d) in subsection (3) (b) by striking out "$100 000" *and substituting* "$200 000", *by striking out* "$1 000" *and substituting* "$2 000" *and by striking out* "one year," *and substituting* "2 years,",

(e) in subsection (5) (a) by striking out "$25 000" *and substituting* "$50 000", *and*

(f) in subsection (5) (b) by striking out "$50 000" *and substituting* "$100 000" *and by striking out* "$500" *and substituting* "$1 000".

29 The following sections are added:

Seizure or destruction of controlled alien species

97.7 (1) A conservation officer or constable may seize a species individual of a controlled alien species if the person in possession of the species individual

(a) is prohibited from possessing that species individual,

(b) contravenes the person's permit in relation to the species individual, or

(c) contravenes a regulation respecting controlled alien species.

(2) A conservation officer or constable may seize or destroy a species individual of a controlled alien species if, in the opinion of the conservation officer or constable, the species individual presents an imminent danger to the health or safety of a person or to property, wildlife or wildlife habitat.

(3) If a constable seizes a species individual under subsection (1) or (2), the constable must, as soon as practicable, deliver the species individual to a conservation officer or to a person designated by the minister.

(4) Sections 23 to 24.2 of the *Offence Act* do not apply in respect of a species individual of a controlled alien species seized under this Act.

Disposition of seized controlled alien species

97.71 (1) If a species individual of a controlled alien species is seized under section 97.7 (1) or (2), the government may destroy, sell or otherwise dispose of the species individual 14 days after the regional manager or a person designated by the minister has given notice to the owner of the species individual in accordance with subsection (2) of this section.

(2) The notice referred to in subsection (1) must be in writing and

(a) mailed to or served personally on the owner of the species individual, or

(b) if it cannot be mailed to or served personally on the owner,

(i) published at least 3 times at 2 day intervals in a newspaper circulating in the area in which the species individual was seized, or

(ii) posted in a conspicuous place at either the owner's last known address or the location at which the species individual was seized.

Controlled alien species is property of new owner

97.72 If a species individual of a controlled alien species is sold or otherwise disposed of under section 97.71, all rights and interests in the species individual

(a) vest in the person to whom it has been sold or otherwise disposed of, and

(b) the former owner ceases to have any of those rights and interests.

Costs and proceeds of disposition of controlled alien species

97.73 (1) If a species individual of a controlled alien species is seized or destroyed under this Act, the director may

(a) issue a certificate

(i) setting out the reasonable costs incurred under this Act by the government with respect to the species individual,

(ii) identifying one or more persons who own the species individual, and

(iii) specifying all or part of those costs as 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.

(2) Notice under subsection (1) (b) may be served in accordance with section 101 (3).

(3) If 2 or more persons are identified in a certificate, those persons are jointly and separately liable to pay the costs as specified in the certificate.

(4) If notice of a certificate is served under subsection (1) (b),

(a) the amount certified as being payable by a person is a debt due to the government by the person, and

(b) on filing in the Supreme Court, the certificate 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.

(5) The government may require the owner to pay the costs that the owner is required to pay under subsection (1) before returning the species individual to the owner.

(6) Subject to subsection (7), the government may retain the proceeds of a sale or other disposition of a species individual of a controlled alien species under section 97.71.

(7) If the proceeds of a sale or other disposition of a species individual of a controlled alien species exceed the costs referred to in subsection (1), the owner of the species individual that was seized may, within 6 months of the date of seizure, claim the balance from the government.

30 Section 100 (2) (b) is amended by striking out "except paragraph (b)," *and substituting* "except a requirement prescribed for the purposes of this section,".

31 Section 101 is amended

(a) in subsection (1) (a) by striking out "guide outfitter's certificate" *and substituting* "guiding territory certificate", *and*

(b) by adding the following subsection:

(4) For the purposes of applying this section to a decision that affects a guiding territory certificate, if notice of a decision referred to in subsection (1) is given in accordance with this section to the agent identified in the guiding territory certificate, the notice is deemed to have been given to the holders of the guiding territory certificate as if the agent were an affected person.

32 *Section 108 (2) is amended by adding the following paragraph:*

(i.1) respecting applications for guiding territory certificates and prescribing qualifications of applicants for guiding territory certificates;.

33 *Section 109 is amended by adding the following paragraphs:*

(h) regulating or prohibiting the feeding or attracting of specified wildlife in a specified area, which may be different for different wildlife, different classes of wildlife or different areas;

(i) respecting controlled alien species, including, without limitation, exercising in relation to controlled alien species any authority in relation to wildlife under section 108 (2) (s) to (v), (x) and (z) and (3) (a) and (c) to (f).

Wildlife Amendment Act, 2004

34 *Section 1 of the Wildlife Amendment Act, 2004, S.B.C. 2004, c. 56, is amended*

(a) by repealing paragraph (a) and substituting the following:

(a) by repealing the definitions of **"critical wildlife area", "endangered species", "species individual"** *and* **"threatened species"** *and substituting the following:*

"endangered species" means a species designated by regulation under section 6 (2) or (4) as an endangered species but does not include a controlled alien species;

"species individual" means

(a) in relation to a controlled alien species, a single live member of the species, at any developmental stage, and

(b) in relation to any other species, a single member of the species, whether alive or dead, at any developmental stage;

"threatened species" means a species designated by regulation under section 6 (3) or (4) as a threatened species but does not include a controlled alien species;,

(b) in paragraph (d) by repealing the definitions of **"developmental stage", "native species", "species"** *and* **"species individual"**, *and*

(c) *by striking out "and" at the end of paragraph (c), by adding ", and" at the end of paragraph (d) and by adding the following paragraph:*

(e) *in the definition of* "wildlife", *as enacted by section 7 (e) of the Environmental (Species and Public Protection) Statutes Amendment Act, 2008, by striking out* "controlled alien species;" *and substituting* "controlled alien species and species at risk;".

35 Section 2 (c) is repealed and the following substituted:

(c) *in subsection (5) by striking out* "or" *at the end of paragraph (a.1) and by adding the following paragraph:*

(a.2) species at risk described in paragraph (a) of the definition of "species", or .

Transitional Provision

Transition – guiding territory certificates

36 A guide outfitter's certificate issued under the *Wildlife Act* that is valid and subsisting on the date this section comes into force is deemed to be a guiding territory certificate issued under that Act.

Commencement

37 The provisions of this Act referred to in column 1 of the following table come into force as set out in column 2 of the table:

Item	Column 1 **Provisions of Act**	Column 2 **Commencement**
1	Anything not elsewhere covered by this table	The date of Royal Assent
2	Section 6	By regulation of the Lieutenant Governor in Council
3	Sections 8 and 9	By regulation of the Lieutenant Governor in Council
4	Sections 14 to 28	By regulation of the Lieutenant Governor in Council
5	Sections 30 to 32	By regulation of the Lieutenant Governor in Council
6	Section 36	By regulation of the Lieutenant Governor in Council

Queen's Printer for British Columbia©
Victoria, 2008

This is Exhibit "3"
referred to in the Affidavit
of Aaron Welch
sworn before me this 4th day of
February, 2010.

A Notary Public in and for the Province of
British Columbia

Exhibit 3

GREENHOUSE GAS REDUCTION (EMISSIONS STANDARDS) STATUTES AMENDMENT ACT, 2008

CHAPTER 20

Assented to May 29, 2008

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

Environmental Management Act

1 ***Section 1 (1) of the Environmental Management Act, S.B.C. 2003, c. 53, is amended by adding the following definition:***

> **"greenhouse gas"** has the same meaning as in the *Greenhouse Gas Reduction Targets Act*; .

2 ***The following Part is added:***

PART 6.1 – GREENHOUSE GAS REDUCTION

Division 1 – Definitions

Definitions

76.1 For the purposes of this Part:

"attributable", in relation to greenhouse gas emissions, means attributable under the regulations;

"carbon dioxide equivalent" means the mass of carbon dioxide that would produce the same global warming impact as a given mass of another greenhouse gas, as determined in accordance with the regulations;

"coal-based generating facility" means a facility that is prescribed by regulation as a coal-based generating facility;

"compliance period" means the period prescribed by regulation for the purposes of section 76.4 *[electricity generation must have net zero emissions]*;

"electricity generating facility" means a facility that is prescribed by regulation as an electricity generating facility;

"emission offset" means an emission offset, as established, approved or recognized under the regulations for the purpose of

(a) reducing or avoiding greenhouse gas emissions into the atmosphere, or

(b) removing greenhouse gas from the atmosphere;

"existing electricity generating facility" means an electricity generating facility that is prescribed by regulation as an existing electricity generating facility;

"new electricity generating facility" means an electricity generating facility that is not an existing electricity generating facility;

"operator", in relation to a coal-based generating facility or an electricity generating facility, means the person considered under the regulations to be the operator of the facility;

"use of coal for the generation of electricity" includes the use of coal for the production of an energy source that is reasonably expected to be used for the generation of electricity.

Division 2 – Waste Management Facilities

Management of greenhouse gases at waste management facilities

76.2 The owner or operator of a waste management facility of a prescribed class must manage, in accordance with the regulations, specified greenhouse gases produced from wastes handled at the waste management facility.

Regulations for purposes of Division 2

76.21 (1) Without limiting section 138 (1) *[general authority to make regulations]*, the Lieutenant Governor in Council may make regulations as follows:

(a) specifying greenhouse gases for the purposes of this Division;

(b) prescribing actions that must be taken in relation to either or both of the following:

(i) the management or reduction of specified greenhouse gases;

(ii) the recovery of energy potential from specified greenhouse gases;

(c) regulating and imposing requirements and prohibitions in relation to actions required under paragraph (b);

(d) regulating and imposing requirements and prohibitions for the design, siting and operation of any works, activities or operations related to the management of, or the recovery of energy potential from, greenhouse gases;

(e) exempting any works, activities or operations or any class of persons, works, activities or operations from any or all of the provisions of the regulations in circumstances or on conditions that the Lieutenant Governor in Council prescribes;

(f) imposing monitoring and reporting requirements in relation to

(i) greenhouse gases or the recovery of energy potential from greenhouse gases,

(ii) handling, treating, transporting, discharging or storing greenhouse gases or energy potential recovered from greenhouse gases, and

(iii) places and things that the Lieutenant Governor in Council considers may be affected by the handling, treatment, transportation, discharge or storage of greenhouse gases or energy potential recovered from greenhouse gases,

including, without limitation, prescribing requirements for the publication of information and respecting to whom reports are to be submitted and the timing, form, content, supporting evidence, verification, certification and manner of submission of the reports;

(g) establishing requirements respecting the retention of records that support reports and information required to be provided to the director under this Division;

(h) defining words or expressions used but not defined in this Division.

(2) Section 139 *[regulations – general rules]* applies for the purpose of making regulations under this Division.

Division 3 – Coal-based Electricity Generation

Coal-based generating facilities – greenhouse gases must be stored or sequestered

76.3 (1) Subject to subsection (2), the operator of a coal-based generating facility must not introduce or cause or allow to be introduced into the environment emissions of prescribed greenhouse gases from the facility that are attributable to the use of coal for the generation of electricity.

(2) The prohibition in subsection (1) does not apply if an amount of greenhouse gas emissions from the facility that is at least equal to the amount of the emissions referred to in subsection (1), as determined in accordance with the regulations on a carbon dioxide equivalent basis, is captured and stored, or captured and sequestered, in accordance with the regulations.

Compliance reports

76.31 (1) The operator of a coal-based generating facility must submit a report to the director, in accordance with the regulations, respecting

(a) the attributable greenhouse gas emissions referred to in section 76.3 (1), as determined in accordance with the regulations,

(b) if applicable, the capture and storage, or capture and sequestration, of an amount of emissions from the facility under section 76.3 (2), and

(c) any other matter prescribed for the purposes of this Division.

(2) The operator of a coal-based generating facility must submit a supplementary report to the director within the prescribed period after the operator becomes aware that

(a) information in a previous report under this section did not completely and accurately disclose the required information, or

(b) information required to be reported in a previous report has changed.

(3) A supplementary report under this section must be made in accordance with the regulations or, if no specific direction is prescribed, in accordance with the regulations applicable to the report under subsection (1).

(4) The director may

(a) require a report under this section to be audited in accordance with the directions of the director, or conduct or authorize a person to conduct such an audit, and

(b) require the operator of a coal-based generating facility to provide additional information in support of a report under this section.

Regulations for purposes of Division 3

76.32 (1) Without limiting section 138 (1) *[general authority to make regulations]*, the Lieutenant Governor in Council may make regulations in relation to this Division as follows:

(a) prescribing facilities within a prescribed class, or prescribing specified facilities, as being coal-based generating facilities, including, without limitation, facilities that

(i) generate electricity in part from coal and in part from another energy source,

(ii) from time to time generate electricity from coal,

(iii) do other things in addition to the generation of electricity from coal,

(iv) produce an energy source from coal that is used to generate electricity, including the generation of electricity by another person or at another facility, or

(v) use an energy source referred to in subparagraph (iv) to generate electricity;

(b) respecting who is to be considered the operator of a coal-based generating facility;

(c) establishing the greenhouse gas emissions that are deemed to be attributable to the use of coal for the generation of electricity;

(d) respecting the methodology by which greenhouse gas emissions referred to in paragraph (c) are to be determined;

(e) establishing

(i) acceptable methods and standards, and

(ii) monitoring, reporting and other requirements

in relation to the capture, storage and sequestration of greenhouse gases;

(f) respecting reports under this Division, including, without limitation, prescribing requirements respecting to whom the reports are to be submitted and the timing, form, content, supporting evidence, verification, certification and manner of submission of the reports;

(g) establishing requirements and standards respecting quality assurance of the information provided in the reports under this Division and the data that support the reports, including, without limitation, requirements and standards respecting

(i) monitoring protocols and equipment,

(ii) sampling protocols and equipment, and

(iii) analytical protocols and equipment

that must be used for the purposes of reports under this Division;

(h) establishing requirements respecting the retention of records that support reports and information required to be provided to the director under this Division;

(i) prescribing information that must or may be made public in relation to this Division, other than information referred to in paragraph (a) of the definition of "protected information" in section 76.52 *[confidentiality in relation to Divisions 3 and 4]*;

(j) defining words or expressions used but not defined in this Division.

(2) Section 139 *[regulations – general rules]* applies for the purpose of making regulations under this Division.

Division 4 – Greenhouse Gas Emissions from Electricity Generation

Electricity generation must have net zero emissions

76.4 For each compliance period, the operator of an electricity generating facility must, in accordance with the regulations,

(a) determine the greenhouse gas emissions attributable to the generation of electricity by the facility for the compliance period, excluding any emissions that are captured and stored, or captured and sequestered, in accordance with the regulations, and

(b) if there are attributable greenhouse gas emissions referred to in paragraph (a) after any applicable exclusion under that provision, no later than the prescribed time after the end of that compliance period, apply emission offsets in accordance with the regulations to net those emissions to zero.

Compliance reports

76.41 (1) The operator of an electricity generating facility must submit a report to the director, in accordance with the regulations, respecting

(a) the attributable greenhouse gas emissions referred to in section 76.4 (a), as determined in accordance with the regulations, including, if applicable, any exclusion referred to in that provision,

(b) compliance with the obligation under section 76.4 (b), and

(c) any other matter prescribed for the purposes of this Division.

(2) The operator of an electricity generating facility must submit a supplementary report to the director within the prescribed period after the operator becomes aware that

(a) information in a previous report under this section did not completely and accurately disclose the required information, or

(b) information required to be reported in a previous report has changed.

(3) A supplementary report under this section must be made in accordance with the regulations or, if no specific direction is prescribed, in accordance with the regulations applicable to the report under subsection (1).

(4) The director may

(a) require a report under this section to be audited in accordance with the directions of the director, or conduct or authorize a person to conduct such an audit, and

(b) require the operator of an electricity generating facility to provide additional information in support of a report under this section.

Application of Division 4

76.42 This Division applies to

(a) new electricity generating facilities,

(b) subject to paragraph (c), existing electricity generating facilities, beginning with the first compliance period that includes all or part of the 2016 calendar year, and

(c) before the compliance period referred to in paragraph (b), existing electricity generating facilities in relation to greenhouse gas emissions that are attributable under the regulations to an expansion of the capacity of a facility where that expansion first generated electricity after February 27, 2007 and meets the prescribed threshold.

Regulations for purposes of Division 4

76.43 (1) Without limiting section 138 (1), the Lieutenant Governor in Council may make regulations in relation to this Division as follows:

(a) prescribing facilities within a prescribed class, or prescribing specified facilities, as being electricity generating facilities, including, without limitation, facilities that do other things in addition to the generation of electricity;

(b) prescribing facilities within a prescribed class, or prescribing specified facilities, as being existing electricity generating facilities on the basis that they were generating electricity on February 27, 2007 or that they generated electricity within a reasonable time period before that date;

(c) prescribing a threshold, by capacity or by generation of electricity, or both, for the purposes of section 76.42 (c);

(d) respecting who is to be considered the operator of an electricity generating facility;

(e) establishing the greenhouse gas emissions that are deemed to be attributable to an electricity generating facility;

(f) respecting the methodology by which greenhouse gas emissions referred to in paragraph (e) are to be determined;

(g) respecting emission offsets for the purposes of this Division, including, without limitation,

(i) establishing one or more systems of emission offsets,

(ii) providing authority for projects or actions to be approved as the basis for emission offsets, including authority to establish the parameters of emission offsets related to projects or actions,

(iii) recognizing as emission offsets for the purposes of this Division

(A) emission offsets under the *Greenhouse Gas Reduction Targets Act*,

(B) compliance units under the *Greenhouse Gas Reduction (Cap and Trade) Act*, or

(C) units of systems established by other jurisdictions or organizations, and

(iv) providing when, how and to what extent emission offsets may or must be applied;

(h) respecting reports under this Division, including, without limitation, prescribing requirements respecting to whom the reports are to be submitted and the timing, form, content, supporting evidence, verification, certification and manner of submission of the reports;

(i) establishing requirements and standards respecting quality assurance of the information provided in the reports under this Division and the data that support the reports, including, without limitation, requirements and standards respecting

(i) monitoring protocols and equipment,

(ii) sampling protocols and equipment, and

(iii) analytical protocols and equipment

that must be used for the purposes of reports under this Division;

(j) establishing requirements respecting the retention of records that support reports and information required to be provided to the director under this Division;

(k) prescribing information that must or may be made public in relation to this Division, other than information referred to in paragraph (a) of the definition of "protected information" in section 76.52 *[confidentiality in relation to Divisions 3 and 4]*;

(l) defining words or expressions used but not defined in this Division.

(2) Section 139 *[regulations — general rules]* applies for the purpose of making regulations under this Division.

Division 5 – General

This Part does not affect authority under other Parts

76.5 Nothing in this Part affects the authority to deal with greenhouse gases under any other Part of this Act.

Inspection powers for purposes of Divisions 3 and 4

76.51 (1) Without limiting the powers of an officer under any other provision of this Act, for the purposes of ensuring compliance with Division 3 *[Coal-based Electricity Generation]* or 4 *[Greenhouse Gas Emissions from Electricity Generation]* of this Part, and the regulations under either of those Divisions, an officer may enter land or premises, except premises or a part of premises occupied solely as a private residence, at any reasonable time to conduct an inspection related to

(a) the capture and storage, or capture and sequestration, of greenhouse gas emissions under either of those Divisions,

(b) the production of electricity that may be subject to either of those Divisions, or

(c) a project or action approved as the basis for emission offsets under section 76.43 (1) (g) *[regulations in relation to emission offsets]*.

(2) An officer who enters on land or premises under subsection (1) may do any of the following:

(a) examine and take away copies of records relating to a matter referred to in subsection (1) (a) to (c);

(b) inspect, analyze, measure, sample or test the land or premises, or any article or substance located on or in the land or premises, in relation to a matter referred to in subsection (1) (a) to (c);

(c) take away samples of land, premises, articles or substances;

(d) require that anything related to a matter referred to in subsection (1) (a) to (c) be operated, used or set in motion under conditions specified by the officer;

(e) use a computer system at the place that is being inspected to examine data, contained in or available to the computer system, related to a matter referred to in subsection (1) (a) to (c);

(f) record or copy by any method any information related to a matter referred to in subsection (1) (a) to (c);

(g) use any machine, structure, material or equipment in the place that is being inspected as is necessary to carry out the inspection;

(h) use copying equipment located at the place that is being inspected to make copies to take away;

(i) take photographs or make audio or video records.

(3) An officer who enters land or premises in accordance with this section

(a) may take along the persons and equipment that the officer considers may be necessary for the purposes of the inspection, and

(b) on request, must provide proof of identity to a person present on the land or premises entered.

(4) A person who is the subject of an inspection under this section, or who is or was a director, receiver, receiver manager, officer, employee, banker, auditor or agent of a person who is the subject of an inspection under this section, on request of an officer, must

(a) produce, without charge or unreasonable delay, for examination by the officer any record relating to a matter referred to in subsection (1) (a) to (c), and

(b) provide the officer with information relevant to the purposes of the inspection.

Confidentiality in relation to Divisions 3 and 4

76.52 (1) In this section:

"protected information" means information that would reveal

(a) trade secrets of a third party, or

(b) commercial, financial, labour relations, scientific or technical information of or about a third party;

"third party" has the same meaning as in the *Freedom of Information and Protection of Privacy Act*;

"trade secret" has the same meaning as in the *Freedom of Information and Protection of Privacy Act*.

(2) Subject to this section, a person who has access to protected information that is in the custody or under the control of the government through

(a) reports required to be provided by an operator under Division 3 *[Coal-based Electricity Generation]* or 4 *[Greenhouse Gas Emissions from Electricity Generation]* of this Part, or

(b) the exercise of powers under section 76.51 *[inspection powers for purposes of Divisions 3 and 4]* or Part 9 *[Compliance]* in relation to Division 3 or 4 of this Part,

must not disclose the protected information to any other person.

(3) The prohibition in subsection (2) does not apply to disclosure of the following information:

(a) information that is publicly available;

(b) information respecting the matters referred to in section 76.31 (1) (a) and (b) *[Division 3 compliance reports]*;

(c) information respecting the matters referred to in section 76.41 (1) (a) and (b) *[Division 4 compliance reports]*;

(d) information that is required or authorized to be made public under this Act.

(4) The prohibition in subsection (2) does not apply to disclosure in the following circumstances:

(a) if required under Part 2 *[Freedom of Information]* of the *Freedom of Information and Protection of Privacy Act*;

(b) in the course of administering or enforcing this Act or a prescribed enactment;

(c) for the purpose of court proceedings;

(d) with the consent of the person, group of persons or organization that is the third party in relation to the protected information.

3 *Section 99 is amended by striking out* "and" *at the end of paragraph (f), by adding* ", and" *at the end of paragraph (g) and by adding the following paragraph:*

(h) determining non-compliance under section 115.2 *[imposed administrative penalties – failure to apply emission offsets]* and the extent of that non-compliance.

4 *Section 100 (2) is repealed and the following substituted:*

(2) For certainty,

(a) a decision under this Act of the Lieutenant Governor in Council or the minister is not appealable to the appeal board, and

(b) for the purposes of this Division, there is no decision under section 115.1 *[automatic administrative penalties – failure to apply emission offsets]*.

5 *Section 109 (6) is amended by striking out* "A person who is or was" *and substituting* "A person who is the subject of an inspection under this section or who is or was".

6 *Section 114 is repealed and the following substituted:*

Restraining orders

114 (1) If a person, by carrying on an activity or operation, contravenes any of the following, the activity or operation may be restrained in a proceeding brought by the minister in the Supreme Court:

(a) section 6 *[waste disposal]*;

(b) section 9 *[hazardous waste storage and disposal]*;

(c) section 10 *[transportation of hazardous waste]*;

(d) a suspension or cancellation made under section 18 *[suspension or cancellation of permits and approvals]*;

(e) an order made under Part 4 *[Contaminated Site Remediation]*;

(f) section 76.2 *[management of greenhouse gases at waste management facilities]*;

(g) section 76.3 (1) *[coal-based generating facilities – greenhouse gases must be stored or sequestered]*.

(2) The making of an order by the court under subsection (1) in relation to a matter does not interfere with the imposition of a penalty in respect of an offence in relation to the same contravention.

7 *Section 115 (8) is repealed.*

8 *The following sections are added:*

Automatic administrative penalties – failure to apply emission offsets

115.1 (1) If a report under section 76.41 *[compliance reports in relation to electricity generation]* indicates that the operator of the electricity generating facility has not complied with the obligation under section 76.4 (b) *[obligation to have net zero emissions]* within the prescribed time, the operator is subject to the administrative penalty established by the regulations.

(2) An administrative penalty under this section must be paid to the government on or before the date on which the applicable report under section 76.41 is due.

Imposed administrative penalties – failure to apply emission offsets

115.2 (1) The director must take action under this section, in accordance with the regulations,

(a) if the director is satisfied on a balance of probabilities that

(i) the greenhouse gas emissions attributable to an electricity generating facility for the compliance period were different from those reported under section 76.41 *[compliance reports in relation to electricity generation]*, and

(ii) as a consequence, the operator has not complied with the obligation under section 76.4 (b) *[obligation to have net zero emissions]* within the prescribed time, or

(b) if

(i) the operator of an electricity generating facility fails to submit a report in accordance with section 76.41, and

(ii) the director is satisfied on a balance of probabilities that the operator has not complied with the obligation under section 76.4 (b) *[obligation to have net zero emissions]* within the prescribed time.

(2) In the circumstances referred to in subsection (1), the director must serve the operator with an administrative penalty notice

(a) identifying the operator's non-compliance as determined by the director, and

(b) requiring the operator to pay the administrative penalty established by the regulations for the purposes of section 115.1 and specified in the notice.

(3) An operator served with an administrative penalty notice under subsection (2) is subject to an administrative penalty as follows:

(a) if the operator admits in writing the non-compliance and its extent as determined by the director, the penalty indicated in the notice is imposed at the time of that admission;

(b) if the time for appealing the determination of non-compliance or its extent under section 101 *[time limit for commencing appeal]* has elapsed and no appeal has been commenced, the penalty indicated in the notice is imposed at the end of the time for appealing;

(c) if the non-compliance or its extent as determined by the director is appealed and under the final determination of the appeal the operator is subject to an administrative penalty, the penalty specified in the final determination is imposed at the time of that final determination.

(4) An administrative penalty imposed under this section must be paid within the prescribed time after the penalty is imposed and in accordance with any other prescribed requirements.

9 Sections 116 and 117 are repealed and the following substituted:

Relationship between administrative penalties and offences

116 (1) Subject to subsections (2) and (4),

(a) if a director issues an administrative penalty notice to a person in respect of a contravention or failure referred to in section 115 (1), a prosecution for an offence under this Act in respect of the same contravention or failure may not be brought against the person, and

(b) a person who has been charged with an offence under this Act may not be subject to an administrative penalty in respect of the circumstances that gave rise to the charge.

(2) A person may be prosecuted under this Act for a contravention or failure in relation to any of the following, even though an administrative penalty has been imposed under section 115 in respect of the same contravention or failure:

(a) section 76.3 *[coal-based generating facilities – greenhouse gases must be stored or sequestered]*;

(b) section 76.31 (1), (2) or (3) *[compliance reports in relation to coal-based generating facilities]*;

(c) a regulation under section 76.32 *[regulations for purposes of Division 3 of Part 6.1]*;

(d) section 76.41 (1), (2) or (3) *[compliance reports in relation to electricity generation]*;

(e) a regulation under section 76.43 *[regulations for purposes of Division 4 of Part 6.1]*.

(3) In imposing a sentence for an offence under this Act, the court may consider an administrative penalty imposed in relation to the same matter.

(4) An administrative penalty under section 115 may not be imposed on a person for a contravention or failure referred to in subsection (2) of this section in relation to which the person has been convicted of an offence.

Recovery of administrative penalties

117 (1) Subject to a decision of the appeal board cancelling a determination under section 115 (1) *[administrative penalties]* or 115.2 *[imposed administrative penalties – failure to apply emission offsets]*, an administrative penalty under this Act may be recovered as a debt due to the government.

(2) If a person fails to pay an administrative penalty as required under this Act, a director may file a certificate in a court that has jurisdiction and, on filing, the certificate has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the court with which it is filed.

(3) A certificate under subsection (2) may be in the prescribed form, must be signed by the director filing the certificate and must contain

(a) the name of the person who is liable for the administrative penalty,

(b) particulars of the administrative penalty, and

(c) the amount of the administrative penalty.

10 Section 119 (1) is amended by adding the following paragraphs:

(b.1) in relation to administrative penalties under section 115.1 *[automatic administrative penalties – failure to apply emission offsets]*,

(i) prescribing the administrative penalty, or the manner of calculating the administrative penalty,

(ii) respecting the manner and process for paying an administrative penalty, and

(iii) prescribing the consequences of failing to pay an administrative penalty, which may include, but are not limited to, the imposition of additional administrative penalties;

(b.2) in relation to administrative penalties under section 115.2 *[imposed administrative penalties – failure to apply emission offsets]*,

(i) respecting the time limit, manner and process for paying an administrative penalty,

(ii) prescribing the form and content of an administrative penalty notice,

(iii) prescribing a limitation period for imposing an administrative penalty and evidentiary matters in relation to that period,

(iv) prescribing procedures to be applied by the director in making a determination of non-compliance,

(v) establishing procedures for providing a person on whom a notice of an administrative penalty has been served with an opportunity to make representations, which may include opportunities that do not involve an oral hearing,

(vi) prescribing the consequences of failing to pay an administrative penalty, which may include, but are not limited to, the imposition of additional administrative penalties, and

(vii) providing for the publication of information respecting the imposition of an administrative penalty.

11 Section 120 (2) and (3) is repealed and the following substituted:

(2) A person who contravenes any of the following commits an offence and is liable on conviction to a fine not exceeding $200 000 or imprisonment for not more than 6 months, or both:

(a) section 9 (3) *[hazardous waste storage and disposal]*;

(b) section 10 (1) (a), (b) or (c) or (2) *[transportation of hazardous waste]*;

(c) section 11 *[packaging, product containers and disposable products]*;

(d) section 72 (1) or (2) *[control of air contaminants]*;

(e) section 76.52 (2) *[confidentiality in relation to Divisions 3 and 4 of Part 6.1]*;

(f) section 79 (5) *[spill prevention and reporting]*;

(g) section 131 (1) *[confidentiality]*;

(h) a regulation under section 74 (1) (i), (j) or (k) *[motor vehicle and engine emission regulations]*

(3) A person who contravenes any of the following commits an offence and is liable on conviction to a fine not exceeding $1 000 000 or imprisonment for not more than 6 months, or both:

(a) section 6 (2), (3) or (4) *[waste disposal]*;

(b) section 7 (1) or (2) *[hazardous waste – confinement]*;

(c) section 8 *[hazardous waste disposal facility]*;

(d) section 9 (1) or (4) *[hazardous waste storage and disposal]*;

(e) section 76.2 *[management of greenhouse gases at waste management facilities]*;

(f) section 76.3 (1) *[coal-based generating facilities – greenhouse gases must be stored or sequestered]*;

(g) section 76.31 (1), (2) or (3) *[compliance reports in relation to coal-based generating facilities]*;

(h) section 76.41 (1), (2) or (3) *[compliance reports in relation to electricity generating facilities]*.

12 Section 131 is amended by adding the following subsection:

(1.1) Subsection (1) does not apply to information that is subject to section 76.52 *[confidentiality in relation to Divisions 3 and 4 of Part 6.1]*.

Forest Act

13 Section 1 (1) of the Forest Act, R.S.B.C. 1996, c. 157, is amended

(a) by adding the following definitions:

"fibre recovery permit" means a fibre recovery permit issued under a fibre supply licence to cut entered into under this Act;

"fibre supply licence to cut" means a licence to cut entered into under section 47.3 (1) (b) (ii) or 47.71 (6);

"forestry licence to cut" means a licence to cut entered into under section 47.6 (2), (2.1), (2.11), (2.2), (3), (4), (4.1) or (5);

"master licence to cut" means a licence to cut entered into under section 47.4 (2) (b);

"occupant licence to cut" means a licence to cut entered into under section 47.4 (2) (a);*, and*

(b) by repealing the definition of **"licence to cut"** *and substituting the following:*

"licence to cut" means

(a) a master licence to cut,

(b) an occupant licence to cut,

(c) a forestry licence to cut, and

(d) a fibre supply licence to cut;.

14 Section 8 (5) is amended by striking out "and" *at the end of paragraph (a) and by adding the following paragraph:*

(a.1) different areas of Crown land within a timber supply area or tree farm licence area, and.

15 The following sections are added:

Direct award of forest licence to produce bioenergy

13.1 (1) In this section and in sections 13.2 and 47.6:

"bioenergy" means energy derived from Crown timber;

"bioenergy supply contract" means an energy supply contract as defined in section 68 of the *Utilities Commission Act*

(a) under which bioenergy is sold to the British Columbia Hydro and Power Authority, and

(b) that is designated by the minister under section 13.2 (a) as a bioenergy supply contract;

"commercial operation date" means the date determined under a bioenergy supply contract as the commercial operation date;

"eligible bioenergy application" means an application for a non-replaceable forest licence under this section that

(a) is made by an applicant

(i) who is the seller of bioenergy under a bioenergy supply contract, and

(ii) whom the minister or a person authorized by the minister considers to be qualified to perform the obligations specified under subsection (2) (c),

(b) conforms to subsection (2), and

(c) is not rejected under section 81 (3) or refused under section 81 (5).

(2) An application for a non-replaceable forest licence under this section must

(a) be in the form required by the minister or a person authorized by the minister,

(b) specify an allowable annual cut for the forest licence that is considered by the minister to be consistent with the maximum allowable annual cut for a timber supply area specified by the minister under section 13.2 (b), and

(c) include any information that the minister or a person authorized by the minister may require about the applicant's qualifications to

(i) carry out timber harvesting operations under the licence, or

(ii) perform specified obligations

(A) under the licence, or

(B) in respect of the licence or its holder, under this Act or another enactment.

(3) On receipt of an eligible bioenergy application, the minister or a person authorized by the minister must approve the application.

(4) The approval of an eligible bioenergy application under subsection (3) is revoked

(a) if the British Columbia Hydro and Power Authority or the applicant terminates the bioenergy supply contract before the commercial operation date, or

(b) if

(i) an approved eligible bioenergy application is rejected under section 81 (3) or refused under section 81 (5), and

(ii) the applicant has not brought the application into compliance with section 81 (3) or (5), as applicable, within 90 days following the commercial operation date.

(5) The regional manager and the applicant of an approved eligible bioenergy application must enter into a non-replaceable forest licence on or after the commercial operation date if, on the commercial operation date, the application

(a) is not rejected under section 81 (3) or refused under section 81 (5), or

(b) is rejected under section 81 (3) or refused under section 81 (5) but is brought into compliance with section 81 (3) or (5), as applicable, within 90 days following the commercial operation date.

(6) If the applicant refuses to enter into a forest licence under subsection (5)

(a) the approval of the eligible bioenergy application under subsection (3) is revoked, and

(b) the minister or a person authorized by the minister may increase the allowable annual cut specified in an existing forest licence entered into under this section by the volume of the allowable annual cut that was to be specified in the forest licence the applicant refused to enter into under subsection (5).

(7) In addition to setting out the matters described in section 14, a forest licence entered into under subsection (5)

(a) must provide that timber harvested under the licence is restricted to a type of timber or terrain, or portion of a timber supply area, and

(b) may include other terms and conditions that the minister considers are necessary or desirable in relation to the bioenergy supply contract.

Designation of bioenergy supply contracts and specification of allowable annual cut

13.2 For the purposes of section 13.1, the minister may

(a) designate an energy supply contract as a bioenergy supply contract, and

(b) specify the maximum allowable annual cut in a timber supply area that may be subject to one or more bioenergy supply contracts.

16 Section 47.3 is amended

(a) in subsection (1) by striking out "woodlot licence or forestry licence to cut if the licence" ***and substituting*** "woodlot licence, forestry licence to cut or fibre supply licence to cut if",

(b) in subsection (1) (a) by adding "the licence" ***before*** "provides that it is entered into",

(c) in subsection (1) (b) by adding "the licence" ***before*** "is entered into" ***and in subparagraph (iii) by striking out*** "economic measures." ***and substituting*** "economic measures, or",

(d) in subsection (1) by adding the following paragraph:

(c) in the case of a fibre supply licence to cut, the licence is entered into with the applicant of an eligible bioenergy application approved under section 13.1 (3) on or after the date the application is approved if, in the opinion of the minister, Crown timber is required for the purpose of

(i) achieving the commercial operation date as set out in the bioenergy supply contract associated with the application, or

(ii) supplying Crown timber to the power plant described in the bioenergy supply contract associated with the application until timber is obtained under the forest licence entered into under section 13.1 (5).,

(e) in subsection (3) (b) by striking out "community salvage licence or forestry licence to cut." *and substituting* "community salvage licence, forestry licence to cut or fibre supply licence to cut.",

(f) in subsection (4) (a) by striking out "community salvage licence or a forestry licence to cut," *and substituting* "community salvage licence, a forestry licence to cut or a fibre supply licence to cut,", *and*

(g) by adding the following subsections:

(5) Despite section 47.72 (1) (a), after a fibre supply licence to cut has been entered into under subsection (1) (c) of this section, the regional manager or district manager may, if it furthers the objectives set out in subsection (1) (c) (i) or (ii), and with the consent of the holder of the licence to cut, extend the term of that licence to cut.

(6) The extension of the term of a fibre supply licence to cut under subsection (5) must not result in the total term of the licence to cut exceeding 10 years.

17 Section 47.4 (1) is repealed.

18 Section 47.6 is amended

(a) by repealing subsection (1),

(b) by repealing subsection (2) (a),

(c) by adding the following subsections:

(2.11) The district manager may enter into a forestry licence to cut if

(a) the forestry licence to cut authorizes its holder, in specified areas within the area or areas of Crown land identified in the forestry licence to cut, to do any of the following:

(i) remove Crown timber;

(ii) process felled Crown timber into chips or other products and remove those products, and

(b) the district manager has received notification of harvest completion for the specified areas referred to in paragraph (a) that are to be subject to the forestry licence to cut from the holder of an agreement listed in section 12 who is required to provide notification in accordance with a regulation made under section 151.6 (2).

(4.1) The regional manager or district manager may enter into a forestry licence to cut with the applicant of an eligible bioenergy application approved under section 13.1 (3) on or after the date the application is approved if, in the opinion of the regional manager or district manager, Crown timber is required for the purpose of

(a) achieving the commercial operation date as set out in the bioenergy supply contract associated with the application, or

(b) supplying Crown timber to the power plant described in the bioenergy supply contract associated with the application until timber is obtained under the forest licence entered into under section 13.1 (5)., *and*

(d) in subsection (2.2) by striking out "subsection (2) (a) or (c)" *and substituting* "subsection (2) (c) or (d)".

19 Section 47.7 is amended

(a) by repealing paragraph (b) and substituting the following:

(b) must describe one or more areas of land and identify for each area whether the holder may do one or more of the following:

(i) harvest Crown timber;

(ii) cut Crown timber;

(iii) remove Crown timber;

(iv) process Crown timber and remove the processed timber,, *and*

(b) by striking out "and" *at the end of paragraph (g) and adding the following paragraph:*

(g.1) may include provisions specifying one or more standard making bodies and requiring the holder of the licence to conduct its operations under the licence in accordance with principles, standards and criteria established by the standard making body or bodies, and .

20 The following sections are added to Division 8.2 of Part 3:

Applications for fibre supply licence to cut

47.71 (1) On request or on his or her own initiative the regional manager or district manager, by advertising in the prescribed manner, may invite applications for a fibre supply licence to cut.

(2) An application for a fibre supply licence to cut must

(a) be made to the district manager or regional manager, and

(b) meet prescribed requirements.

(3) The regional manager or district manager must evaluate applications for a fibre supply licence to cut in accordance with prescribed requirements.

(4) After evaluating applications under subsection (3), the person who evaluated the applications may

(a) approve an application, or

(b) decline to approve all applications.

(5) If an applicant whose application is approved under subsection (4) neglects or declines to enter into the fibre supply licence to cut, the regional manager or district manager may

(a) approve the next best application, or

(b) at the discretion of the minister, refuse to approve any of the applications.

(6) The regional manager or district manager must enter into a fibre supply licence to cut with every person whose application is approved under subsection (4) or (5).

Content of a fibre supply licence to cut

47.72 (1) A fibre supply licence to cut

(a) must be for a term not exceeding 5 years,

(b) must require its holder to pay to the government, in addition to other amounts payable under this Act, stumpage under Part 7,

(c) must provide for fibre recovery permits to be issued by the district manager, or a forest officer authorized by the district manager, within the limits provided in the fibre supply licence to cut and subject to this Act and the *Forest and Range Practices Act*, to authorize its holder in specified areas within the area or areas of land identified in the fibre supply licence to cut to do any of the following:

(i) remove Crown timber;

(ii) process felled Crown timber into chips or other products and remove those products,

(d) may include provisions specifying one or more standard making bodies and requiring the holder of the fibre supply licence to cut to conduct its operations under the fibre supply licence to cut in accordance with principles, standards and criteria established by the standard making body or bodies,

(e) may include other terms and conditions, consistent with this Act, the *Forest and Range Practices Act*, the *Wildfire Act* and any regulations or standards made under those Acts, determined by the regional manager or district manager, and

(f) may include other terms and conditions that the regional manager or district manager considers necessary or desirable respecting operations under the fibre supply licence to cut as they relate to the holder of an agreement listed in section 12 who is required to provide notification in accordance with a regulation made under section 151.6 (2).

(2) The district manager or the forest officer authorized by the district manager must not issue to the holder of a fibre supply licence to cut a fibre recovery permit for an area described in subsection (1) (c) unless the district manager has received notification of harvest completion for the specified areas referred to in subsection (1) (c) that are to be subject to the fibre recovery permit from the holder of an agreement listed in section 12 who is required to provide notification in accordance with a regulation made under section 151.6 (2).

Volume deemed to be harvested under licence for cut control purposes

47.73 (1) Subject to subsection (2) and for the purposes of paragraph (a) of the definition of "volume of timber harvested" in section 75.1 (1), the amount of timber that

(a) is merchantable Crown timber, and

(b) is removed under

(i) a forestry licence to cut entered into under section 47.6 (2.11), or

(ii) a fibre recovery permit issued under a fibre supply licence to cut

is deemed to be harvested under the agreement of the agreement holder who gave the notification of harvest completion referred to in

(c) section 47.6 (2.11) (b) in the case of a forestry licence to cut, or

(d) section 47.72 (2) in the case of a fibre supply licence to cut.

(2) Subsection (1) does not apply if the amount of timber removed or harvested under the forestry licence to cut or removed under the fibre recovery permit has already been attributed to the agreement referred to in subsection (1) for the purposes of paragraph (a) of the definition of "volume of timber harvested" in section 75.1 (1).

21 The heading to Division 8.3 of Part 3 is repealed and the following substituted:

Division 8.3 – Disposition of Timber Acquired under *Forestry Revitalization Act* or Subject to Waste Assessment.

22 The following section is added to Division 8.3 of Part 3:

Disposition of timber not harvested or removed under an agreement

47.9 Timber that is not harvested or removed under an agreement listed in section 12 and in respect of which a notification must be given in accordance with a regulation made under section 151.6 (2) may be the subject of

(a) a forestry licence to cut entered into under section 47.6 (2.11), or

(b) a fibre supply licence to cut.

23 *Section 69 (1) is amended by striking out* "timber or terrain or from different parts of Crown land or private land within the tree farm licence area" *and substituting* "timber or terrain in different parts of Crown land or private land within the tree farm licence area or from different areas of Crown land within the tree farm licence area".

24 *Section 72 is amended*

(a) in subsection (1) by striking out "timber licence or" *and substituting* "timber licence, community forest agreement or"*, and*

(b) by adding the following subsection:

(10) Subsection (9) does not apply if the amount of timber harvested under the forestry licence to cut has already been attributed to the tree farm licence, community forest agreement or woodlot licence of the person to whom a notice is sent under subsection (4) for the purposes of paragraph (a) of the definition of "volume of timber harvested" in section 75.1 (1).

25 *Section 73 is amended by adding the following subsection:*

(9) Subsection (8) does not apply if the amount of timber harvested under the forestry licence to cut has already been attributed to the forest licence of the person to whom a notice is sent under subsection (3) for the purposes of paragraph (a) of the definition of "volume of timber harvested" in section 75.1 (1).

26 *The following Division is added to Part 4:*

Division 3.01 – Allowable Annual Cut Partition

Definitions

75.01 In this Division:

"allowable annual cut partition" means the portion of the allowable annual cut determined under section 8 (1) for a timber supply area or tree farm licence area that is attributed by the chief forester under section 8 (5) to

(a) a type of timber or terrain in parts of Crown land within the timber supply area or tree farm licence area,

(b) different areas of Crown land within the timber supply area or tree farm licence area, and

(c) a type of timber or terrain in different parts of private land within the tree farm licence area;

"base-level allowable annual cut" means the allowable annual cut that is prescribed for the purposes of this Division;

"exempted licence" means a licence that

(a) specifies an allowable annual cut that is less than the base-level allowable annual cut,

(b) is a non-replaceable forest licence that meets prescribed conditions, or

(c) is identified as an exempted licence in the regulations by the number of the particular licence;

"harvested volume" means the total of the following volumes, less downward adjustments to those volumes for grade as prescribed by regulation, other than a downward adjustment prescribed under section 75.1 (3) (a) (ii), attributed to a licence referred to in section 75.02 that is not an exempted licence, in cut control statements issued on behalf of the government during the period of a minister's order under section 75.02 (1) or (2):

(a) the volume of timber cut under the licence and under road permits associated with the licence;

(b) the volume of timber estimated to be wasted or damaged under the licence and under road permits associated with the licence;

(c) the volume of timber attributed to the licence by the regional manager or district manager under a regulation made under section 75.1 (3) (b) or 75.11 (2) (a) if the licences subject to the attribution are within the same timber supply area or tree farm licence area.

Partition order

75.02 (1) If the chief forester specifies an allowable annual cut partition for a timber supply area, the minister, by order, may, if he or she considers it necessary to ensure the attribution specified in the partition is carried out, specify a limit on the harvested volume under all forest licences and forestry licences to cut in the timber supply area that are not exempted licences for

(a) a type of timber or terrain in parts of Crown land within the timber supply area, or

(b) different areas of Crown land within the timber supply area.

(2) If the chief forester specifies an allowable annual cut partition for a tree farm licence area, the minister, by order, may, if he or she considers it necessary to ensure the attribution specified in the partition is carried out, specify a limit on the harvested volume under the tree farm licence and all forest licences and forestry licences to cut in the tree farm licence area that are not exempted licences for

(a) a type of timber or terrain in parts of Crown land within the tree farm licence area,

(b) different areas of Crown land within the tree farm licence area, or

(c) a type of timber or terrain in different parts of private land within the tree farm licence area.

(3) An order made under subsection (1) or (2) must

(a) except in prescribed circumstances, be made within one year of the date

(i) the allowable annual cut partition relating to the order was specified by the chief forester under section 8 (5), or

(ii) the chief forester postpones an allowable annual cut determination under section 8 (3.1) for which an allowable annual cut partition was specified,

(b) be for a term not exceeding 5 years,

(c) specify the allowable annual cut partition relating to the order, and

(d) specify the harvested volume limit, as determined in accordance with the regulations, that licence holders may not exceed.

(4) The regional manager must serve a copy of an order made under subsection (1) on the holder of a licence to which the order relates, but the order is not invalid only because it is not served.

(5) Subject to section 75.04, all persons who hold a licence referred to in subsection (1) or (2) of this section must ensure that the harvested volume under the licence does not, during the term of an order under subsection (1) or (2) of this section, whichever is applicable, exceed the harvested volume limit specified in the order.

Waiver of order

75.03 (1) On request of the holder of a licence referred to in section 75.02 (1) or (2), the minister may waive the order if the minister is satisfied that the reasons for the waiver meet prescribed criteria.

(2) A request under subsection (1) must

(a) be submitted within 60 days after the date the minister made the order,

(b) be signed by, or on behalf of, the requesting person, and

(c) specify the reasons for the request.

Revocation or amendment of order

75.04 The minister may revoke or amend an order made under section 75.02 (1) or (2).

Consolidation or subdivision of licences subject to an order

75.05 (1) In this section, **"licence"** means a licence referred to in section 75.02 (1) or (2) that is not an exempted licence.

(2) If a licence is replaced under section 19 or 39 by 2 or more other licences, the harvested volume that, before the replacement, was charged to the replaced licence must be charged to the other licences by allocating that volume among the other licences by the method set out in subsection (3).

(3) The part of the harvested volume to be allocated among each of the other licences must be determined by multiplying that volume by the fraction obtained by dividing the allowable annual cut of that other licence by the allowable annual cut of the replaced licence.

(4) If 2 or more licences are replaced under section 19 or 39 by one other licence, the harvested volume that before the replacement was charged to the replaced licences must be charged to the other licence.

(5) The minister must amend an order made under section 75.02 (1) or (2) to account for an allocation of volume under subsection (2) of this section or a charging of volume under subsection (4) of this section.

Penalty for non-compliance with minister's order

75.06 (1) If the harvested volume limit imposed by an order under section 75.02 (1) or (2) is exceeded, the licence holder must pay to the government the penalty determined under subsection (2) of this section.

(2) The penalty under subsection (1) is the product of

(a) the volume of harvested timber that exceeds the harvested volume limit as determined in accordance with the regulations, and

(b) the prescribed rate.

(3) A penalty under this section is in addition to stumpage payable or another penalty under this Act or another enactment.

Relief from penalty

75.07 (1) On request of the holder of a licence referred to in section 75.02 (1) or (2), the minister may grant relief from a penalty imposed under section 75.06 if the minister is satisfied that the reasons for the relief meet prescribed criteria.

(2) A request under subsection (1) must

(a) be submitted within 90 days after the date the penalty is imposed under section 75.06 (1),

(b) be signed by, or on behalf of, the requesting person, and

(c) specify the reasons for the request.

27 Section 75.1 (3) (a) is repealed and the following substituted:

(a) prescribing percentages or amounts by which the timber volumes attributed to a licence in statements referred to in that definition must be adjusted downward to take into account

(i) grades and species of timber, or

(ii) uses of timber

included in the volumes described in subsection (2) (a) and (b), .

28 ***Section 80 (3) is amended by striking out*** "under section 75.1," ***and substituting*** "under section 75.02, 75.1,".

29 ***Section 94 is amended by adding the following subsection:***

(3.1) If, at the place where timber is yarded to a landing or roadside, the timber is processed under a forestry licence to cut entered into under section 47.6 (2.11) or a fibre supply licence to cut, the processed timber may be scaled at a location specified by the regional manager or district manager or a forest officer authorized by either of them.

30 ***Section 96 (1) (b) is repealed and the following substituted:***

(b) must express the scale

(i) in cubic metres unless subparagraph (ii) applies, or

(ii) for special forest products referred to in section 94 (3) or processed timber referred to in section 94 (3.1), in the unit of metric measure required by the minister.

31 ***Section 103.1 is amended by adding the following subsections:***

(4) Despite subsections (1) to (3), the Lieutenant Governor in Council may make regulations specifying circumstances under which waste assessments are payable to the government in respect of merchantable Crown timber that could have been cut and removed under the agreement but, at the agreement holder's discretion, is not cut and removed.

(5) If a provision in an agreement entered into under this Act conflicts or is inconsistent with a regulation made under subsection (4), the regulation prevails.

32 ***Section 109 (2) (h) is amended by striking out*** "section 151 (2) (e)" ***and substituting*** "section 151 (11) or (12)".

33 ***Section 151 is amended***

(a) in subsection (2) (d) by striking out "timber after harvesting," ***and substituting*** "timber after harvesting or of timber products,",

(b) in subsection (2) (d) (i) and (iii) by adding "or timber products" ***after*** "timber",

(c) by repealing subsection (2) (e), and

(d) by adding the following subsections:

(11) The Lieutenant Governor in Council may make regulations respecting deposits and security of any kind, including but not limited to money, to be provided by the holder of an agreement listed in section 12 or a pulpwood agreement, to ensure the performance of an obligation under this Act or the agreement, the *Forest and Range Practices Act*, the *Wildfire Act* or the *Forest Practices Code of British Columbia Act*.

(12) Without limiting subsection (11), the Lieutenant Governor in Council may make regulations respecting the following:

(a) the type of security that is acceptable or unacceptable;

(b) the form and content of the security;

(c) the circumstances under which the security may be realized.

34 The following section is added:

Regulation making power for fibre supply and forestry licence to cut

151.6 (1) The Lieutenant Governor in Council may make regulations he or she considers necessary or desirable for the purpose of prescribing requirements for a forestry licence to cut entered into under section 47.6 (2.11) or a fibre supply licence to cut, including but not limited to regulations

(a) prescribing additional provisions to supplement the provisions of

(i) Division 8.2 of Part 3 of this Act, or

(ii) the regulations made for that Division

as the provisions apply in respect of that licence to cut or its holder,

(b) varying provisions of that Division or of regulations made for that Division as the provisions apply in respect of that licence to cut or its holder,

(c) providing that specified provisions of that Division or of regulations made for that Division do not apply to or in respect of that licence to cut or its holder, and

(d) imposing conditions for the purpose of regulations made under this section.

(2) Without limiting subsection (1) and for the purposes of sections 47.6 (2.11) (b) and 47.72 (2), the Lieutenant Governor in Council may make regulations as follows:

(a) requiring the holder of an agreement listed in section 12 to give written notification to the district manager respecting harvest completion;

(b) respecting time requirements for the notification;

(c) respecting content requirements for the notification including, without limitation,

(i) a declaration in respect of timber that is not harvested or removed under the agreement indicating the amount of that timber the agreement holder

(A) plans to sell, trade or use for commercial purposes, and

(B) does not plan to sell, trade or use for commercial purposes,

(ii) an estimate of the amount of timber referred to in subparagraph (i) (B) that is at all landings or roadsides,

(iii) a list of the activities the agreement holder has planned for the site area that are to be subject to the fibre recovery permit for a specified period, and

(iv) a description of any of the agreement holder's forest management concerns;

(d) if an agreement holder indicates in accordance with paragraph (c) (i) that the holder plans to sell, trade or use for commercial purposes timber that was not harvested or removed, requiring the holder to sell, trade or use that timber as declared;

(e) prohibiting an agreement holder from destroying timber referred to in paragraph (c) (i) in specified circumstances.

Forest and Range Practices Act

35 Section 108 (5) of the Forest and Range Practices Act, S.B.C. 2002, c. 69, is amended by striking out "subsection (1) (b)" *and substituting* "subsection (1) (d)".

36 Section 204 (3) is amended by striking out "section 47.4 (1)" *and substituting* "section 1 (1)".

Commencement

37 The provisions of this Act referred to in column 1 of the following table come into force as set out in column 2 of the table:

Item	Column 1 **Provisions of Act**	Column 2 **Commencement**
1	Anything not elsewhere covered by this table	The date of Royal Assent
2	Sections 1 to 14	By regulation of the Lieutenant Governor in Counsel
3	Sections 16 to 23	By regulation of the Lieutenant Governor in Counsel
4	Section 26	By regulation of the Lieutenant Governor in Counsel
5	Sections 28 to 34	By regulation of the Lieutenant Governor in Counsel
6	Section 36	By regulation of the Lieutenant Governor in Counsel

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This is Exhibit "4"
referred to in the Affidavit
of Aaron Welch
sworn before me this 4th day of
February, 2010.

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Exhibit 4

2 Section 2 is repealed and the following substituted:

Audit standards

2 The board may develop standards for the purpose of the periodic independent audits required under

(a) section 122 of the Act, and

(b) section 68 of the *Wildfire Act*.

3 Section 3 (2) (a) and (b) are repealed and the following substituted:

(a) familiar with whichever of the following is relevant to the audits:

(i) the Act, the regulations and the standards established by the chief forester under the Act;

(ii) the *Wildfire Act* and the regulations under that Act;

(iii) the Acts, regulations and standards in both subparagraphs (i) and (ii),

(b) capable of assessing the environmental impact of whichever of the following is relevant to the audits:

(i) forest practices;

(ii) range practices;

(iii) both forest and range practices, .

4 Section 5 is amended

(a) by adding the following subsection:

(1.1) The matters on which a person may make a complaint to the board under section 68 of the *Wildfire Act* are the following:

(a) a party's compliance with the requirements of Parts 1 and 2 of the *Wildfire Act* and the regulations and standards made in relation to those Parts;

(b) the appropriateness of government enforcement under Part 3 of the *Wildfire Act*. , and

(b) in subsection (2) (a) by striking out "subsection (1)" and substituting "subsection (1) or (1.1)".

B.C. Reg. 390/2008, deposited December 9, 2008, pursuant to the **FOREST AND RANGE STATUTES AMENDMENT ACT, 2008** [Section 36]. Order in Council 927/2008, approved and ordered December 8, 2008.

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that sections 15, 17 (a) and 28 of the *Forests and Range Statutes Amendment Act, 2008*, S.B.C. 2008, c. 4, are brought into force.

— P. BELL, *Minister of Forests and Range*; S. BOND, *Presiding Member of the Executive Council.*

B.C. Reg. 391/2008, deposited December 9, 2008, pursuant to the **GREENHOUSE GAS REDUCTION (EMISSIONS STANDARDS) STATUTES AMENDMENT ACT** [Section 37] and the **ENVIRONMENTAL MANAGEMENT ACT** [Section 76.21]. Order in Council 903/2008, approved and ordered December 8, 2008.

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective January 1, 2009,

1 the following provisions of the *Greenhouse Gas Reduction (Emissions Standards) Statutes Amendment Act, 2008*, S.B.C. 2008, c. 20, are brought into force:

(a) section 1;

(b) section 2, insofar as it enacts sections 76.2, 76.21 and 76.5;

(c) section 6, insofar as it enacts section 114 (1) (a) to (f) and (2);

(d) section 11, insofar as it enacts section 120 (2) (a) to (d) and (f) to (h) and (3) (a) to (e), and

2 the attached Landfill Gas Management Regulation is made.

— B. PENNER, *Minister of Environment*; S. BOND, *Presiding Member of the Executive Council.*

LANDFILL GAS MANAGEMENT REGULATION

Contents

Definitions

1 In this regulation:

"Act" means the *Environmental Management Act*;

"initial report" means a report, referred to in section 4 (3), for an initial landfill gas generation assessment;

"guidelines" means the most recent edition of landfill gas management guidelines approved by the director and published on a publicly accessible website maintained by or on behalf of the ministry;

"landfill gas" means a mixture of gases generated by the decomposition of municipal solid waste;

"landfill gas management" includes the following:

(a) managing migration of landfill gas;

(b) collection of landfill gas;

(c) storing of landfill gas;

(d) flaring of landfill gas;

"landfill gas management facilities" includes equipment, apparatus, fixtures and other structures used for landfill gas management;

"ministry" means the ministry administered by the minister;

"municipal solid waste" has the same meaning as in Part 3 of the Act;

"qualified professional", in relation to a duty or function under this regulation, means a professional who

2

This is Exhibit "5"
referred to in the Affidavit
of Aaron Welch
sworn before me this 4th day of
February, 2010.

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British Columbia

Exhibit 5

FINAL AGREEMENT CONSEQUENTIAL AMENDMENTS ACT, 2007

CHAPTER 36

Assented to November 22, 2007

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

Adoption Act

1 *Section 1 of the Adoption Act, R.S.B.C. 1996, c. 5, is amended*

(a) *in the definition of* "**aboriginal child**" *by adding the following paragraph:*

(b.2) who is a treaty first nation child, ,

(b) *in the definition of* "**designated representative**" *by striking out* "when used in relation to the Nisga'a Lisims Government, an Indian band or an aboriginal community," *and substituting* "when used in relation to the Nisga'a Lisims Government, an Indian band, an aboriginal community or a treaty first nation,", *and*

(c) *by adding the following definition:*

"**treaty first nation**", in relation to a treaty first nation child, means the treaty first nation of which the child is a treaty first nation child.

2 *Section 7 (1) is amended*

(a) *by adding the following paragraph:*

(a.2) if the child is a treaty first nation child, with a designated representative of the treaty first nation; ;

(b) *in paragraph (b) by striking out* "if the child is not a Nisga'a child and is not registered or not entitled to be registered as a member of an Indian band," *and substituting* "if the child is neither a Nisga'a child nor a treaty first nation child and is neither registered nor entitled to be registered as a member of an Indian band,", *and*

(c) *by adding the following subsection:*

(3) An adoption agency must make reasonable efforts to obtain information about the cultural identity of a treaty first nation child before placing the treaty first nation child for adoption if the final agreement of the treaty first nation requires these efforts to be made.

(d) consult, within the meaning of the final agreement of the treaty first nation, with the treaty first nation, and

(e) ensure that the treaty first nation has an opportunity to participate in any environmental assessment of the project.

Environmental Management Act

53 *Section 39 (1) of the Environmental Management Act, S.B.C. 2003, c. 53, is amended by repealing the definition of* "**government body**" *and substituting the following:*

"**government body**" means a federal, provincial, municipal or treaty first nation body, including an agency or ministry of the Crown in right of Canada or British Columbia and an agency of a municipality or treaty first nation;.

54 *Section 44 (2) (b) (iii) and (e) (iii) is amended by striking out* "any person with a registered interest in the site as shown in the records of the land title office at the time" *and substituting* "any person with a registered interest in the site as shown in the records of the land title office or a land registry office of a treaty first nation at the time".

55 *Section 48 (13) is amended by striking out* "if the interest is registered in the land title office at the time of issuing the order." *and substituting* "if the interest is registered in the land title office or a land registry office of a treaty first nation at the time of issuing the order."

56 *Section 55 is amended*

(a) by repealing subsection (6) and substituting the following:

(6) A municipality or treaty first nation, including its employees or members of its governing body, does not incur any liability and must not be considered a responsible person under this Act as a result of any bylaw, law, permit, licence, approval or other document adopted or issued under the *Community Charter*, the *Islands Trust Act*, the *Local Government Act*, the *Vancouver Charter* or a law of a treaty first nation that authorizes the removal or deposit of contaminated soil in the municipality or treaty lands.,

(b) by repealing subsection (7) (a) and (b) and substituting the following:

(a) a bylaw of a municipality or law of a treaty first nation, or

(b) a permit, licence, approval or other document issued under the authority of a municipal bylaw or law of a treaty first nation*, and*

(c) in subsection (8) by striking out "any municipality" *and substituting* "any municipality or treaty first nation" *and by striking out* "the municipality" *wherever it appears and substituting* "the municipality or treaty first nation".

2

(c) by adding the following subsection:

(5) In this section, **"cultural property"** has the same meaning as in paragraph 115 of the Nisga'a Government Chapter of the Nisga'a Final Agreement.

181 The following section is added:

Will or cultural property of treaty first nation members

1.2 (1) If the final agreement of a treaty first nation so provides, the treaty first nation may commence and may intervene in an action under this Act in respect of a will of a treaty first nation member of the treaty first nation if the will provides for the devolution of cultural property.

(2) If the final agreement of a treaty first nation so provides, in any judicial proceeding under this Act in which

(a) the validity or variation of a will of a treaty first nation member of the treaty first nation, or

(b) the devolution of cultural property of a treaty first nation member of the treaty first nation

is at issue, that treaty first nation has standing in the proceeding.

(3) In a proceeding described in subsection (1) or to which subsection (2) applies, the court must consider, among other matters, any evidence or representations in respect of the applicable treaty first nation's laws or customs dealing with the devolution of cultural property.

(4) The participation of a treaty first nation in a proceeding described in subsection (1) or to which subsection (2) applies must be in accordance with the applicable Rules of Court and does not affect the court's ability to control its process.

(5) In this section, **"cultural property"**, in relation to a treaty first nation, has the same meaning as in the final agreement of the treaty first nation.

182 Section 3 is amended by adding the following subsection:

(1.2) An action in respect of the will of a treaty first nation member of a treaty first nation in relation to which section 1.2 (1) or (2) applies, other than an action commenced by the treaty first nation, must not be heard by the court at the instance of a party claiming the benefit of this Act unless a copy of the writ of summons has been served on that treaty first nation.

Amendments to this Act

183 If section 6 of the Environmental Management Amendment Act, 2004, S.B.C. 2004, c. 18, comes into force before the date section 54 of this Act comes into force, section 54 of this Act is repealed.

3

184 If section 10 of the Greater Vancouver Transportation Authority Amendment Act, 2007, comes into force before the date section 70 of this Act comes into force, section 70 of this Act is repealed.

Commencement

185 The provisions of this Act referred to in column 1 of the following table come into force as set out in column 2 of the table:

Item	Column 1 **Provisions of Act**	Column 2 **Commencement**
1	Anything not elsewhere covered by this table	The date of Royal Assent
2	Sections 1 to 182	By regulation of the Lieutenant Governor in Council
3	Section 183	On the date section 6 of the *Environmental Management Amendment Act, 2004*, S.B.C. 2004, c. 18, comes into force
4	Section 184	On the date section 10 of the *Greater Vancouver Transportation Authority Amendment Act, 2007* comes into force

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4

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February, 2010.

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Exhibit 6

(b) the net taxable value of land and improvements set out in the notice to Delta under section 119 (6) of the *School Act* for the 2009 taxation year includes the net taxable value of those parcels,

the minister charged with the administration of the *Income Tax Act* may write off all or part of the amount of school taxes attributable to the deleted parcels, and, if an amount is written off, a corresponding adjustment must be made to amounts to be raised under section 119 of the *School Act* by taxation in Delta in the current taxation year, in the manner directed by that minister.

Economic Incentive and Stabilization Statutes Amendment Act, 2008

6 Section 35 of the *Economic Incentive and Stabilization Statutes Amendment Act, 2008* must be read, as it applies in relation to the assessment roll completed under section 5 (2) of this regulation, as if references in an enactment to actual value, assessed value or any other amount determined under or in accordance with the *Assessment Act* also include a reference to the amount as determined under this regulation.

***Assessment Act* rule respecting application of regulations does not apply**

7 Section 74 (5) of the *Assessment Act* does not apply to this regulation.

B.C. Reg. 55/2009, deposited March 2, 2009, pursuant to the **TSAWWASSEN FIRST NATION FINAL AGREEMENT ACT** [Section 21]; **MAA-NULTH FIRST NATIONS FINAL AGREEMENT ACT** [Section 31]; **FINAL AGREEMENT CONSEQUENTIAL AMENDMENTS ACT, 2007** [Section 185]; and the **TREATY FIRST NATION TAXATION ACT** [Section 9]. Order in Council 101/2009, approved and ordered February 27, 2009.

On the recommendation of the undersigned, the Administrator, by and with the advice and consent of the Executive Council, orders that, effective April 3, 2009, being the date the Tsawwassen First Nation Final Agreement comes into effect, the following provisions are brought into force:

(a) sections 1 to 3, 5 to 9, 11 to 16 and 18 to 20 of the *Tsawwassen First Nation Final Agreement Act*, S.B.C. 2007, c. 39;

(b) sections 19 to 30 of the *Maa-nulth First Nations Final Agreement Act*;

(c) sections 1 to 64, 65, 66 to 69, 71 to 81, 88 to 90, 92 to 96, 97, 98, 99, 100 to 104, 105 to 120, 121 to 125, 127 to 155, 156 to 163, 164.1 to 178.3 and 179 to 182 of the *Final Agreement Consequential Amendment Act, 2007*, S.B.C. 2007, c. 36;

(d) sections 3 to 8 of the *Treaty First Nation Taxation Act*, S.B.C. 2007, c. 38.

— M. de JONG, *Minister of Aboriginal Relations and Reconciliation*; S. BOND, *Presiding Member of the Executive Council.*

B.C. Reg. 56/2009, deposited March 2, 2009, pursuant to the **VITAL STATISTICS ACT** [Section 54 (2) (b.1)]. Order in Council 124/2009, approved and ordered February 27, 2009.

On the recommendation of the undersigned, the Administrator, by and with the advice and consent of the Executive Council, orders that the Vital Statistics Act Regulation, B.C. Reg. 69/82, is amended as follows:

1 Section 9 is renumbered as section 9 (1) and the following subsection is added:

(2) For the purposes of section 41.1 (2) (d) of the Act, the chief executive officer may enter into an information-sharing agreement with a body described in Schedule A.1.

This is Exhibit "7"
referred to in the Affidavit
of Aaron Welch
sworn before me this 4th day of
February, 2010.

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Exhibit 7

B.C. Reg. 375/96
O.C. 1480/96 and M271/2004

Deposited December 16, 1996
effective April 1, 1997

Environmental Management Act

CONTAMINATED SITES REGULATION

[Includes amendments up to B.C. Reg. 343/2008, January 1, 2009]

Contents

PART 1 – INTERPRETATION

Definitions

1 In this regulation:

"agricultural land use" means the use of land for the primary purpose of producing agricultural products for human or animal consumption including, without limitation, livestock raising operations, croplands, orchards, pastures, greenhouses, plant nurseries and farms;

"aquatic life water use" means the use of water as habitat for any component of the freshwater or marine aquatic ecosystem, including phytoplankton, zooplankton, benthos, macrophytes and fish;

"background concentration" means the concentration of a substance in an environmental medium in a geographic area, but does not include any contribution from local human-made point sources, determined by following director's protocols;

"cancer risk" means the probability of the occurrence of cancer from exposure to a carcinogenic substance;

"carcinogenic substance" means any chemical classified by

(a) the International Agency for Research on Cancer as a group 1 or group 2A carcinogen, or

(b) the United States Environmental Protection Agency as a group A or group B1 carcinogen;

"commercial land use" means the use of land for the primary purpose of buying, selling or trading of merchandise or services including, without limitation, shopping malls, office complexes, restaurants, hotels, motels, grocery stores, automobile service stations, petroleum distribution operations, dry cleaning operations, municipal yards, warehouses, law courts, museums, churches, golf courses, government offices, air and sea terminals, bus and railway stations, and storage associated with these uses;

"confirmation of remediation report" means a report under section 49 (2) (b);

"decommission a site" means the removal, destruction or treatment of soil, process equipment or buildings, including the removal of storage tanks, in a manner designed to stop or reduce a significant portion of the operations at a site or to significantly change the use of the site;

"director's interim standards" means the substances and risk based or numerical criteria, standards and conditions prescribed by the director under section 63.1 of the Act;

"director's protocol" means a protocol established by a director under section 64 of the Act;

"drinking water use" means the use of water for the purpose of consumption by humans;

"environmental media" means soil, sediments, surface water, groundwater, air, vapour, animals and plants;

"environmental risk assessment report" means a report under section 18 (6) or 18.1 (5);

"external contract reviewer" means a person with whom a director has entered into a contract under section 10 (1);

"generic numerical sediment criterion" means the concentration of a substance specified in Schedule 9 for a particular sediment use;

"generic numerical soil standard" means the concentration of a substance in soil specified for a particular land use in Schedule 4 or Schedule 10;

"generic numerical vapour standards" means the concentration in vapour of a substance specified for a particular land use in Schedule 11;

"generic numerical water standard" means the concentration of a substance in water specified for a particular water use in Schedule 6 or Schedule 10;

"guidelines" includes criteria and objectives;

"hazard index" means the sum of hazard quotients for any substance over all exposure pathways;

"hazard quotient" or **"HQ"** means the quotient determined from the equation

$$HQ = \frac{EDI}{RfD}$$

where

"EDI" is the estimated daily intake (in milligrams per kilogram of body weight per day) for any substance having non-carcinogenic deleterious effects, and

"RfD" is the reference dose which is an estimate of the maximum daily exposure level (in milligrams per kilogram of body weight per day) to a substance that is unlikely to produce an appreciable risk of non-carcinogenic deleterious effects during a lifetime of exposure to that substance;

"industrial land use" means the use of land for the primary purpose of conducting industrial manufacturing and assembling processes and their ancillary uses including, without limitation, factories, metal foundries, wood treatment facilities, mines, refineries, hydroelectric dams, metal smelters, automotive assembly plants, rail car or locomotive maintenance facilities, railyards, non-retail breweries and bakeries, roads and highways, wastewater and sewage treatment plants, electrical transformer stations and salvage yards;

"irrigation water use" means the use of water for the purpose of producing hay, forage crops, pasture, cereal crops, vegetables and fruit;

"livestock water use" means the use of water for the purpose of consumption by livestock;

"matrix numerical soil standard" means the concentration of a substance in soil specified for a particular land use and a particular site-specific factor in Schedule 5;

"medical health officer" means a medical health officer as defined in the *Health Act;*

"numerical standards" means generic numerical soil standards, generic numerical vapour standards, generic numerical water standards, matrix numerical soil standards, generic numerical sediment criteria, director's interim standards and site-specific numerical standards;

"ownership interest", when used in Part 2, means

(a) a fee simple interest,

(b) a lease or similar form of tenure respecting real property having a term, including any option to renew, equal to or exceeding 30 years, or

(c) a licence of occupation under section 39 of the *Land Act* having a term, including any option to renew, equal to or exceeding 30 years,

but does not include an interest in the nature of

(d) a mortgage,

(e) a right of way,

(f) a tenure under the *Forest Act,*

(g) a lien,

(h) a judgment,

(i) an interest in real property which deals exclusively with subsurface rights including a tenure under the *Geothermal Resources Act*, the *Mineral Tenure Act* or the *Petroleum and Natural Gas Act*,

(j) an option to purchase,

(k) an equitable charge,

(l) a restrictive covenant,

(m) a covenant under section 219 of the *Land Title Act*, or

(n) a right to purchase an ownership interest;

"Provincial health officer" means the Provincial health officer appointed under the *Health Act;*

"remediation plan" means a written document which may include, but is not necessarily limited to, plans and other information respecting

(a) overall site location and delineated horizontal and vertical locations of contamination presented in maps, cross-sections and other graphic representations,

(b) remediation alternatives which were considered for managing contamination from or at a site, and evaluation methods used to assess the factors under section 56 of the Act,

(c) remediation methods selected to ensure compliance with the numerical standards, or the risk based standards prescribed in this regulation, and the conditions imposed by a director under section 53 of the Act or in a remediation order,

(d) identification and classification in accordance with the numerical standards of the substances in any soil, surface water, groundwater, sediment or vapour to remain in place,

(d.1) identification and classification in accordance with the numerical standards of the substances in any soil or sediment to be relocated,

(e) risk assessment calculations and methodology to demonstrate compliance with risk-based remediation standards if remediation is assessed relative to the risk-based remediation standards,

(f) a schedule with estimated dates for implementing remediation,

(g) identification and discussion of the effects of known regulatory requirements on remediation, including any authorizations which will be required to implement remediation,

(h) proposed confirmatory sampling, analysis, testing or monitoring during and after treatment, management or removal of contamination,

(i) proposed measures and controls to ensure security, including covenants under section 219 of the *Land Title Act*, restrictive covenants and financial security in accordance with section 48 of this regulation, for ongoing management of any contamination if it will be managed at the site, and

(j) any public consultation or review of remediation which has occurred or which is proposed during remediation;

"residential land use" means the use of land for the primary purpose of

(a) a residence by persons on a permanent, temporary or seasonal basis, including, without limitation, single family dwellings, cabins, apartments, condominiums or townhouses, or

(b) institutional facilities, including, without limitation, schools, hospitals, daycare operations, prisons, correctional centres and community centres;

"right of way" includes

(a) an easement,

(b) a statutory right of way, and

(c) a limited interest in the land or a licence or a permit that grants the right to construct, operate or maintain works of a lineal nature on, over or under land;

"risk assessment" means the systematic process of identifying and evaluating substances, persons potentially affected, and exposures to the substances in order to estimate cancer risks or hazard indices in accordance with a director's protocol;

"risk management" means actions, including monitoring, designed to prevent or mitigate risks to human health or the environment caused by contamination at a site;

"screening level risk assessment" means a screening level risk assessment and report described in a director's protocol;

"sediment" means particulate material that usually lies below water;

"sensitive sediment use" means the use as habitat for sensitive components of freshwater, marine or estuarine aquatic ecosystems of a site containing sediment, which sensitive components include, but are not limited to,

(a) phytoplankton, zooplankton, benthos, macrophytes and fish,

(b) habitats used by endangered or threatened species or species of special concern under the *Species at Risk Act* (Canada),

(c) watercourses, wetlands, forested riparian areas, mudflats and intertidal zones that are important to the preservation of fish or wildlife,

(d) reaches of aquatic habitats that are important to fish spawning or serve as important rearing habitat for fish,

(e) reaches of aquatic environments that encompass or border habitat compensation or restoration sites or other areas that are intended or designed to create, restore or enhance biological or habitat features, and

(f) areas and aquatic habitat included in wild life management areas designated under the *Wildlife Act*;

"site profile form" means the form prescribed in Schedule 1;

"site-specific numerical standard" means the concentration of a substance in soil, water, sediment or vapour

(a) determined for a particular land, water, sediment or vapour use at a specific site by applying the applicable director's protocol, and

(b) approved by the director;

"soil" includes

(a) unconsolidated mineral or organic material,

(b) rock,

(c) fill, and

(d) sediment deposited on land,

but does not include the following, which are applied to land for a beneficial purpose in compliance with the Organic Matter Recycling Regulation or an authorization given under the Act:

(e) sewage sludge;

(f) composted organic materials;

(g) products derived from the materials described in paragraph (e) or (f);

"summary of site condition form" means the form set out as Schedule 1.1;

"typical sediment use" means the use of a site containing sediment for a use that is not a sensitive sediment use;

"urban park land use" means the use of urban land for the primary purpose of outdoor recreation including, without limitation, municipal parks, fairgrounds, sports fields, rifle ranges, captive wildlife parks, biking and hiking areas, community beaches and picnic areas, but does not mean wildlands such as ecological reserves, national or provincial parks, protected wetlands or woodlands, native forests, tundra and alpine meadows;

"vapour" means gaseous emissions from soil, sediment or water;

"wide area remediation plan" means a remediation plan for a wide area site for one or more specific substances which have originated from one or more sources specified in the plan;

"wide area site" means a site which is designated by a director under section 14;

"wildlands land use" means the use of land for the primary purpose of supporting natural ecosystems, including the use of land for ecological reserves, national or provincial parks, protected wetlands or woodlands, native forests, tundra and alpine meadows, but does not include uses defined as urban park land use.

[am. B.C. Regs. 244/99, s. 1; 17/2002, s. 1; 109/2002, s. 7 (a); 419/2003, s. 1; 322/2004 and 324/2004, s. 1; 201/2007, s. 1; 343/2008, s. 1.]

PART 2 – SITE PROFILES

Scope of "industrial or commercial" purpose or activity

2 (1) A person is exempt from the duty to provide a site profile under section 40 (1), (2), (3), (6) and (7) of the Act with respect to industrial or commercial purposes and industrial or commercial activities which are not described in Schedule 2.

(2) Despite subsection (1), a municipality or approving officer may request a person who makes any type of application described in section 40 (1) of the Act to complete sections I to III and XI of the site profile form and provide it to the municipality or approving officer.

[am. B.C. Regs. 244/99, s. 2; 17/2002, s. 2; 322/2004 and 324/2004, s. 2.]

When site profiles must be provided

3 (1) Subject to section 4, a person described in section 40 (1) of the Act must provide a site profile at the time of presenting, in writing, an application or request for approval described in that section of the Act.

(2) Subject to section 4, a municipality undertaking to zone or rezone land in which it has an ownership interest described in section 40 (1) (b) (i) of the Act must provide a site profile to a director not later than 15 days after giving first reading to the applicable bylaw.

(3) Subject to section 4, an owner of real property described in section 40 (2) (b) of the Act must provide a site profile not less than 10 days before the time the owner dismantles a building or structure, or otherwise decommissions a site which was used for an industrial or commercial purpose or activity listed in Schedule 2.

(4) Subject to section 4, an owner under the *Petroleum and Natural Gas Act* who is described in section 40 (3) of the Act must provide a site profile at the time the owner presents, in writing, an application for a certificate of restoration respecting a well, test hole or production facility under the *Petroleum and Natural Gas Act*.

(5) and (6) Repealed. [B.C. Regs. 322/2004 and 324/2004, s. 3 (c).]

(7) Subject to section 4, a vendor of real property described in section 40 (6) of the Act must provide a site profile to a prospective purchaser at least 30 days before the actual transfer of the real property, but if the time between the written agreement for the transfer and the actual transfer is less than 30 days, the vendor must provide the site profile before the date of the agreement for the transfer.

(8) A person described in section 40 (7) of the Act must provide a site profile to a director no later than 10 days after the person takes possession or control of the real property.

[am. B.C. Regs. 244/99, s. 3; 322/2004 and 324/2004, s. 3.]

Exemptions respecting the providing of site profiles

4 (1) Subject to subsection (3), a person is exempt from the duty to provide a site profile under section 40 of the Act if any of the following apply:

(a) a site profile has been filed on the site registry and the information in sections II to X of the site profile form accurately reflects the person's current knowledge about the site;

(b) the site is the subject of an approval in principle or certificate of compliance relevant to the current use of the site and any use proposed by the person, but only if the person has no reason to believe that there has been any additional or new contamination at the site after issuance of the approval in principle or certificate of compliance;

(c) Repealed. [B.C. Regs. 322/2004 and 324/2004, s. 4 (d).]

(d) the site is the subject of a certificate of restoration issued under the *Petroleum and Natural Gas Act*, but only if the person has no reason to believe that there is contamination at the site that is not otherwise addressed in the certificate of restoration;

(e) the site is located within a wide area site for which

(i) a director has approved a wide area remediation plan or the scope of a proposed wide area remediation plan, and

(ii) the site profile would only be provided due to uses or activities that caused contamination which is dealt with in the approved wide area remediation plan or the approved scope of a proposed wide area remediation plan;

(f) the site is the subject of a determination under section 44 of the Act, but only if the person has no reason to believe that, since the determination,

(i) in the case of a site determined not to be contaminated, there has been any contamination at the site, and

(ii) in the case of a site determined to be contaminated, there has been any new or additional contamination at the site.

(2) Subject to subsection (3), for a site remediated before April 1, 1997, a person is exempt from the duty to provide a site profile under section 40 of the Act if

(a) the site was the subject of correspondence from an official at the Ministry of Water, Land and Air Protection or any predecessor ministry indicating that remediation of the site was carried out in a manner that substantially satisfies the remediation standards of this regulation respecting the current use and any use proposed by the person,

(b) there has not been a change in the primary land use or water use at the site after the remediation described in paragraph (a), and

(c) the person has no reason to believe that there could have been any new contamination of the site after the date of the correspondence referred to in paragraph (a).

(3) Subsections (1) and (2) do not apply to a person to whom section 40 (7) or (8) of the Act applies.

(4) A person is exempt from the duty to provide a site profile to a municipality or approving officer under section 40 (1) of the Act with respect to any site within a municipality if the municipality or approving officer has filed written notice with the minister that the municipality or approving officer does not wish to receive site profiles under section 40 (1) of the Act.

(5) An applicant for a subdivision under section 114 of the *Land Title Act* is exempt from the duty to provide a site profile under section 40 (1) (a) of the Act.

(6) A municipality undertaking to zone or rezone land is exempt from the duty to provide a site profile under section 40 (1) (b) (i) of the Act if

(a) the municipality does not have an ownership interest in the land, or

(b) the municipality

(i) does not intend to develop the parcel or parcels of land that it owns within the area being zoned or rezoned, and

(ii) at the time it is undertaking to zone or rezone the land it commits in writing to a director to submit a site profile when development of the land begins, unless it is exempted when development of the land begins from the requirement to submit a site profile under other provisions of the Act and this regulation.

(7) An applicant for a development permit or a development variance permit is exempt from the duty to provide a site profile under section 40 (1) (b) (ii) of the Act if the activity which the permit allows does not involve any disturbance or excavation of soil.

(8) If a person is required to provide a site profile under both section 40 (1) (b) (iv) and 40 (2) (b) of the Act, the person is exempt from the requirement to provide a site profile under section 40 (2) (b) of the Act.

(9) A person is exempt from the duty to provide a site profile under section 40 (1) (b) (iv) and (2) (b) of the Act if

(a) the demolition or dismantling is of a temporary camp or a temporary facility if the camp or facility is associated with the construction of rights of way for exploration for or development of any of the following resources:

(i) petroleum;

(ii) natural gas;

(iii) mineral;

(iv) geothermal energy,

(b) the buildings or structures to be demolished or dismantled are not associated with decommissioning a site, or

(c) the demolition does not involve any disturbance or excavation of soil other than that which is incidental to the demolition.

(10) Repealed. [B.C. Regs. 322/2004 and 324/2004, s. 4 (d).]

(11) A vendor of real property is exempt from the duty to provide a site profile under section 40 (6) of the Act in respect of real property which is not an ownership interest as defined in section 1.

(12) A vendor of real property is exempt from the duty to provide a site profile to a director under section 40 (6) of the Act.

(13) A vendor of real property is exempt from the duty to provide a site profile to a prospective purchaser under section 40 (6) of the Act if

(a) the prospective purchaser waives, in writing, the right to be provided with a site profile,

(b) at the time of contract for purchase and sale, the subject property of the sale is used primarily for residential purposes, or

(c) at the time of the contract for purchase and sale, the subject property has never been zoned for any use other than primarily for residential purposes.

[am. B.C. Regs. 244/99, s. 4; 17/2002, s. 3; 109/2002, s. 1; 322/2004 and 324/2004, s. 4; 343/2008, s. 2.]

Duty to provide a satisfactorily completed site profile

5 The obligation of a person to provide a site profile under section 40 (1), (2), (6), (7) and (8) of the Act and under this regulation is not satisfied until the person provides all the site profile information required by the site profile form.

[am. B.C. Regs. 322/2004 and 324/2004, s. 5.]

Assessing and forwarding site profiles

6 (1) For the purposes of section 40 (4) of the Act, a municipality that, or approving officer who, receives a site profile must, within 15 days after receiving it,

(a) assess whether the site profile in Schedule 1 is satisfactorily completed in accordance with the instructions provided by the director,

(b) notify the person who provided the site profile if the site profile is not satisfactorily completed,

(c) forward a satisfactorily completed site profile to

(i) a director if any question is answered in sections IV to IX of the site profile with a "yes" response, or

(ii) the registrar if subparagraph (i) does not apply, and

(d) notify the person from whom the site profile was received whether or not it has been forwarded to a director under paragraph (c) (i).

(2) For the purposes of section 40 (4) of the Act, on receipt of a site profile the commission must, within 15 days after receiving it,

(a) assess if the site profile is satisfactorily completed,

(b) notify the person who provided the site profile if the site profile is not satisfactorily completed, and

(c) forward a copy of the satisfactorily completed site profile to the registrar.

(3) A municipality, an approving officer and the commission do not have a duty arising under the Act or this regulation

(a) to store, file or otherwise manage a site profile provided to the municipality, approving officer or commission after discharging the duties set out in subsections (1) and (2), or

(b) to disclose to any person

(i) whether the municipality, approving officer or commission possesses a particular site profile, or

(ii) the contents of a particular site profile,

unless the disclosure is requested by the person who provided the site profile.

(4) A municipality or approving officer, on receipt of an application specified in section 40 (1) of the Act without a site profile, may submit information to a director indicating that the municipality or approving officer believes the subject lands of the application have been used for a use specified in Schedule 2.

(5) Subsection (4) applies only if the municipality or approving officer

(a) provides an opportunity for the applicant to review and comment on the information which the municipality or approving officer intends to submit to the director, and

(b) submits the information and the applicant's review and commentary to the director.

(6) A municipality that, or approving officer who, receives a site profile that does not need to be forwarded to a director under subsection (1) of this section and section 40 (4) of the Act may, despite those provisions, submit the site profile to the director if

(a) any response in the site profile conflicts with or is inconsistent with the knowledge or information possessed by the municipality or approving officer,

(b) the person who provided the site profile has been provided an opportunity to review and comment to the municipality or approving officer on knowledge or information referred to in paragraph (a), and

(c) the knowledge or information referred to in paragraph (a) and the commentary referred to in paragraph (b) is sent to the director at the time of submitting the site profile.

(7) For the purposes of exercising the power under this section, a municipality, an approving officer and the commission do not have a duty to conduct a search of the records or archives maintained by the municipality, approving officer or commission.

(8) A municipality that, or approving officer who, submits to a director the information under subsection (4) or a site profile under subsection (6) is deemed to not forward the site profile under section 40 (4) (b) of the Act, but is deemed to carry out a power, duty or function under Part 4 of the Act.

[am. B.C. Regs. 244/99, s. 5; 322/2004 and 324/2004, s. 6; 239/2007, s. 1.]

Duties of a director and the commission after receiving a site profile

7 (1) Subject to subsection (2), a director must, within 15 days after receiving a site profile, notify

(a) the municipality that, or approving officer who, forwarded the site profile, and

(b) the person who provided the site profile

whether or not the director intends to require or order a preliminary site investigation or a detailed site investigation under section 41 of the Act.

(2) The director may extend the time for notification under subsection (1) to a maximum of 30 days if the extension is necessary to obtain information to determine whether or not a preliminary site investigation or a detailed site investigation will be required or ordered, and in doing so the director must inform the persons described in subsection (1) of

(a) the duration of the extension, and

(b) the nature of the information required.

(3) Subject to subsection (4), the commission, within 15 days after receiving a site profile under section 40 (3) of the Act, must notify the person who provided the site profile whether the commission intends to require or order a preliminary site investigation under section 41 of the Act.

(4) The commission may extend the time for notification under subsection (3) to a maximum of 30 days if the extension is necessary to obtain information to determine whether or not a preliminary site investigation will be required or ordered, and in doing so the commission must inform the persons described in subsection (3) of

(a) the duration of the extension, and

(b) the nature of the information required.

[am. B.C. Regs. 322/2004 and 324/2004, s. 7.]

PART 2.1 – SUMMARIES OF SITE CONDITION

Duty to provide director with summary of site condition

7.1 (1) A person applying for, requesting or seeking approval, consideration, review or a determination of any of the following in relation to a site must provide a summary of site condition, together with a recommendation by an approved professional in respect of the matter, to the director:

(a) a determination under section 44 of the Act *[determination of contaminated sites]*;

(b) a determination under section 50 of the Act *[minor contributors]*;

(c) a voluntary remediation agreement under section 51 of the Act;

(d) an approval in principle under section 53 (1.1) of the Act;

(e) a certificate of compliance under section 53 (3) of the Act;

(f) a contaminated soil relocation agreement under section 55 of the Act;

(g) if the site is one to which Part 5 of the Act applies, a transfer agreement referred to in section 67 (1) (a) *[advanced exploration sites]* or 68 (1) (a) *[producing or past producing mine sites]* of that Part;

(h) if the site is one to which Part 5 of the Act applies, indemnification for the site under the *Financial Administration Act*;

(i) a covenant to be registered under section 48 (1) of this regulation;

(j) a preliminary site investigation report;

(k) a human health risk assessment or environmental risk assessment report;

(l) a detailed site investigation report;

(m) a remediation plan;

(n) a confirmation of remediation report;

(o) a report respecting local background concentrations of substances.

(2) A summary of site condition must set out the information necessary to complete the summary of site condition form.

[en. B.C. Reg. 239/2007, s. 2; am. B.C. Reg. 343/2008, s. 3.]

PART 3 – SITE REGISTRY

Site registry

8 (1) For the purposes of section 43 (2) (f) of the Act, a director must provide the registrar with information respecting each of the following that the director enters into, makes, receives, issues or has knowledge of, as applicable:

(a) a contaminated soil relocation agreement entered into under section 55 of the Act;

(b) a decision under section 41 of the Act respecting whether a preliminary site investigation and detailed site investigation will be ordered;

(c) a remediation plan prepared and submitted under sections 48, 51 and 53 of the Act;

(d) an approval in principle and a certificate of compliance issued under section 53 of the Act;

(e) a covenant required to be registered under section 53 (3) (e) of the Act;

(f) a determination that a site is an orphan site or a high risk orphan site made under section 58 (1) of the Act;

(g) a designation under section 14 of this regulation of a wide area site;

(h) an approval of the scope of a proposed wide area remediation plan;

(i) an opinion from an allocation panel under section 49 (2) of the Act;

(j) information related to the monitoring, verification or confirmation of compliance with a remediation plan;

(k) information about decisions being appealed;

(l) an agreement pertaining to responsibility for remediation of a contaminated site but only if all parties to the agreement jointly request that a notation about the agreement be entered on the site registry;

(m) a notification of substance migration or likely migration, described in section 57 (1.1) or 60.1 (2) of this regulation;

(n) a summary of site condition;

(o) information respecting the classification of a site, including its reclassification or de-classification, as the case may be.

(2) Repealed. [B.C. Regs. 322/2004 and 324/2004, s. 8.]

(3) Repealed. [B.C. Reg. 419/2003, s. 2.]

(4) The registrar may enter into the site registry historical information on discharges to land and such other historical information that the director may require.

[am. B.C. Regs. 419/2003, s. 2; 322/2004 and 324/2004, s. 8; 201/2007, s. 2.]

PART 4 – FEES

Fees

9 (1) Subject to this section, a person who undertakes an action described in Column I of Table 1 of Schedule 3 must pay the fee set out opposite the action in Column II.

(2) Subject to this section, a person who

(a) undertakes an activity requiring an action or activity,

(b) is ordered or required by a director to undertake an activity requiring an action or activity, or

(c) requests an action or activity

described in Column I of Table 2 of Schedule 3 must pay the fees set out opposite the action or activity in Column II.

(3) Repealed. [B.C. Reg. 201/2007, s. 3 (b).]

(4) The federal goods and services tax, if payable, must be added to the fees payable.

(5) Fees payable under this regulation are payable to the government except that

(a) fees established for computer-based site registry inquiries are payable to the electronic data distributor, and

(b) fees imposed by an approving officer or a municipality for assessing a site profile are payable to the approving officer or municipality.

(6) Fees imposed by an approving officer or municipality under section 40 (5) of the Act may not exceed the amount of the fees established under this regulation for providing a site profile to an approving officer or a municipality.

(7) A fee referred to in subsection (6) is payable at the time the person provides the site profile to the approving officer or municipality.

(8) The fees listed in Schedule 3 are exclusive of one another and of fees associated with any other action or activity under this regulation.

(9) Subject to subsection 19, a person who pays a fee set out in Column II of Table 2 of Schedule 3 must be provided with a credit toward any fee payable under subsection (15) (a) of this section in respect of the item for which the fee is paid, equal to 1 hour for each $200 of the fee set out opposite the item.

(10) If a director considers that an application or a report submitted in relation to an action or activity listed in Column I of Table 2 of Schedule 3 is incomplete or contains errors, the director must return the application or report to the person for completion or correction and the person may resubmit a completed or corrected report or plan for another review.

(11) The fee for a subsequent review of an application or report under subsection (10) is 50% of the fee paid.

(12) The fee for a review requested under section 10 (2) is equal to the sum of

(a) the amount of the fee payable by the government to the external contract reviewer under a contract referred to in section 10 (1), and

(b) 50% of the fee set out in Column II of Table 2 of Schedule 3, as applicable, opposite the type of review set out under item 2 (a) to (e) and (g) in Column I.

(13) If an external contract reviewer considers, and advises the ministry, that a report or plan the reviewer has been asked to review is incomplete or contains an error, the person who requested the assignment of the reviewer may resubmit a completed or corrected report or plan for another review by the external contract reviewer.

(14) The fee for a subsequent review under subsection (13) is equal to the sum of

(a) the amount of the fee payable by the government to the external contract reviewer for the subsequent review, and

(b) if a director considers it justified on the basis of additional time it takes a person to review the completed or corrected plan or report on behalf of the ministry, 50% of the fee paid under subsection (12) (b) on the first submission.

(15) In addition to any other fees under this section, a person who requests an action or activity under

(a) Table 2 of Schedule 3 must pay a fee of $165 per hour that a person is engaged in performing the action or activity on behalf of the ministry,

(b) Table 3 of Schedule 3 must pay a fee of $165 per hour that a person is engaged in performing the action or activity on behalf of the ministry after the first hour, and

(c) Table 3 of Schedule 3 must pay a fee equal to the amount of the reasonable traveling and out of pocket expenses necessarily incurred by a person in performing the action or activity on behalf of the ministry.

(16) If a director is satisfied, on application, that a risk assessment reviewed under item 2 (d) or (g) of Table 2 of Schedule 3 is a screening risk level assessment, the director may,

(a) in the case of a risk assessment under item 2 (d), reduce the fee by up to 20%, and

(b) in the case of a risk assessment under item 2 (g), reduce the fee by up to 50%.

(17) A person or organization is exempt from all or part of a fee under item 2 or 3 of Table 1 of Schedule 3, in the amount specified by a director, if

(a) the person or organization satisfies the director that paying the fee or the part would be an unmanageable financial burden on the person or organization required to pay it, or

(b) in the case of a government ministry or a person acting on behalf of a government ministry, the fee does not exceed $500 and the director is satisfied that granting the exemption is in the public interest.

(18) A director may

(a) invoice a person for a fee,

(b) agree in writing in a particular case to accept the payment of fees in installments, and

(c) require in a particular case that a person provide fees in advance of any services being provided.

(19) If a person withdraws a request referred to in subsection (2) (c), the person is not required to pay the fee referred to in that subsection for that action or activity,

however the hourly fees described in subsection (15) (a) and (b) and the travelling and other expenses described in subsection (15) (c) continue to apply and are payable in respect of action or activity done before the person withdraws the request.

(20) In addition to any other fees under this section, a person who requests an amendment to any of the following must pay a fee of $165 per hour that a person is engaged in performing an action or activity on behalf of the ministry in relation to the amendment:

(a) a determination under section 44 of the Act *[determination of contaminated sites]*;

(b) a determination under section 50 of the Act *[minor contributors]*;

(c) a voluntary remediation agreement under section 51 of the Act;

(d) an approval in principle under section 53 (1.1) of the Act;

(e) a certificate of compliance under section 53 (3) of the Act;

(f) a contaminated soil relocation agreement under section 55 of the Act;

(g) if the site is one to which Part 5 of the Act applies, a transfer agreement referred to in section 67 (1) (a) *[advanced exploration sites]* or 68 (1) (a) *[producing or past producing mine sites]* of that Part;

(h) if the site is one to which Part 5 of the Act applies, indemnification for the site under the *Financial Administration Act.*

[en. B.C. Reg. 419/2003, s. 3; am. B.C. Regs. 322/2004 and 324/2004, s. 9; 464/2004, s. 1 (a); 201/2007, s. 3; 343/2008, s. 4.]

Review of report or plan by external contract reviewer

10 (1) A director may enter into a contract with an approved professional to assist in the review of reports or plans, listed under items 2 (a) to (e) and (g) of Column I of Table 2 of Schedule 3, by making a report to the director containing the external contract reviewer's professional opinion in respect of

(a) the adequacy of the report or plan,

(b) the need for remediation of the site in respect of which the report or plan is submitted, and

(c) whether the report or plan complies with Provincial laws and ministry policy.

(2) A person may request a director to assign an external contract reviewer to assist with a review listed under item 2 (a) to (e) or (g) in Column I of Table 2 of Schedule 3.

[en. B.C. Reg. 419/2003, s. 3; am. B.C. Regs. 322/2004 and 324/2004, s. 10.]

PART 5 – CONTAMINATED SITE DEFINITION AND DETERMINATION

Definition of contaminated site

11 (1) Subject to section 12 and subsections (2), (3) and (4) of this section, the following substances, standards and conditions are prescribed for the purposes of the definition of "contaminated site" in section 39 of the Act:

(a) the land use of the site is agricultural, commercial, industrial, urban park, wildlands or residential and the concentration of any substance in the soil is greater than

(i) the applicable generic numerical soil standard, or

(ii) the lowest value of the applicable matrix numerical soil standards;

(a.1) the land use of the site is wildlands land use and

(i) the concentration of any substance in the soil at a depth of less than 3 metres is greater than the numerical standards for soil that would apply if the land use of the site were urban park land use, or

(ii) the concentration of any substance in the soil at a depth of 3 metres or more is greater than the numerical standards for soil that would apply if the land use of the site were commercial land use;

(b) the surface or groundwater located on or flowing from the site is used or has a reasonable probability of being used for aquatic life, irrigation, livestock or drinking water and the concentration of any substance in the surface water or groundwater is greater than the applicable generic numerical water standard;

(c) the concentration of any substance in sediment at the site is greater than the applicable generic numerical sediment criterion;

(c.1) the concentration of any substance in vapour at the site is greater than the applicable generic numerical vapour standard;

(c.2) despite paragraph (a), for land less than 15 metres from a natural gas or petroleum well head and the land use of the site is agricultural land use,

(i) the concentration of any substance in the soil at a depth of less than 2 metres is greater than the applicable agricultural land use standards for soil, or

(ii) the concentration of any substance in the soil at a depth of 2 metres or more is greater than the standards for soil that would apply if the land use of the site were commercial land use;

(c.3) despite paragraph (a.1), for Crown land less than 15 metres from a natural gas or petroleum well head and the land use of the site is wildlands land use,

(i) the concentration of any substance in the soil at a depth of less than 2 metres is greater than the standards for soil that would apply if the land use of the site were urban park land use, or

(ii) the concentration of any substance in the soil at a depth of 2 metres or more is greater than the standards for soil that would apply if the land use of the site were commercial land use;

(d) the concentration of any substance at the site, not specified in Schedule 4, 5, 6, 7, 9, 10 or 11, is greater than,

(i) if the substance is specified without a particular use, the concentration specified for that substance in a director's interim standard, and

(ii) if the substance is specified with a particular use, the concentration specified for that substance and use in a director's interim standard.

(2) Subsection (1) does not apply to a site in relation to a substance if the concentration of the substance in soil, surface water, groundwater, sediment or vapour at the site is not greater than the applicable site-specific numerical standard.

(3) Subsection (1) does not apply to a site in relation to a substance in the soil, surface water, groundwater, sediment or vapour if the concentration of the substance in the soil, surface water, groundwater, sediment or vapour is not greater than the local background concentration of that substance in the soil, surface water, groundwater, sediment or vapour respectively.

(4) Subsection (1) does not apply to a site in relation to a substance in the soil if

(a) the site has been used for the application of

(i) managed organic matter, as defined in the Organic Matter Recycling Regulation, B.C. Reg. 18/2002,

(ii) retail-grade organic matter, as defined in the Organic Matter Recycling Regulation, or

(iii) products derived from the materials described in subparagraphs (i) or (ii)

in a manner consistent with the Organic Matter Recycling Regulation or an authorization given under the Act, and

(b) the site has not been used for a commercial or industrial activity listed in Schedule 2.

[en. B.C. Regs. 322/2004 and 324/2004, s. 11; am. B.C. Reg. 343/2008, s. 5.]

Specification of applicable land, water, sediment and vapour uses and site-specific factors

12 (1) For the purpose of using the standards in this regulation,

(a) if a protocol provides for more than one land use at a particular site, the land uses that apply, at any given time, to the site or a part of the site are the land uses that apply in accordance with the protocol, and

(b) otherwise, the land use that applies, at any given time, to a particular site or a part of a site is the primary land use at the surface of the site.

(2) For the purpose of using the standards in this regulation, the surface water uses or groundwater uses which apply, at any given time, to a particular site or part of a site are based on

(a) the uses of the surface water or groundwater at the site or on neighbouring sites, and

(b) the potential for the groundwater or surface water to cause pollution.

(2.1) For the purpose of using the standards in this regulation, the sediment use that applies, at any given time, to a particular site or a part of a site is based on

(a) the use of sediment at the site or at neighbouring sites, and

(b) the potential for the sediment to cause pollution.

(2.2) For the purpose of using the standards in this regulation, the vapour use that applies, at any given time, to a particular site or a part of a site is based on

(a) the uses of the land at the surface of the site, and

(b) the potential of the vapour to cause pollution.

(2.3) A director may specify the applicable land use under subsection (2.2) from the following:

(a) agricultural land use;

(b) commercial land use;

(c) industrial and use;

(d) urban park land use;

(e) residential land use;

(f) wildlands land use.

(3) Subject to subsection (6), a director may specify the applicable land use or uses, as the case may be, under subsection (1) from the following:

(a) agricultural land use;

(b) commercial land use;

(c) industrial land use;

(d) urban park land use;

(e) residential land use;

(f) wildlands land use.

(4) A director may specify the applicable water uses under subsection (2) from the following:

(a) aquatic life water use;

(b) irrigation water use;

(c) livestock water use;

(d) drinking water use.

(4.1) A director may specify the applicable sediment use under subsection (2.1) from the following:

(a) typical sediment use;

(b) sensitive sediment use.

(5) In specifying the primary land use, water use or sediment use under subsections (3), (4) and (4.1), a director must take into account current and reasonable potential future land, water and sediment uses based on the following factors:

(a) current and proposed zoning for the site;

(b) land use and planning policies of the government or the municipality or municipalities in which the site and neighbouring sites are situated;

(c) current site activities;

(d) proposed site activities;

(e) current and proposed uses for surface water and groundwater on the site;

(f) current and proposed land use, and surface water and groundwater uses of neighbouring sites;

(g) current nearby uses of other surface water and groundwater;

(h) the potential for surface water and groundwater to cause pollution;

(h.1) current and proposed uses for sediment at neighbouring sites;

(h.2) potential for surface water, groundwater and sediment to cause pollution on neighbouring sites;

(i) other factors that a director considers appropriate in the circumstances.

(6) If the current or anticipated future use of a site is not encompassed within any of the land uses specified in subsection (3), the land use that applies to the site must be chosen from the land uses in subsection (3) based on the historical activities at the site.

(7) For the purpose of using matrix numerical soil standards and site-specific numerical standards, a director may specify the applicable site-specific factors for a site after consideration of the land and water use factors in subsection (5).

(8) For the purpose of using matrix numerical soil standards and site-specific numerical soil standards, the site-specific factors for

(a) human intake of contaminated soil, and

(b) toxicity to soil invertebrates and plants are mandatory and must be applied at every site.

[am. B.C. Regs. 322/2004 and 324/2004, s. 12; 343/2008, s. 6.]

13 Repealed. [B.C. Reg. 343/2008, s. 7.]

Wide area site

14 A director may designate a site as a wide area site with respect to specified substances and specified sources if

(a) the site covers an extensive geographic area and comprises many individual properties, and

(b) many of the individual properties located within the bounds of the wide area site would, on an individual basis, likely be determined by the director to be contaminated with one or more of the specified substances in the designation.

[am. B.C. Regs. 322/2004 and 324/2004, s. 14; 239/2007, s. 3.]

Procedures for determination of contaminated site

15 (1) The numerical standards must be applied in determining whether a site is a contaminated site.

(2) A director who makes a preliminary determination under section 44 (2) (a) of the Act must provide written reasons for the preliminary determination with the notice required by section 44 (2) (b) of the Act.

(3) After making a preliminary determination under section 44 (2) (a) of the Act, the director must allow a period for comment under section 44 (2) (c) of the Act of not less than 30 days and not more than 60 days after delivery of the notice of preliminary determination.

(4) Within 15 days after making a final determination under section 44 (2) (d) or (3) of the Act, the director must send the notice required by section 44 (2) (e) accompanied by written reasons for the final determination.

(5) A director may require that an application for a determination under section 44 of the Act include a report and the recommendation of an approved professional in respect of whether the site is a contaminated site.

(6) If the director does not impose a requirement under subsection (5), an application for a determination under section 44 of the Act may include a report and the recommendation of an approved professional in respect of whether the site is a contaminated site and, if so, section 49.1 applies.

(7) If a director rejects the recommendation of an approved professional provided under subsection (5) or (6), the director, within 15 days of the rejection, must provide written reasons to

(a) the applicant, and

(b) the professional association, in the Province, of which the approved professional is a member.

[en. B.C. Regs. 322/2004 and 324/2004, s. 15; am. B.C. Reg. 201/2007, s. 4.]

PART 6 – REMEDIATION STANDARDS

Remediation options

16 The numerical standards, or the risk based standards prescribed in section 18 or 18.1, may be used in relation to the remediation of a contaminated site.

[en. B.C. Regs. 322/2004 and 324/2004, s. 16.]

Application of numerical standards for remediation

17 (1) Subject to subsection (2), a contaminated site has been remediated in accordance with the numerical standards if

(a) the site is used for agricultural, commercial, industrial, urban park or residential land use and the soil at the site does not contain any substance with a concentration greater than or equal to

(i) the applicable generic numerical soil standard, or

(ii) the lowest value of the applicable matrix numerical soil standards,

(a.1) the use of the site is wildlands land use and

(i) the soil at a depth of less than 3 metres does not contain any substance with a concentration greater than the numerical standards for soil that would apply if the land use of the site were urban park land use, and

(ii) the soil at a depth equal to or greater than 3 metres does not contain any substance with a concentration greater than the numerical standards for soil that would apply if the land use of the site were commercial land use,

(b) surface water or groundwater used for, or which has a reasonable probability of being used for, aquatic life, irrigation, livestock or drinking water use does not contain any substance with a concentration greater than the generic numerical water standard for that substance and use,

(b.1) the sediment at the site does not contain any substance with a concentration greater than the generic numerical sediment criterion for that substance for the applicable sediment use of the site,

(b.2) the vapour at the site does not contain any substance with a concentration greater than the generic numerical vapour standard for that substance for the applicable land use of the site,

(c) the soil, surface water, groundwater, sediment or vapour at the site does not contain any substance with a concentration greater than the concentration specified for that substance and use in a director's interim standard.

(d) despite paragraph (a), for land less than 15 metres from a natural gas or petroleum well head and the use of the site is agricultural land use,

(i) the soil at a depth of less than 2 metres does not contain any substance with a concentration greater than

(A) the generic numerical soil standard, or

(B) the lowest value of the applicable matrix numerical soil standard

that would apply if the land use of the site were agricultural land use, and

(ii) the soil at a depth of 2 metres or more does not contain any substance with a concentration greater than

(A) the generic numerical soil standard, or

(B) the lowest value of the applicable matrix numerical soil standard

that would apply if the land use of the site were commercial land use, and

(e) despite paragraph (a.1), for Crown land less than 15 metres from a natural gas or petroleum well head and the use of the site is wildlands land use,

(i) the soil at a depth of less than 2 metres does not contain any substance with a concentration greater than

(A) the generic numerical soil standard, or

(B) the lowest value of the applicable matrix numerical soil standard

that would apply if the land use of the site were urban park land use, and

(ii) the soil at a depth of 2 metres or more does not contain any substance with a concentration greater than

(A) the generic numerical soil standard, or

(B) the lowest value of the applicable matrix numerical soil standard

that would apply if the land use of the site were commercial land use.

(2) A contaminated site has been remediated in accordance with the numerical standards if

(a) the soil, surface water, ground water, vapour or sediment at the site does not contain any substance with a concentration greater than or equal to the applicable site-specific numerical standard for the soil, surface water, groundwater, vapour or sediment, respectively, or

(b) the soil, surface water, ground water, vapour or sediment at the site does not contain any substance with a concentration greater than the local background concentration of that substance in the soil, surface water, groundwater, vapour or sediment, respectively.

(3) Subject to subsection (4), and regardless of the use of the land at the surface of this site, the soil beyond a depth of 3 metres below the surface of land at a contaminated site has been remediated in accordance with numerical standards prescribed for the purposes of the definition of "contaminated site" if it or the vapour in it does not contain any substance with a concentration greater than or equal to the concentration specified for that substance for commercial land use in

(a) the generic numerical soil standard or the matrix numerical soil standard,

(a.1) the generic numerical vapour standard,

(b) a director's interim standard, or

(c) the site-specific numerical standard for that site.

(4) A director may require the application of the standards for soil or vapour referred to in subsection (1) or (2) to a depth greater than 3 metres for any specific site if the nature of the contaminants, the land use or proposed land use, site-specific factors or other factors indicate such action is necessary.

(4.1) Subsections (3) and (4) do not apply in relation to land to which subsection (1) (d) or (e) applies.

(5) If surface water or groundwater is not currently being used at the contaminated site for any of the purposes specified in subsection (1) (b), a director may specify a numerical standard for the surface water or groundwater as necessary to protect the present and future surface water or groundwater uses on neighbouring sites or to prevent pollution.

[am. B.C. Regs. 322/2004 and 324/2004, s. 17; 341/2008, s. 1.]

Application of risk-based standards for remediation

18 (1) The remediation standards have been met for a specific contaminated site if a responsible person satisfies a director that

(a) for any non-threshold carcinogenic substance, the calculated human lifetime cancer risk due to exposure to that substance at the site is less than or equal to a risk value recommended by the local medical health officer for the site, and

(b) for any substance for which a hazard index is calculated, the hazard index due to exposure of a human to that substance at the site is less than a maximum hazard index recommended by the local medical health officer for that site.

(2) A responsible person who asks a director for a decision that the standards in subsection (1) have been met for a contaminated site must

(a) provide information to support and justify the basis for the request, and

(b) participate in and pay for a public community based consultation process facilitated by the local medical health officer which

(i) is for the purpose of developing a recommendation on the acceptable level of human health risk for the site,

(ii) will consider remediation options in relation to levels of resulting human health risk at the site,

(iii) will be conducted in conjunction with any requirement under section 52 of the Act and section 55 (1) of this regulation, and

(iv) is carried out over a time period not exceeding 3 months from the date of the request under subsection (1) unless the person making the request, the local medical health officer and the director agree to an alternate time period.

(3) Despite subsections (1) and (2), a director must consider a contaminated site to have been satisfactorily remediated without review and recommendation by the local medical health officer if

(a) for each non-threshold carcinogenic substance, the calculated human lifetime cancer risk due to exposure to that substance at the site is less than or equal to one in 100 000, and

(b) for each substance for which a hazard index is calculated, the hazard index due to exposure of a human to that substance at the site is less than or equal to one.

(4) A director must not decide that the standards in subsection (1) have been met before receiving written recommendations with supporting rationale from the local medical health officer respecting the matters described in subsection (1) (a) and (b).

(5) If a person demonstrates to the satisfaction of a director that the local background concentration of any substance at a particular site results in the standards required by subsection (1) or (3) being exceeded, the remediation standards for that substance must be the calculated lifetime cancer risk and calculated hazard index which results from exposure of a human to the local background concentration of that substance at the site.

(6) A person who applies the risk-based standards of this section must also prepare an environmental risk assessment report which identifies

(a) the potential onsite and offsite environmental risks of any substances causing contamination before and after remediation, and

(b) procedures, including monitoring, designed to mitigate any significant potential risks identified in paragraph (a).

(7) A director may impose requirements on a responsible person to prevent or mitigate risks identified

(a) in the environmental risk assessment report required under subsection (6), or

(b) by the director using other available data.

[am. B.C. Regs. 17/2002, s. 7; 322/2004 and 324/2004, s. 18.]

Application of risk-based standards for remediation at wide area sites

18.1 (1) The remediation standards have been met with respect to a substance from a source specified under section 14 if a director is satisfied that

(a) the risk to human health due to exposure to that substance at the site is less than or equal to a maximum value recommended by the medical health officer for the wide area site,

(b) the maximum value recommended by the medical health officer under paragraph (a) takes a form other than that of a hazard index or cancer risk, and

(c) the recommendation under paragraph (a) has been reviewed and endorsed by the Provincial health officer.

(2) A responsible person who asks a director for a decision that the standards in subsection (1) have been met for a contaminated site must

(a) provide information to support and justify the basis for the request, and

(b) participate in and pay for a public community based consultation process, acceptable to and facilitated by the medical health officer, that

(i) is for the purpose of developing a recommendation on the acceptable level of human exposure and health risk for the site,

(ii) considers remediation options in relation to levels of human exposure and health risk at the site,

(iii) is conducted in conjunction with any requirement under section 52 of the Act and section 55 (1) of this regulation, and

(iv) is carried out over a time period not exceeding 6 months from the date of the request under subsection (1), unless the person making the request, the medical health officer and the director agree to an alternate time period.

(3) A director must not decide that the standards in subsection (1) have been met before receiving written recommendations with supporting rationale from the medical health officer respecting the matters described in subsection (1) (a) and

a written review and endorsement of the recommendations from the Provincial health officer under subsection (1) (c).

(4) Despite subsections (1) and (2), the director must consider a wide area site to have been satisfactorily remediated with respect to each substance from a source specified in section 14 without review and recommendation from the medical health officer if

(a) for each non-threshold carcinogenic substance, the calculated human lifetime cancer risk due to exposure to that substance at the site is less than or equal to one in 100 000, and

(b) for each substance for which a hazard index is calculated, the hazard index due to exposure of a human to that substance at the site is less than or equal to one.

(5) A person who applies the risk-based standards of this section with respect to specified substances must also prepare an environmental risk assessment report that identifies

(a) the potential onsite and offsite environmental risks of each specified substance before and after the remediation, and

(b) procedures, including monitoring, designed to mitigate any significant potential risks identified in paragraph (a).

(5.1) If a person demonstrates to the satisfaction of a director that the local background concentration of any substance at a particular wide area site results in the standards required by subsection (1) or (4) being exceeded, the remediation standards for that substance must be the calculated lifetime cancer risk and calculated hazard index that result from exposure of a human to the local background concentration of that substance at the wide area site.

(6) A director may impose requirements on a responsible person to prevent or mitigate risks identified

(a) in the environmental risk assessment report required under subsection (5), or

(b) by the director using other available data.

[en. B.C. Reg. 17/2002, s. 8; am. B.C. Regs. 322/2004 and 324/2004, s. 19.]

PART 7 – LIABILITY

Persons not responsible – transporters and arrangers

19 For the purposes of section 46 (1) (n) of the Act, a person described in section 45 (1) (c) or (d) or (2) (c) or (d) of the Act is designated not responsible for remediation of a contaminated site in relation to a substance if the person

(a) did not control the disposal, handling or treatment of the substance, or

(b) by contract, agreement or otherwise merely required

(i) adoption of standards of design, construction or operation of works at the site which were intended to prevent contamination, or

(ii) compliance with environmental laws, standards, policies or codes of practice of government which applied at the time of producing, transporting or arranging for transport of the substance.

[am. B.C. Regs. 322/2004 and 324/2004, s. 20.]

Persons not responsible – sureties

20 (1) Subject to subsection (2), a surety who issues a bid bond, performance bond or labour and materials payment bond for a contract with respect to construction activities at a site which

(a) is a contaminated site at the effective date of issuance of the bond, or

(b) became a contaminated site after the effective date of issuance of the bond

is designated for the purposes of section 46 (1) (n) of the Act not responsible for remediation of the contaminated site and is exempt from an order under section 83 (2) (f) of the Act in relation to the contaminated site, unless the surety 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.

(2) A surety does not exercise control or impose requirements under subsection (1) if the surety acts under its rights or obligations with respect to the bond including, without limitation, any of the following:

(a) participating only in purely financial matters related to construction activities at the site;

(b) having 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;

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

(d) appointing a person to inspect or investigate a contaminated site to determine future steps or actions that the surety might take;

(e) imposing requirements on any person to comply with environmental laws, standards, policies or codes of practice of government or industry, including requirements to perform monitoring tests, scientific studies or to remediate contaminated sites.

(3) Subject to subsections (4) and (5), the liability of the surety is limited to the cost of remediation and the cost of completion of the bonded contract in accordance with the terms and conditions of the bond.

(4) The liability of the surety under subsection (3) is limited to the penal sum of the bond.

(5) The limitation under subsections (3) and (4) does not apply to a surety who intentionally caused environmental damage or was grossly negligent or guilty of wilful misconduct with respect to

(a) the use of the environment, or

(b) the lives or safety of persons.

[am. B.C. Regs. 322/2004 and 324/2004, s. 21.]

Persons not responsible – insurers and insurance brokers

21 (1) Subject to subsection (2), an insurer or insurance broker who undertakes risk evaluation, physical inspection of hazards or loss control activities at a site which

(a) is a contaminated site at the date of such activities, or

(b) became a contaminated site after the date of such activities

is designated for the purposes of section 46 (1) (n) of the Act not responsible for remediation of the contaminated site and is exempt from an order under section 83 (2) (f) of the Act in relation to the contaminated site, unless the insurer or insurance broker 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.

(2) An insurer or insurance broker does not exercise control or impose requirements under subsection (1) if the insurer or insurance broker acts pursuant to rights or obligations with respect to an insurance policy including, without limitation, any of the following:

(a) participating only in purely financial matters related to providing insurance at the site;

(b) having 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 the capacity or ability in such a way as to cause or increase contamination;

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

(d) appointing a person to inspect or investigate a contaminated site to determine future steps or actions that the insurer or insurance broker may take;

(e) imposing requirements on any person to comply with environmental laws, standards, policies or codes of practice of government or industry, including requirements to perform monitoring tests, scientific studies or to remediate contaminated sites.

(3) Subject to subsection (4), if an insurer or insurance broker is responsible for remediation, the liability of the insurer is limited to the cost of remediation, provided that such liability does not exceed the sum of any proceeds of any

insurance coverage that is provided for the subject site for the purpose of covering such environmental risks.

(4) The limitation under subsection (3) does not apply to an insurer or insurance broker who intentionally caused environmental damage or who was grossly negligent or guilty of wilful misconduct with respect to

(a) the use of the environment, or

(b) the lives or safety of persons.

(5) This section does not affect any rights or obligations under an insurance policy.

[am. B.C. Regs. 322/2004 and 324/2004, s. 22.]

Persons not responsible – certain owners

22 (1) Subject to subsection (2), for the purposes of section 46 (1) (n) of the Act, a person is designated not responsible for remediation of a contaminated site if, with respect to the contaminated site, the person is a current or previous owner of

(a) an easement,

(b) a right of way,

(c) a restrictive covenant,

(d) a covenant under section 219 of the *Land Title Act*,

(e) a lien,

(f) a judgement,

(g) a reservation in a Crown grant, or

(h) an interest in real property which deals exclusively with subsurface rights including such a tenure under the *Geothermal Resources Act*, the *Mineral Tenure Act* or the *Petroleum and Natural Gas Act*.

(2) Subsection (1) does not apply unless the person can establish that there has been no use or exercise of any right of the interest specified in paragraphs (a) to (h) of that subsection in a manner that, in whole or in part, caused the site to become a contaminated site.

[am. B.C. Regs. 244/99, s. 9; 322/2004 and 324/2004, s. 23.]

Persons not responsible – producers arranging for transportation

23 For the purposes of section 46 (1) (n) of the Act, a person described in section 45 (1) (c) or (d) of the Act is designated not responsible for remediation of a contaminated site if

(a) the person transferred ownership of a substance and responsibility for managing the substance to a transporter who

(i) intended at the time of the transfer to transport the substance to a site where the owner or operator of the site was at that time legally entitled to accept the substance, and

(ii) spilled or otherwise discharged the substance after the transfer but before delivering the substance to the person described in subparagraph (i), and

(b) the person did not by contract, agreement or otherwise impose requirements on the transporter in a manner which caused, in whole or in part, the spill or discharge referred to in paragraph (a) (ii).

[am. B.C. Regs. 322/2004 and 324/2004, s. 24.]

Persons not responsible – construction on contaminated sites

24 For the purposes of section 46 (1) (n) of the Act, a person is designated not responsible for remediation of a contaminated site if the person provided only contracting or consulting services related to the construction of buildings and facilities at the contaminated site.

[en. B.C. Regs. 322/2004 and 324/2004, s. 25.]

Persons not responsible – secured creditors

25 (1) For the purposes of section 46 (1) (n) of the Act, a secured creditor described in section 45 (3) (a) of the Act is designated not responsible for remediation of a contaminated site if the secured creditor does any of the following:

(a) imposes requirements on any person to comply with environmental laws, standards, policies or codes of practice of government or industry, including requirements to perform monitoring tests, scientific studies or to remediate contaminated sites;

(b) participates in loan work out actions, including the giving of financial or other advice to a financially distressed borrower, restructuring or renegotiating the terms of a security interest, requiring additional payments or consideration, or exercising forbearance;

(c) takes steps, whether or not they are part of realization proceedings, to preserve, protect or enhance the value of the secured assets or to reduce or prevent future contamination or the migration of existing contaminants or otherwise conduct any independent remediation;

(d) subject to section 45 (3) (b) of the Act and subsection (2) of this section, undertakes realization proceedings.

(2) Subject to subsection (3), the liability of a secured creditor who becomes a registered owner in fee simple of real property at a contaminated site exists and endures under section 45 (3) (b) of the Act only while the secured creditor is the registered owner in fee simple of the real property.

(3) Subsection (2) does not remove the liability of a secured creditor for remediation of a contaminated site under Part 4 of the Act if the secured creditor who became the registered owner in fee simple of real property at the contaminated site 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.

[am. B.C. Regs. 322/2004 and 324/2004, s. 26.]

Persons not responsible – receivers, receiver managers and bankruptcy trustees

26 (1) In this section:

"available funds" means any and all funds realized by a receiver less

(a) the costs of realization and sale of property,

(b) the claims of trade creditors of the receiver,

(c) the claims of the receiver for remuneration and indemnification,

(d) the authorized borrowings of the receiver inclusive of interest, and

(e) the proceeds of property disposed of by the receiver, but only to the extent that those proceeds are required by the receiver to discharge a mortgage, lien, charge or security interest in the property which was filed, perfected or registered before the earlier of

(i) the date when a remediation order or other order under the Act respecting the property was entered on the site registry, or

(ii) the date when the receiver receives a remediation order or other order under the Act respecting the property;

"dispose" includes to transfer by a vesting order issued by a court;

"receiver" means a current or previous receiver, receiver manager, liquidator or bankruptcy trustee who is an owner or operator under the Act.

(2) For the purposes of section 46 (1) (n) of the Act, a receiver is designated not responsible personally under Part 4 of the Act for remediation of a contaminated site and is exempt personally from an order under section 81 or 83 of the Act in relation to the contaminated site, including a site that was a contaminated site on the date that the receiver became an owner or operator of that site, unless it is established that

(a) the receiver at any time exercised control over or imposed requirements on any person regarding the manner of treatment, disposal or handling of a substance,

(b) the receiver was grossly negligent or guilty of wilful misconduct in the exercise of such control over or the imposition of such requirements on a person, and

(c) such control or requirements caused the site to become, in whole or in part, a contaminated site,

in which case, the receiver is designated as responsible personally for remediation of the contaminated site and is not exempt personally from an order under section 81 or 83 of the Act.

(3) For the purposes of section 45 (1) (e) of the Act, a receiver is designated responsible, in his or her role as receiver and to the extent of the receivership, for remediation of a contaminated site, and is subject to an order under section 81 or 83 of the Act in relation to the contaminated site in that role and to that extent.

(3.1) For the purposes of subsection (3), the **"extent of the receivership"** means

(a) the limit of the available funds, and

(b) the period commencing with the receiver's appointment and ending with a termination under subsection (5).

(4) If a receiver does not have sufficient available funds to comply with applicable remediation requirements under Part 4 of the Act or any other order made under the Act, the receiver must give notice to a director of the lack of available funds as soon as the receiver becomes aware of the fact.

(5) A receiver's obligation under subsection (3) terminates when any of the following occurs:

(a) the receiver gives notice to a director under subsection (4);

(b) the receiver pays all available funds to a director, the minister or the Minister of Finance, in trust, for remediation of the contaminated site;

(c) the receiver resigns the appointment;

(d) the receiver is removed or discharged by the court or otherwise ceases to be a receiver;

(e) subject to subsection (6), the receiver disposes of a contaminated site to a person who

(i) agrees, in writing, to accept responsibility for remediation, or

(ii) enters into a voluntary remediation agreement with a director;

(f) subject to subsection (6), the receiver disposes of a contaminated site to a person in circumstances in which, at the time of the disposition,

(i) there is no requirement on the receiver to provide a site profile or, if there is such a requirement, the receiver has complied with it,

(ii) there is no record of contamination at the site on the site registry, and

(iii) the receiver has no knowledge of any contamination at the site.

(6) If a receiver disposes of part of a contaminated site in accordance with subsection (5) (e) or (f), the receiver's obligation under subsection (3) is terminated only with respect to that part.

(7) On application by a receiver or a director, the court may order that the obligation of the receiver is terminated with or without conditions or make any order it considers just, but this subsection does not provide the court with the power to set aside provincial legislation.

(8) A receiver who applies to the court under subsection (7) must give notice to a director, and the director may make representations to the court respecting the application.

(9) A receiver who

(a) has provided a site profile under section 40 (7) of the Act,

(b) is subject to an obligation to provide a site profile under section 40 (8) of the Act, or

(c) is in possession of a site for which there is an entry on the site registry indicating that the site

(i) has been determined, in whole or in part, to be a contaminated site under section 44 of the Act, or

(ii) is otherwise expressly stated to be, in whole or in part, a contaminated site,

must give written notice to a director of

(d) any proposed distribution of available funds at least 15 days before the date of the proposed distribution, or

(e) any proposed abandonment of the site or part of the site by the receiver at least 15 days before the date of the proposed abandonment if the receiver

(i) resigns the appointment, or

(ii) applies to a court for a discharge.

(10) A receiver, within 30 days after receiving a remediation order or a pollution abatement order, may give written notice to a director that, during that 30 day period, the receiver is determining or assessing

(a) the ability and willingness of the receiver to administer the property at the contaminated site,

(b) the responsibilities which would be incurred by the receiver in administering the property, and

(c) whether the receiver should seek to terminate the appointment in accordance with subsection (5) or abandon the contaminated site,

and during that period, subject to subsections (11) to (13), the receiver is not required to comply with the remediation order or the pollution abatement order.

(11) A receiver may, upon giving notice in writing to a director, apply to the court for an extension of the 30 day period described in subsection (10), but this provision does not apply if the director agrees to the extended time proposed by the receiver.

(12) The court, on hearing an application under subsection (11), must not order an extension unless it determines that an extension is reasonably necessary to permit the receiver to ascertain the environmental condition of the site and the extent and cost of fulfilling the duties arising from the operation or control of the site and compliance with the director's order.

(13) If a director requires compliance with a remediation order or a pollution abatement order within the 30 day period to reduce the threat of a contaminated site, the director may, upon giving written notice to the receiver, seek a court order to reduce the 30 day period described in subsection (10), but this provision does not apply if the receiver agrees to the reduced time proposed by the director.

(14) Despite any other provision in this section, a director may agree to the continued involvement of a receiver in the remediation of a contaminated site even if there are insufficient available funds to satisfy the costs of remediation.

[am. B.C. Regs. 322/2004 and 324/2004, s. 27.]

Persons not responsible – trustees, executors, administrators and other fiduciaries

27 (1) In this section:

"available funds" means the net realizable value of the trust property but does not include

(a) the costs of realization and sale of trust property,

(b) the claims of the trustee for remuneration and indemnification,

(c) trust property paid, distributed or transferred to any party by the trustee before receiving a remediation order or other order under the Act, but only if, at the time the trustee paid, distributed or transferred the trust property,

(i) there was no requirement on the trustee to provide a site profile, and

(ii) the trustee had no actual knowledge of any contamination at the site, or

(d) the proceeds of trust property disposed of by the trustee, but only to the extent that those proceeds are required by the trustee to discharge a mortgage, lien, charge or security interest in the property which was filed, perfected or registered before the earlier of

(i) the date when a remediation order or other order under the Act respecting the property is entered on the site registry, or

(ii) the date when the trustee receives a remediation order or other order under the Act respecting the property;

"trustee" includes

(a) an executor or an administrator of the estate of a deceased person,

(b) an express trustee or a bare trustee,

(c) a committee or other person appointed by a court as a representative under any adult guardianship legislation,

(d) a guardian of the estate of an infant, and

(e) an attorney acting under an enduring power of attorney whose principal lacks the capacity to manage his or her own affairs,

but does not include a receiver as defined in section 26;

"trust property" means the property held by a trustee in a fiduciary capacity and includes

(a) in relation to a trustee who is a committee of the estate of a patient, the patient's property,

(b) in relation to a trustee who is an attorney acting under an enduring power of attorney whose principal lacks the capacity to manage his or her affairs, the principal's property, and

(c) in relation to a guardian of an infant, the infant's property.

(2) For the purposes of section 46 (1) (n) of the Act, a trustee is designated not responsible personally under Part 4 of the Act for remediation of a contaminated site and is exempt personally from an order under section 81 or 83 of the Act in relation to the contaminated site, including a site that was a contaminated site on the date that the trustee became an owner or operator of that site, unless it is established that

(a) the trustee at any time exercised control over or imposed requirements on any person regarding the manner of treatment, disposal or handling of a substance,

(b) the trustee was grossly negligent or guilty of wilful misconduct in the exercise of such control over or the imposition of such requirements on a person, and

(c) such control or requirements caused the site to become, in whole or in part, a contaminated site.

in which case, the trustee is designated responsible personally for remediation of the contaminated site and is not exempt personally from an order under section 81 or 83 of the Act.

(3) For the purposes of section 45 (1) (e) of the Act, a trustee is designated as responsible, in his or her role as a trustee and to the extent of the trust, for remediation of a contaminated site, and is subject to an order under section 81 or 83 of the Act in relation to the contaminated site in that role and to that extent.

(3.1) For the purposes of subsection (3), **"extent of the trust"** means

(a) the limit of the available funds, and

(b) the period commencing with the trustee's appointment and ending with a termination under subsection (5).

(4) As soon as a trustee is aware that the available funds are insufficient to comply with applicable remediation requirements under Part 4 of the Act or any other order made under the Act, the trustee must immediately give notice to a director of the trustee's inability to meet the order or remediation requirements out of the available funds.

(5) A trustee's obligation under subsection (3) terminates when any of the following occurs:

(a) the trustee gives notice to a director under subsection (4);

(b) the trustee pays or transfers the trust property to a director, the minister or the Minister of Finance, in trust, for remediation of the contaminated site;

(c) subject to subsection (6), the trustee disposes of a contaminated site to a person who

(i) agrees, in writing, to accept responsibility for remediation, or

(ii) enters into a voluntary remediation agreement with a director;

(d) subject to subsection (6), the trustee disposes of a contaminated site to a person in circumstances in which, at the time of disposition,

(i) there is no requirement on the trustee to provide a site profile or, if there is such a requirement, the trustee has complied with it,

(ii) there is no record of contamination of the site on the site registry, and

(iii) the trustee has no knowledge of any contamination at the site;

(e) subject to subsection (7), the trustee is removed or discharged by the court or otherwise ceases to be a trustee.

(6) When a trustee disposes of part of a contaminated site in accordance with subsection (5) (c) or (d), the trustee's obligation under subsection (3) is terminated only with respect to that part.

(7) On application by a trustee or a director, a court may order that the obligation of the trustee under Part 4 of the Act or section 81 or 83 of the Act is terminated, with or without conditions, or make any order it considers just, but this subsection does not provide the court with the power to set aside provincial legislation.

(8) A trustee who applies to a court under subsection (7) must give notice to a director, and the director may make representations to the court respecting the application.

(9) A trustee who administers trust property for which there is an entry on the site registry indicating that the trust property

(a) has been determined, in whole or in part, to be a contaminated site under section 44 of the Act, or

(b) is otherwise expressly stated to be, in whole or in part, a contaminated site

must give written notice to a director of any proposed disposition of the contaminated site, or part of the contaminated site, by the trustee under subsection (5) (c) and (d) at least 15 days before the date of the proposed disposition.

(10) A trustee may, within 30 days after receiving a remediation order, a pollution abatement order or a pollution prevention order under the Act, give written notice to a director that, during that 30 day period, the trustee is determining or assessing

(a) the ability of the trustee to comply with the order,

(b) the responsibilities which would be incurred by the trustee in administering the trust property, and

(c) whether the trustee should seek to terminate the appointment under subsection (5),

and, during that period and subject to subsections (11) to (13), the trustee is not required to comply with the remediation order, pollution abatement order or pollution prevention order.

(11) A trustee may, upon giving written notice to a director, apply to the court for an extension of the 30 day period described in subsection (10), but this provision does not apply if the director agrees to the extended time proposed by the trustee.

(12) The court, on hearing an application under subsection (11), must not order an extension unless it determines that an extension is reasonably necessary to permit the trustee to ascertain the environmental condition of the site and the extent and cost of fulfilling the duties arising from the operation or control of the site and compliance with the director's order.

(13) If a director requires compliance with a remediation order, a pollution abatement order or a pollution prevention order within the 30 day period to reduce the threat of a contaminated site, the director may, upon giving written notice to the trustee, seek a court order to reduce the 30 day period described in subsection (10), but this provision does not apply if the trustee agrees to the reduced time proposed by the director.

(14) Despite subsection (5) (b), a director may agree to the continued involvement of a trustee in the ongoing trust administration duties of the trust property.

[am. B.C. Regs. 322/2004 and 324/2004, s. 28.]

Persons not responsible – clarification of innocent acquisition exemption

28 When judging whether an owner or operator has, under section 46 (1) (d) (i) (C) of the Act, undertaken all appropriate inquiries into the previous ownership and uses of a site and undertaken other investigations consistent with good commercial or customary practice at the time of acquisition of the property, consideration must be given to all of the following:

(a) any personal knowledge or experience of the owner or operator respecting contamination at the time of the acquisition;

(b) the relationship of the actual purchase price to the value of the property if it was uncontaminated;

(c) commonly known or reasonably ascertainable information about the property at the time of the acquisition;

(d) any obvious presence of contamination or indicators of contamination or the feasibility of detecting such contamination by appropriate inspection at the time of the acquisition.

[am. B.C. Regs. 322/2004 and 324/2004, s. 29.]

Persons not responsible – modification of lessor liability under section 46 (1) (e) of the Act

29 Subject to section 30, an owner of real property at a contaminated site is exempt from section 46 (1) (e) of the Act if

(a) the owner voluntarily leased, rented or otherwise allowed use of the real property by another person,

(b) the owner knew or had a reasonable basis for knowing that the other person described in paragraph (a) planned or intended to use the real property to dispose of, handle or treat a substance in a manner that, in whole or in part, would cause the site to become a contaminated site, and

(c) the person described in paragraph (a) used the real property to dispose of, handle or treat a substance in a manner that, in whole or in part, caused the site to become a contaminated site.

[am. B.C. Regs. 322/2004 and 324/2004, s. 30.]

Persons not responsible – lessors who provide surface access for subsurface use

30 A lessor who, under the *Petroleum and Natural Gas Act*, enters into a surface lease agreement with a lessee that allows the lessee access to subsurface resources is, for the purposes of section 46 (1) (n) of the Act, designated not responsible for remediation of contamination caused by the lessee if the agreement requires the lessee to covenant and agree to indemnify and save harmless the lessor from any liabilities, damages, costs, claims, suits or actions arising out of the lessee's operations on the lessor's lands, except liabilities, damages, costs, claims, suits or actions arising out of the gross negligence or wilful misconduct of the lessor, its agents, servants, employees or contractors.

[am. B.C. Regs. 322/2004 and 324/2004, s. 31.]

Persons responsible – municipalities

31 For the purposes of 45 (1) (e) of the Act, a government body that acquires an ownership interest in a contaminated site by a municipal boundary extension or a municipal amalgamation initiated by the municipality is designated responsible for remediation of the contaminated site.

[en. B.C. Regs. 322/2004 and 324/2004, s. 32.]

Persons not responsible – transporters of contaminated soil

32 (1) A transporter of contaminated soil who is otherwise in compliance with the Act and the regulations is, for the purposes of section 46 (1) (n) of the Act, designated not responsible for remediation of a site which becomes contaminated by disposal or deposit of contaminated soil if there has been any misrepresentation to the transporter by

(a) a person who arranged for the transportation of the contaminated soil respecting the quality or degree of contamination of the soil, or

(b) a person who agrees to receive the contaminated soil respecting the quality, degree of contamination or acceptability of the disposal location in accordance with any requirement in Part 8.

(2) Subsection (1) applies only if the transporter acted in good faith and without negligence.

[am. B.C. Regs. 322/2004 and 324/2004, s. 33.]

Persons not responsible – contamination which is subject to a wide area remediation plan

33 (1) Subject to subsection (2), a person who is a current or previous owner or operator of a contaminated site is, for the purposes of section 46 (1) (n) of the Act, designated not responsible for remediation of the site if the site is contaminated only by substances being managed in accordance with a wide area remediation plan.

(2) Subsection (1) does not apply to a person who caused the contamination which is the subject of a wide area remediation plan.

[am. B.C. Regs. 322/2004 and 324/2004, s. 33.]

34 Repealed. [B.C. Regs. 322/2004 and 324/2004, s. 34.]

Determining compensation under section 47 (5) of the Act

35 (1) For the purposes of determining compensation payable under section 47 (5) of the Act, a defendant named in a cost recovery action under that section may assert all legal and equitable defences, including any right to obtain relief under an agreement, other legislation or the common law.

(2) In an action between 2 or more responsible persons under section 47 (5) of the Act, the following factors must be considered when determining the reasonably incurred costs of remediation:

(a) the price paid for the property by the person seeking cost recovery;

(b) the relative due diligence of the responsible persons involved in the action;

(c) the amount of contaminating substances and the toxicity attributable to the persons involved in the action;

(d) the relative degree of involvement, by each of the persons in the action, in the generation, transportation, treatment, storage or disposal of the substances that caused the site to become contaminated;

(e) any remediation measures implemented and paid for by each of the persons in the action;

(f) other factors relevant to a fair and just allocation.

(3) For the purpose of section 47 of the Act, any compensation payable by a defendant in an action under section 47 (5) of the Act is a reasonably incurred cost of remediation for that responsible person and the defendant may seek

contribution from any other responsible person in accordance with the procedures under section 4 of the *Negligence Act.*

(4) In an action under section 47 (5) of the Act against a director, officer, employee or agent of a person or government body, the plaintiff must prove that the director, officer, employee or agent authorized, permitted or acquiesced in the activity which gave rise to the cost of remediation.

(5) In an action under section 47 (5) of the Act, a corporation is not liable for the costs of remediation arising from the actions of a subsidiary corporation unless the plaintiff can prove that the corporation authorized, permitted or acquiesced in the activity of the subsidiary corporation which gave rise to the costs of remediation.

[am. B.C. Regs. 322/2004 and 324/2004, s. 35.]

Remediation orders – timing for consent and notice

36 (1) Subject to subsection (3), a director who receives

(a) a site profile under section 40 (7) of the Act, and

(b) a request under section 48 (10) of the Act for notice respecting whether a remediation order will be issued,

must provide the notice within 10 days after receiving the site profile.

(2) Subject to subsection (3), if a director is requested by a person to give consent under section 48 (8) of the Act, the director must consider the request and give written notice of the decision to the person within 10 days after receiving the site profile.

(3) If a director requires more than 10 days to obtain or consider information relevant to the request under subsection (1) or (2), the director must

(a) give notice to the person making the request under subsection (1) (b) or (2) that more time is required, and

(b) state, in the notice given under paragraph (a), how much more time is required.

(4) Despite subsection (3), a director must not take more than 30 days to review and respond to

(a) a person's request for consent under section 48 (8) of the Act, or

(b) a person's request for notice under section 48 (10) of the Act respecting whether a remediation order will be issued.

[am. B.C. Regs. 322/2004 and 324/2004, s. 36.]

Remediation orders – diminishing or reducing assets

37 A person is exempt from the duty not to diminish or reduce assets under section 48 (8) or (10) of the Act to the extent that the person does any of the following:

(a) converts or exchanges assets from one class or kind to another class or kind including, without limitation, allowing the sale and conversion of inventory to a receivable or the collection and conversion of a receivable into cash;

(b) uses assets to satisfy liabilities as they become due, including paying fair value for supplies, services or other benefits conferred on the person, or on a receiver as defined in section 26 or a trustee as defined in section 27, carrying out the management function with respect to the asset;

(c) makes or accepts payments on loans or advances, revolves an operating line of credit, makes demand on a term or operating loan, reduces the maximum available under an operating line of credit or refuses to advance further funds;

(d) processes natural resources, including crude oil, natural gas and timber;

(e) installs infrastructure to provide services;

(f) provides services to customers;

(g) is a receiver as defined in section 26 or trustee as defined in section 27 who complies with section 26 or 27 respectively;

(h) realizes on a mortgage, lien, charge or other security interest.

[am. B.C. Regs. 322/2004 and 324/2004, s. 37.]

Minor contributors

38 A responsible person applying for minor contributor status under section 50 of the Act must provide information to a director, to the extent the information is reasonably ascertainable, respecting all of the following:

(a) the condition of the contaminated site at the time the applicant

(i) became an owner or operator at the site, and

(ii) if applicable, ceased to be an owner or operator at the site;

(b) any activities and land uses carried out by the applicant while located at the site;

(c) the nature and quantity of contamination at the site attributable to the applicant;

(d) all measures taken by the applicant to prevent or remediate contamination;

(e) contamination on the site or released from the site which is attributable to

(i) the applicant, and

(ii) other persons at the site;

(f) all measures taken by the applicant to exercise due diligence with respect to any substance that, in whole or in part, caused the site to become a contaminated site, including any measures taken to prevent foreseeable acts of third parties which may have contributed to the contamination at the site.

[am. B.C. Regs. 322/2004 and 324/2004, s. 38.]

Voluntary remediation agreements

39 (1) A responsible person requesting a voluntary remediation agreement in respect of a contaminated site, including a wide area site, must provide all of the following information to a director:

(a) a detailed site investigation;

(b) a remediation plan;

(c) a detailed description of the responsible person's past and present activities on the site, including the amount and characteristics of contamination at the site attributable to that person's activities;

(d) an estimate of the total cost of remediation;

(e) an estimate of the responsible person's share of the total cost of remediation and justification for the estimate;

(f) the name and address of any other person who the responsible person has reason to believe may, with respect to the subject contaminated site, be a responsible person;

(g) a statement describing the responsible person's ability and plans to conduct and finance the remediation.

(2) Repealed. [B.C. Regs. 322/2004 and 324/2004, s. 39 (c).]

(3) Before a director enters into a voluntary remediation agreement with a responsible person, the director must notify any persons identified as other potential responsible persons under subsection (1) (f) and allow those persons not less than 15 days to give notice if they wish to review or make representations to the director about the proposed voluntary remediation agreement.

[am. B.C. Regs. 322/2004 and 324/2004, s. 39.]

PART 8 – CONTAMINATED SOIL RELOCATION

Class of sites defined for Part 8

40 (1) In this Part:

"receiving site" means the site to which contaminated soil is or will be relocated under a contaminated soil relocation agreement;

"source site" means the site from which contaminated soil is or will be relocated under a contaminated soil relocation agreement.

(2) For the purposes of this Part, a source site is a contaminated site if

(a) the concentration of a substance in the soil at the source site is greater than the concentration specified for that substance and the use of the receiving site in, as applicable,

(i) Column II of Schedule 7, or

(ii) Column III of Schedule 10,

(b) the soil at the source site contains any substance not specified in Schedule 7 with a concentration greater than the concentration specified for that substance for residential land use in a director's interim standard,

(c) the soil at the source site contains hazardous waste, or

(d) the receiving site is used or may reasonably be used for agricultural land use and the soil at the source site contains any substance with a concentration greater than the concentration specified for that substance in Column III of Schedule 7 or in a director's interim standard for agricultural land use, or

(e) the concentration of a substance in vapour at the source site is greater than the concentration specified in Schedule 11 for that substance and the land use of the receiving site.

(3) Despite subsection (2), the relocation of contaminated soil from a contaminated site is exempt from section 55 of the Act if section 10 of the Act applies to the transportation of the contaminated soil.

[en. B.C. Regs. 322/2004 and 324/2004, s. 40; am. B.C. Reg. 343/2008, s. 8.]

Exemptions for soil relocation and disposal

41 (1) Disposal of the following classes of soil is exempt from section 6 (2) and (3) of the Act

(a) soil in which the concentrations of all substances are less than the concentration specified for those substances in

(i) Column IV of Schedule 7, or

(ii) a director's interim standard;

(b) contaminated soil relocated in accordance with a contaminated soil relocation agreement under section 55 (2) of the Act.

(2) A regional district is not required to include soil in its waste management plan for the management of municipal solid waste.

(3) The relocation of contaminated soil is exempt from section 55 (1) of the Act and this Part in the following circumstances:

(a) relocation of contaminated soil on the site at which the contaminated soil originates;

(b) relocation of contaminated soil which is contaminated due only to the presence of the local background concentration of a substance, but only if the contaminated soil is relocated within the geographic area having soil with this local background level of contamination;

(c) relocation of contaminated soil within an area subject to a wide area remediation plan approved by a director, but this exemption applies only with respect to the contaminants which are the subject of the wide area remediation plan;

(d) relocation of contaminated soil originating from emergency cleanup of a spill, but only if notice of the location to which the soil has been relocated is provided to a director within 3 days of the soil relocation;

(e) relocation of soil to an authorized hazardous waste storage or treatment facility;

(f) relocation of contaminated soil to a destination outside of British Columbia;

(g) relocation of contaminated soil from a specific site not exceeding 5 cubic metres in volume;

(h) relocation of contaminated soil to federal property.

[am. B.C. Regs. 244/99, s. 10; 322/2004 and 324/2004, s. 41.]

Soil relocation to a landfill without a contaminated soil relocation agreement

42 (1) If a site is authorized for landfill waste disposal in any of the ways referred to in section 55 (5) (a), (b) or (c) of the Act but the authorization does not expressly allow the deposit of contaminated soil, the deposit of contaminated soil in the landfill is exempt from section 55 (1) of the Act if

(a) the owner of the site authorized for landfill waste disposal has filed a written statement with a director indicating the intended future use of the site, and

(b) the written statement indicates that one of the following applies:

(i) the site will be used for an agricultural land use, and the concentration of any substance in the contaminated soil is not greater than or equal to

(A) the concentration for that substance specified in Column II of Schedule 4, or

(B) the lowest concentration for that substance specified in Column II of Schedule 5;

(ii) the site will be used for an urban park land use, and the concentration of any substance in the contaminated soil is not greater than or equal to

(A) the concentration for that substance specified in Column III of Schedule 4, or

(B) the lowest concentration for that substance specified in Column III of Schedule 5;

(iii) the site will be used for a commercial land use, and the concentration of any substance in the contaminated soil is not greater than or equal to

(A) the concentration for that substance specified in Column V of Schedule 4, or

(B) the lowest concentration of that substance specified in Column V of Schedule 5;

(iv) the site will be used for an industrial land use, and the concentration of any substance in the contaminated soil is not greater than or equal to

(A) the concentration for that substance specified in Column VI of Schedule 4, or

(B) the lowest concentration for that substance specified in Column VI of Schedule 5;

(v) the site will be used only for waste disposal, but the contaminated soil must not be a hazardous waste unless the hazardous waste is authorized for disposal under the Hazardous Waste Regulation.

(2) Subsection (1) does not authorize the deposit of soil if the deposit would be contrary to an authorization given under the Act.

(3) Subsection (1) does not prevent an owner of a site for which an authorization has been given under the Act from refusing to accept any type of contaminated soil.

[am. B.C. Regs. 322/2004 and 324/2004, s. 42.]

Application for a contaminated soil relocation agreement

43 (1) If a contaminated soil relocation agreement is required under section 55 of the Act, an application must be made using the form set out in Schedule 8.

(2) A director may require that an application described in subsection (1) for relocating soil from a contaminated site that is classified under a director's protocol as a low or moderate risk site include a report and the recommendation of an approved professional that the application be approved.

(3) If the director does not impose a requirement under subsection (2), the application may include a report and the recommendation of an approved professional in respect of whether the application should be approved.

(4) If a director rejects the recommendation of an approved professional provided under subsection (2) or (3), the director, within 15 days of the rejection, must provide written reasons to

(a) the applicant, and

(b) the professional association, in the Province, of which the approved professional is a member.

(5) Subject to section 40 (3), an applicant for a contaminated soil relocation agreement respecting the relocation of soil contaminated with a substance specified in Schedule 10 must complete an environmental risk assessment report for the deposit site that demonstrates to the satisfaction of the director that the deposit of the contaminated soil at the receiving site will not cause

(a) contamination of the receiving site, or

(b) risks to human health or the environment

greater than the standards prescribed in section 18 or 18.1, as applicable.

[am. B.C. Regs. 17/2002, s. 9; 322/2004 and 324/2004, s. 43.]

Conditions pertaining to a contaminated soil relocation agreement

44 Before soil relocation begins in accordance with a contaminated soil relocation agreement, the applicant under section 43 must

(a) ensure that a copy of the notice from a director as required by section 55 (9) of the Act has been received by

(i) the municipality from which the soil is removed, and

(ii) the municipality in which the receiving site is situated, or

(b) wait at least 4 business days from the time of receiving the approved contaminated soil relocation agreement before moving any contaminated soil.

[am. B.C. Regs. 17/2002, s. 10; 322/2004 and 324/2004, s. 44.]

Numerical standards for contaminated soil relocation agreements

45 (1) For the purpose of section 55 (3) (a) of the Act, the prescribed numerical standards are the standards set out in subsections (2) and (3).

(2) Subject to subsection (3), contaminated soil may be relocated to a receiving site which is used or will be used for agricultural, commercial, industrial, urban park or residential land use if the contaminated soil does not contain any substance with a concentration greater than or equal to

(a) the applicable generic numerical soil standard,

(b) the lowest value of the applicable matrix numerical soil standards, or

(c) a director's interim standard.

(3) A receiving site is considered to be acceptable if the contaminated soil does not contain any substance with a concentration exceeding

(a) the applicable site-specific numerical standard, or

(b) the local background concentration of that substance in the soil at the deposit site.

[am. B.C. Regs. 322/2004 and 324/2004, s. 45.]

Risk-based standards for contaminated soil relocation agreements

46 (1) For the purposes of section 55 (3) (a) of the Act, the prescribed risk-based standards are the standards set out in sections 18 and 18.1 of this regulation.

(2) If risk assessment has been used to evaluate site conditions, a director may, as part of a contaminated soil relocation agreement, include terms and conditions for

(a) monitoring impacts of the substances in the contaminated soil to be deposited,

(b) inspecting and maintaining any works considered necessary to secure the contamination at the receiving site and to protect human health or the environment,

(c) site registry notations, and

(d) preparation and registration of a covenant under section 219 of the *Land Title Act*.

[am. B.C. Regs. 322/2004 and 324/2004, s. 46.]

Part 9 – Remediation Plan Approval and Completion

Approval in principle

47 (1) A responsible person may apply for an approval in principle of a proposed remediation plan under section 53 (1.1) of the Act by submitting a request in writing to a director and attaching or ensuring the director already has

(a) copies of any preliminary and detailed site investigation reports prepared for the site,

(b) copies of any other site investigation and assessment reports prepared for the site, and

(c) the proposed remediation plan for which the approval in principle is sought.

(1.1) A responsible person making an application described in subsection (1) or (4) respecting a site classified under a director's protocol as a low or moderate risk site must specify in writing whether the application shall be processed

(a) in the manner for low or moderate risk sites, or

(b) in the manner for medium, intermediate or high risk sites.

(1.2) A responsible person making an application described in subsection (1) or (4) respecting a site classified under a director's protocol as a medium, intermediate or high risk site, or not classified under a director's protocol, may specify in writing that the application be processed in the manner for low or moderate risk sites.

(1.3) A director may reject an application for which a written specification is made under subsection (1.1) (a) or (1.2) if the director is satisfied that, for the likely human health and environmental risks to be properly assessed, a site covered by the application must be processed in the manner for a medium, intermediate or high risk site before a decision can properly be made whether or not to issue an approval in principle under section 53 (1.1) of the Act.

(1.4) A director may require that an application for an approval in principle in relation to a contaminated site, including a wide area site, that is classified under a director's protocol as a low or moderate risk site include a report and the recommendation of an approved professional that the application be approved.

(1.41) If the director does not impose a requirement under subsection (1.4), the application may include a report and the recommendation of an approved professional in respect of whether the application should be approved and, if so, section 49.1 applies.

(1.5) If the director rejects the recommendation of an approved professional provided under subsection (1.4) or (1.41), the director, within 15 days of the rejection, must provide written reasons to

(a) the applicant, and

(b) the professional association, in the Province, of which the approved professional is a member.

(2) Before issuing an approval in principle under section 53 (1.1) of the Act, a director may request any additional information and reports the director considers necessary to assess whether the standards, criteria or conditions prescribed in section 17, 18 or 18.1 of this regulation are likely to be complied with when the proposed remediation plan has been implemented.

(3) When issuing an approval in principle under section 53 (1.1) of the Act, a director may specify conditions for any or all of the following:

(a) implementing some or all of the activities described in a proposed remediation plan;

(b) risk assessment and risk management measures which may be required for part or all of a site for any reason;

(c) preparation, registration, and criteria for final discharge of a covenant under section 219 of the *Land Title Act* as may be required under section 48;

(d) carrying out confirmatory sampling and analysis after treatment or removal of contamination;

(e) testing and monitoring to evaluate the quality and performance of any remediation measures;

(f) any financial security required by the director in accordance with section 48;

(g) any actions which the director could require in a permit under section 14 of the Act.

(4) A responsible person may apply under subsection (1) for approval in principle of a wide area remediation plan.

(5) A director may issue an approval in principle for a wide area site remediation plan if the remediation plan complies with all the following:

(a) the goal of the plan is to satisfy the applicable criteria, standards or conditions prescribed in this regulation;

(b) environmental risks are addressed in the plan to the satisfaction of the director;

(c) the plan provides for the monitoring and assessment of public health and environmental parameters the director considers appropriate for evaluating progress in satisfying the applicable criteria, standards or conditions in relation to the contaminants specified in the plan.

(6) An approval in principle for a remediation plan issued under this section is a permit within the meaning of the Act for any facility which

(a) is located on the site to which the remediation plan applies,

(b) is specifically identified in the remediation plan, and

(c) is used to manage any contamination which is located on the site for which the remediation plan applies.

(7) In relation to an application for an approval in principle described in subsection (6), the Public Notification Regulation does not apply with respect to the facility, except for a hazardous waste treatment or disposal project under that regulation.

[am. B.C. Regs. 244/99, s. 11; 322/2004 and 324/2004, s. 47; 343/2008, s. 4.]

Covenants and financial security – general principles

48 (1) A director may require that a covenant be registered under section 219 of the *Land Title Act* for the purpose of any or all of

(a) setting conditions regarding works, and their inspection and maintenance at a site, considered necessary to secure the contamination at the site and to protect human health or the environment,

(b) setting conditions for restricting disturbance of soils, or preventing a changed use of a site, which would invalidate a risk assessment and potentially increase exposure of human and environmental receptors to site contamination,

(c) specifying requirements to monitor for movement or impacts of contamination, and

(d) indemnifying the Crown or its agents or employees from losses, charges, actions or suits related to contamination remaining at the site,

if these purposes are unlikely to be satisfactorily met by the entry of notations in the site registry.

(2) A person may request that a director have a covenant registered under the authority of subsection (1) discharged if the person believes that the conditions which gave rise to the covenant no longer exist or have been complied with.

(3) A director must have a covenant registered under the authority of subsection (1) discharged when

(a) remediation has been carried out in accordance with the numerical standards for remediation set out in section 17, and

(b) the director issues a certificate of compliance for the remediation referred to in paragraph (a).

(4) A director may require financial security if

(a) a significant risk could arise from conditions at a contaminated site because

(i) the site is left in an unremediated or partially remediated state, or

(ii) the site is remediated but requires ongoing management and monitoring because contamination is left at the site, and

(b) a covenant under section 219 of the *Land Title Act* is, in the opinion of the director, unlikely to be an effective means to ensure that necessary remediation is carried out at the site.

(5) The financial security required by a director under subsection (4) may be for the purpose of any or all of the following:

(a) ensuring that a responsible person completes remediation or guarantees performance to the satisfaction of the director;

(b) providing funds to further treat, remove or otherwise manage contamination;

(c) complying with the applicable legislation and financial management and operating policies of British Columbia.

[am. B.C. Regs. 322/2004 and 324/2004, s. 48.]

Requests for certificates

49 (1) A person may apply for a certificate of compliance under section 53 (3) of the Act by submitting a request in writing to a director.

(2) In support of the application referred to in subsection (1), the person requesting the certificate of compliance must provide to the director the reports described in paragraphs (a) and (b) and ensure that the director has information on the items described in paragraphs (c) and (d):

(a) preliminary and detailed site investigation reports;

(b) a confirmation of remediation report which describes sampling and analyses carried out after remediation of the contamination including

(i) a description of sampling locations and methods used,

(ii) a schedule of sampling conducted, and

(iii) a summary and evaluation of results of field observations and of field and laboratory analyses of samples;

(c) compliance with all conditions set by a director under section 47 (3) if an approval in principle was issued prior to remediation;

(d) the quality and performance of remediation measures on completion of remediation, including compliance with the remediation standards, criteria or conditions prescribed in this regulation.

(3) A person making an application described in subsection (1) respecting a site classified under a director's protocol as a low or moderate risk site must specify in writing whether the application shall be processed

(a) in the manner for low or moderate risk sites, or

(b) in the manner for medium, intermediate or high risk sites.

(4) A person making an application described in subsection (1) respecting a site classified under a director's protocol as a medium, intermediate or high risk site, or not classified under a director's protocol, may specify in writing that the application be processed in the manner for low or moderate risk sites.

(5) A director may reject an application for which a written specification is made under subsection (3) (a) or (4) if the director is satisfied that, for the likely human

health and environmental risks to be properly assessed, a site covered by the application must be processed in the manner for a medium, intermediate or high risk site before a decision can properly be made whether or not to issue a certificate under section 53 (3) of the Act.

(6) A director may require that an application described in subsection (1) for a certificate of compliance in relation to a contaminated site that is classified under a director's protocol as a low or moderate risk site include a report and the recommendation of an approved professional that the application be approved.

(7) If the director does not impose a requirement under subsection (6), the application may include a report and the recommendation of an approved professional in respect of whether the application should be approved and, if so, section 49.1 applies.

(8) If a director rejects the recommendation of an approved professional provided under subsection (6) or (7), the director, within 15 days of the rejection, must provide written reasons to

(a) the applicant, and

(b) the professional association, in the Province, of which the approved professional is a member.

[am. B.C. Regs. 244/99, s. 12; 17/2002, s. 11; 322/2004 and 324/2004, s. 49.]

Director may consider recommendations of approved professionals

49.1 For the purpose of determining the manner and extent of the review that must be undertaken of the work on which an application referred to in section 15 (6), 43 (3), 47 (1.41) or 49 (7), a director may consider whether the application includes the recommendation of an approved professional in respect of the decision requested in the application.

[en. B.C. Regs. 322/2004 and 324/2004, s. 50.]

Financial security as a condition of a certificate

50 (1) If financial security is a condition of an approval in principle for a remediation plan for a particular site, all terms of the security requirement must be met before a director may issue a certificate of compliance for that site.

(2) If a director requires financial security in accordance with section 53 (3) (d) of the Act and section 48 (4) of this regulation, before the director issues a certificate of compliance, a responsible person must

(a) provide, to the director, satisfactory evidence of the availability of the required security, and

(b) provide any required contractual agreement relating to the terms and conditions of the security, signed by the responsible person.

[am. B.C. Regs. 322/2004 and 324/2004, s. 51.]

Approvals in principle and certificates for part of a site

51 If a responsible person applies for and a director issues an approval in principle or a certificate of compliance for a part of a contaminated site as authorized by section 53 (6) of the Act, the director must

(a) provide to the registrar information respecting the part of the site to which the approval in principle or certificate of compliance applies, and

(b) in accordance with section 48 of this regulation, consider whether a covenant under section 219 of the *Land Title Act* or financial security is required relative to one or more parts of the site not remediated.

[en. B.C. Regs. 322/2004 and 324/2004, s. 52.]

Duties of director respecting approvals in principle and certificates of compliance

52 (1) A director need not consider an application for an approval in principle or certificate of compliance until all required information has been provided to the director for review.

(2) A director must send a copy of an approval in principle or certificate of compliance issued by the director in respect of a site to the municipality in which the subject contaminated site is located.

[en. B.C. Regs. 322/2004 and 324/2004, s. 53.]

PART 10

53 Repealed. [B.C. Regs. 322/2004 and 324/2004, s. 54.]

PART 11 – ALLOCATION PANEL

Allocation panel procedures

54 (1) If a director establishes an allocation panel to provide an opinion under section 49 (2) of the Act, the panel

(a) must consider written and oral information submitted to it by the person who requested that a panel be established, and

(b) may consider other written and oral information submitted to it by any other person.

(2) Subsection (1) applies only if the information pertains to one or more of the factors described in section 49 (3) of the Act.

(3) An allocation panel established under section 49 (2) of the Act must give advance notice of its planned deliberations to any person who the panel believes, on reasonable grounds, may be a responsible person.

(4) An allocation panel established under section 49 (2) of the Act may determine its own procedures to be used in rendering an opinion, but the procedures must not conflict with a director's protocol.

(5) A person who wishes to withdraw a request to obtain an opinion from an allocation panel must notify the director in writing.

(6) The director who receives the notice referred to in subsection (5) may request that the allocation panel render an opinion on the basis of any information submitted to it before the withdrawal of the request.

(7) A person who withdraws a request to obtain an opinion from an allocation panel is liable for the panel fees and costs incurred by the panel before the time of receipt by the director of the notice referred to in subsection (5).

(8) An allocation panel must, when rendering an opinion, state the information relied on to render the opinion, including the extent of information and facts available to it and any significant deficiencies in the information provided to it.

[am. B.C. Regs. 322/2004 and 324/2004, s. 55.]

Part 12 – Public Consultation and Review

Director's powers

55 (1) When ordering public consultation or a review under section 52 (1) of the Act, a director may require a person who proposes to carry out remediation to do any or all of the following:

(a) post a notice of the proposed remediation, in a manner acceptable to the director, in a location visible to the public on the site or property which is the subject of the proposed remediation;

(b) publish, as specified by the director, in 2 or more editions of one or more newspapers with circulation local to the subject site, a notice of availability of information respecting

(i) site investigations,

(ii) evaluation of remediation alternatives,

(iii) remediation plans,

(iv) site registry identification numbers, and

(v) any other documentation as may be specified by the director;

(c) serve, on any person who, in the opinion of the director, may be adversely affected by the proposed remediation, a notice of availability of information respecting

(i) site investigations,

(ii) evaluation of remediation alternatives,

(iii) remediation plans, and

(iv) any other documentation that may be specified by the director;

(d) undertake other notification requirements specified by the director;

(e) hold public information meetings and use other public consultation methods, including providing public access to reports and studies at local public libraries, that the director specifies.

(2) A director may, when considering the need for public consultation or review of remediation of a contaminated site under section 52 (2) of the Act, require a person who proposes to remediate the contaminated site to submit a report to the director which describes past and proposed public consultations regarding the contaminated site under consideration.

(3) After issuance of an approval in principle or a certificate of compliance, a director must not order public consultation with respect to the remediation which is the subject of the approval in principle or certificate of compliance, but this does not prevent the director from ordering the person to provide information to the public about the remediation.

[am. B.C. Regs. 322/2004 and 324/2004, s. 56.]

PART 13 – INDEPENDENT REMEDIATION PROCEDURES

56 Repealed. [B.C. Regs. 322/2004 and 324/2004, s. 57.]

Notifications for independent remediation

57 (1) A responsible person who carries out independent remediation of a site pursuant to section 54 (1) of the Act must, if the responsible person knows that one or more substances has migrated or is likely to have migrated to a neighbouring site and is or is likely causing contamination of the neighbouring site, provide the notification described in subsection (1.1).

(1.1) The responsible person must provide written notification to the person or persons who own the neighbouring site and a copy of the notification to a director, within 15 days after the responsible person becomes aware of the migration or likely migration of each substance to the neighbouring site, giving

(a) the name and address of the person or persons who own the site or sites to be remediated,

(b) the name, address and telephone number of the person to contact regarding the remediation activities to be undertaken at the site, and

(c) a general description of the nature of the migration or likely migration of each substance.

(1.2) A person who has a duty to provide notification to a director of commencement of independent remediation under section 54 (2) (a) of the Act must provide written notice to a director within 3 days after the commencement of any remediation activity involving handling, management or treatment of contamination, other than activity which has the purpose of obtaining results for investigation purposes, giving

(a) the legal description, including parcel identifier numbers and latitudinal and longitudinal references, and civic address of the parcel or parcels of land at the site to be remediated,

(b) the name and address of the person or persons who own the parcel or parcels of land at the site to be remediated,

(c) the name, address and telephone number of the person to contact regarding the remediation activities to be undertaken at the site, and

(d) a general description of the nature of the contaminated site and the remediation being conducted.

(2) In the case of independent remediation arising from emergency response to a spill of a polluting substance, a person is exempt from the requirements of subsection (1.2) if the spill has been reported in accordance with the requirements of section 79 of the Act and the Spill Reporting Regulation.

[am. B.C. Regs. 17/2002, s. 13; 322/2004 and 324/2004, s. 58; 201/2007, s. 5.]

PART 14 – SITE INVESTIGATIONS

Preliminary site investigations

58 (1) Subject to subsections (3) and (4) and subject to the terms and conditions of a remediation order, an order to investigate under section 41 of the Act or a pollution abatement order, a preliminary site investigation consists of the following 2 stages:

(a) a first stage which includes

(i) a review of site historical use and records, including a search of the site registry, to determine current and past activities or uses, accidents and spills, and practices and management relating to potential contamination at the site and neighbouring sites,

(ii) one or more site reconnaissance visits with visual inspection of buildings, property, equipment, land, surface water and biota for indicators or presence of contamination,

(iii) interviews with current or former owners, occupants, neighbours, directors, employees and government officials who can, with reasonable attempts, be contacted respecting information on activities which may have caused contamination,

(iv) any information as to which substances on the site may cause contamination, and

(v) activities described in a director's protocol,

but does not include sampling of relevant environmental media or investigation of subsurface conditions;

(b) a second stage which allows determination of the general location and degree of any contamination and which includes

(i) sampling of relevant environmental media,

(ii) laboratory or field instrumental analysis of sampled and selected environmental media for substances which may cause or threaten to cause contamination,

(iii) other intrusive or nonintrusive methods of investigating subsurface conditions,

(iv) assessment of substance concentrations relative to the standards in the Hazardous Waste Regulation and the criteria, standards and conditions prescribed in this regulation, and

(v) activities described in a director's protocol.

(2) A person who carries out a preliminary site investigation may proceed sequentially through the 2 stages described in subsection (1) (a) and (b) or may proceed in a manner which combines the 2 stages.

(3) A person who has been ordered to undertake a preliminary site investigation and who has proceeded using a staged approach in accordance with subsection (1) may

(a) present to a director a report of the first stage of a preliminary site investigation, and

(b) seek consent of the director that the second stage of the preliminary site investigation is not required.

(4) A person who has been ordered to undertake a preliminary site investigation is not required to comply with the terms of the order if the person obtains the consent of a director to prepare a detailed site investigation which addresses the subject matter of the ordered preliminary site investigation.

(5) A report of a preliminary site investigation prepared under section 41 of the Act must do all of the following:

(a) indicate whether the investigation proceeded in stages as described in subsection (1) and, if so, the objectives, methods and procedures which were used in each stage;

(b) describe the relationship of the 2 stages and, in particular, explain how the methods of investigation and findings of the first stage were used to design and carry out the second stage;

(c) provide a compilation and presentation of all field observations, field measurement and analytical data and laboratory analytical data;

(d) provide interpretation and evaluation of the data in a manner which clearly shows

(i) the contamination in soil, groundwater, sediments and surface water in relation to standards in the Hazardous Waste Regulation and the criteria, standards and conditions prescribed in this regulation, and

(ii) the general location and degree of contamination, including migration which may have occurred to adjoining properties.

[am. B.C. Regs. 244/99, s. 15; 322/2004 and 324/2004, s. 59.]

Detailed site investigations

59 (1) A person who is ordered to undertake a detailed site investigation under section 41 (1) of the Act must do one of the following:

(a) carry out a preliminary site investigation before the detailed site investigation;

(b) conduct a detailed site investigation in a manner which ensures that the information referred to in section 58 (1) is obtained.

(2) A detailed site investigation must provide information necessary for conducting a risk assessment, if applicable, and for developing a remediation plan, and must, without limitation, include procedures to

(a) identify which substances may cause or threaten to cause adverse effects and provide any applicable information on their form,

(b) identify the specific areas, depths and degree of contamination on the site including areas and extent of migration if applicable, and

(c) evaluate contamination relative to standards in the Hazardous Waste Regulation and in this regulation.

(3) A report of a detailed site investigation prepared under section 41 (1) of the Act must do all of the following:

(a) describe the relationship of the detailed site investigation and any prior preliminary site investigation and, in particular, explain how the methods of investigation and findings of the preliminary site investigation were used to design and carry out the detailed site investigation;

(b) provide a compilation and presentation of all field observations, field measurement and analytical data and laboratory analytical data;

(c) provide an interpretation and evaluation of the data in a manner which clearly shows

(i) the contamination in soil, groundwater, sediments or surface water in relation to standards in the Hazardous Waste Regulation and the criteria, standards and conditions prescribed and in this regulation, and

(ii) specific areas, depths and degree of contamination, including migration which may have occurred to adjoining properties.

[am. B.C. Regs. 244/99, s. 16; 322/2004 and 324/2004, s. 60.]

Summary of site investigations and remediation plans

60 Any preliminary site investigation report, detailed site investigation report or remediation plan submitted to a director for approval must include a summary of the report or plan for the purpose of entry on the site registry in a format which may be specified in a director's protocol.

[am. B.C. Regs. 322/2004 and 324/2004, s. 61.]

Notification of neighbouring site owners after site investigations

60.1 (1) A responsible person who carries out a site investigation that discloses that one or more substances has migrated or is likely to have migrated to a neighbouring site and is or is likely causing contamination of the neighbouring site must provide written notification described in subsection (2).

(2) The responsible person for the investigated site must provide written notification to the person or persons who own the neighbouring site and a copy of the notification to the director, within 15 days after the responsible person becomes aware of the migration or likely migration of each substance to the neighbouring site, giving

(a) the name and address of the person or persons who own the investigated site,

(b) the name, address and telephone number of the person to contact regarding the investigation, and

(c) a general description of the nature of the migration or likely migration of each substance.

[en. B.C. Reg. 17/2002, s. 14; am. B.C. Regs. 322/2004 and 324/2004, s. 62.]

PART 15 – ORPHAN SITES

Criteria for determining orphan sites

61 A director may determine that a contaminated site is an orphan site if the contaminated site is a site for which

(a) a responsible person cannot be found or is not willing or financially able to carry out remediation in a time frame specified by a director, or

(b) a government body has become the owner subsequent to the failure of the former owner or other responsible person to comply with a requirement to carry out remediation at the site.

[am. B.C. Regs. 322/2004 and 324/2004, s. 63.]

High risk orphan sites

62 For the purposes of section 58 (1) (b) of the Act, the determination that an orphan site is a high risk orphan site must be made in accordance with a classification system in a director's protocol.

[en. B.C. Regs. 322/2004 and 324/2004, s. 64.]

PART 16 – PROFESSIONAL STATEMENTS

Professional statements

63 A director need not consider an application for

(a) an approval in principle,

(b) a certificate of compliance, or

(c) Repealed. [B.C. Regs. 322/2004 and 324/2004, s. 65.]

(d) an approval of a preliminary or detailed site investigation

until the applicant or the applicant's agent provides a written signed statement that

(e) any documentation in support of an application referred to in paragraphs (a) to (d) has been prepared in accordance with all requirements in the Act and the regulations, and

(f) certifies that the person signing the statement has demonstrable experience in remediation of the type of contamination at the site for which the statement applies and is familiar with the remediation carried out on the site.

[am. B.C. Regs. 322/2004 and 324/2004, s. 65.]

PART 17

64 to **66** Repealed. [B.C. Regs. 322/2004 and 324/2004, s. 67.]

PART 18 – DIRECTOR'S PROTOCOLS

Director's protocols

67 For the purposes of protocols established under section 64 (1) of the Act, a director may establish protocols in respect of the following matters:

(a) establishing the form of a summary of site condition;

(b) establishing procedures for defining and determining the boundaries of a site;

(c) establishing procedures for determining

(i) whether multiple land uses apply at a site, and

(ii) if multiple lands uses apply at a site, which land uses apply.

[en. B.C. Reg. 239/2007, s. 4; am. B.C. Reg. 343/2008, s. 9.]

SCHEDULE 1

[am. B.C. Regs. 17/2002, ss. 15 to 19; 343/2008, s. 10.]

SITE PROFILE

All Information Must be Provided and All Questions Answered

I. CONTACT IDENTIFICATION

A. Name of Site Owner:

Last .... First .... Middle Initial(s) .... (and / or, if applicable)
Company ....
Owner's Civic Address ....
City .... Province/State ....
Country .... Postal Code/ZIP ....

B. Person Completing Site Profile *Leave blank if same as above*:

Last .... First...................................... Middle Initial(s) .... (and / or, if applicable)
Company ....

C. Person to Contact Regarding the Site Profile:

Last .... First...................................... Middle Initial(s) .... (and / or, if applicable)
Company ....
Mailing Address ....
City .... Province/State ....
Country .... Postal Code/ZIP ....
Telephone (..........) .... -................................ Fax (..........) .... -..

II. SITE IDENTIFICATION

Please attach a site location map

All Property:

Coordinates (using the North American Datum 1983 convention) for the centre of the site:

Latitude: Degrees .... Minutes .... Seconds ....
Longitude: Degrees .... Minutes .... Seconds ....

Please attach a map of appropriate scale showing the boundaries of the site.

For Legally Titled, Registered Property

Site Street Address
....
City .... Postal Code ....

PID numbers and associated legal descriptions. *Attach an additional sheet if necessary.*

PID	Legal Description
....	....
....	....
....	....
....	....

Total number of titled parcels represented by this site profile is: ....

For Untitled Crown Land

PIN numbers and associated land description. *Attach an additional sheet if necessary.*

PIN	Land Description
....	....
....	....
....	....
....	....

Total number of untitled, crown land parcels represented by this site profile is: ....

(and, if available)

Crown land file numbers. *Attach an additional sheet if necessary.*

III. COMMERCIAL AND INDUSTRIAL PURPOSES OR ACTIVITIES

Please indicate below, in the format of the example provided, which of the industrial and commercial purposes and activities from Schedule 2 have occurred or are occurring on this site.

EXAMPLE:

Schedule 2 Reference	Description
E1	appliance, equipment or engine repair, reconditioning, cleaning or salvage
F10	solvent manufacturing or wholesale bulk storage

....

Please print legibly. Attach an additional sheet if necessary

Schedule 2 Reference	Description
....	....
....	....
....	....
....	....
....	....

IV. AREAS OF POTENTIAL CONCERN

	Is there currently or to the best of your knowledge has there previously been on the site any (please mark the appropriate column opposite the question):	**YES**	**NO**
A	Petroleum, solvent or other polluting substance spills to the environment greater than 100 litres?		
B	Residue left after removal of piled materials such as chemicals, coal, ore, smelter slag, air quality control system baghouse dust?		
C	Discarded barrels, drums or tanks?		

IV.	**AREAS OF POTENTIAL CONCERN**		
D	Contamination resulting from migration of substances from other properties?		

V.	**FILL MATERIALS**		
	Is there currently or to the best of your knowledge has there previously been on the site any deposit of (please mark the appropriate column opposite the question):	**YES**	**NO**
A	Fill dirt, soil, gravel, sand or like materials from a contaminated site or from a source used for any of the activities listed under Schedule 2?		
B	Discarded or waste granular materials such as sand blasting grit, asphalt paving or roofing material, spent foundry casting sands, mine ore, waste rock or float?		
C	Dredged sediments, or sediments and debris materials originating from locations adjacent to foreshore industrial activities, or municipal sanitary or stormwater discharges?		

VI.	**WASTE DISPOSAL**		
	Is there currently or to the best of your knowledge has there previously been on the site any landfilling, deposit, spillage or dumping of the following materials (please mark the appropriate column opposite the question):	**YES**	**NO**
A	Materials such as household garbage, mixed municipal refuse, or demolition debris?		
B	Waste or byproducts such as tank bottoms, residues, sludge, or flocculation precipitates from industrial processes or wastewater treatment?		
C	Waste products from smelting or mining activities, such as smelter slag, mine tailings, or cull materials from coal processing?		
D	Waste products from natural gas and oil well drilling activities, such as drilling fluids and muds?		
E	Waste products from photographic developing or finishing laboratories; asphalt tar manufacturing; boilers, incinerators or other thermal facilities (e.g. ash); appliance, small equipment or engine repair or salvage; dry cleaning operations (e.g. solvents); or from the cleaning or repair of parts of boats, ships, barges, automobiles or trucks, including sandblasting grit or paint scrapings?		

VII.	**TANKS OR CONTAINERS USED OR STORED, OTHER THAN TANKS USED FOR RESIDENTIAL HEATING FUEL**		
	Are there currently or to the best of your knowledge have there been previously on the site any (please mark the appropriate column opposite the question):	**YES**	**NO**
A	Underground fuel or chemical storage tanks other than storage tanks for compressed gases?		
B	Above ground fuel or chemical storage tanks other than storage tanks for compressed gases?		

VIII. HAZARDOUS WASTES OR HAZARDOUS SUBSTANCES			
	Are there currently or to the best of your knowledge have there been previously on the site any (please mark the appropriate column opposite the question):	YES	NO
A	PCB-containing electrical transformers or capacitors either at grade, attached above ground to poles, located within buildings, or stored?		
B	Waste asbestos or asbestos containing materials such as pipe wrapping, blown-in insulation or panelling buried?		
C	Paints, solvents, mineral spirits or waste pest control products or pest control product containers stored in volumes greater than 205 litres?		

IX. LEGAL OR REGULATORY ACTIONS OR CONSTRAINTS			
	To the best of your knowledge are there currently any of the following pertaining to the site (please mark the appropriate column opposite the question):	YES	NO
A	Government orders or other notifications pertaining to environmental conditions or quality of soil, water, groundwater or other environmental media?		
B	Liens to recover costs, restrictive covenants on land use, or other charges or encumbrances, stemming from contaminants or wastes remaining onsite or from other environmental conditions?		
C	Government notifications relating to past or recurring environmental violations at the site or any facility located on the site?		

X. ADDITIONAL COMMENTS AND EXPLANATIONS

(Note 1: Please list any past or present government orders, permits, approvals, certificates and notifications pertaining to the environmental condition, use or quality of soil, surface water, groundwater or biota at the site.
Note 2: If completed by a consultant, receiver or trustee, please indicate the type and degree of access to information used to complete this site profile):

XI. SIGNATURES

The person completing the site profile states that the above information is true, based on the person's current knowledge as of the date completed.

....

Signature of person completing site profile Date completed: (YY-MM-DD)

SCHEDULE 1.1

[en. B.C. Reg. 343/2008, s. 11.]

SUMMARY OF SITE CONDITION

Purpose of this Summary of Site Condition

This Summary of Site Condition will serve several purposes. It will provide the Ministry of Environment (the ministry) with a summary of key information that will be used to understand the status of investigations and remediation, the nature and extent of remediation that is proposed or has been undertaken, further work that will be required, or closure documentation requested that is authorized by legislation and regulations in B.C. The Summary of Site Condition will also provide information to persons with an interest in investigations and management of contaminants on or adjacent to a property or properties that are considered a site.

The information contained in this Summary of Site Condition is provided by or on behalf of the British Columbia Ministry of Environment to assist individuals to become familiar with conditions and issues at a site for which contaminant investigations and / or remediation have been carried out and reviewed under the guidance of the British Columbia Contaminated Sites Regulation (CSR), the Hazardous Waste Regulation (HWR), and the *Environmental Management Act* (EMA).

It is emphasized that this is a summary only and should in no case be the sole basis for important decisions about the site. Those with an interest in contaminant issues and the status of the site should seek more complete technical information as contained in site investigation, risk assessment, remediation plan and confirmation of remediation reports prepared by and signed by appropriately qualified individuals. Firms and individuals that rely on the information contained herein do so entirely at their own risk.

Notes and instructions

A Summary of Site Condition is to be completed by the Approved Professional(s) making submission to the Ministry of Environment with application for a regulatory instrument (e.g. Determination, Approval in Principle, Contaminated Soil Relocation Agreement or Certificate of Compliance).

This Summary of Site Condition will provide ministry regulatory officials with much of the information on which they will evaluate the recommendation of an Approved Professional(s).

A separate Summary of Site Condition is required for each service request submitted for a site.

All applicable parts of this Summary of Site Condition and required attachments (e.g., site plan; site plan showing areas of potential environmental concern, and/or areas of environmental concern) must be completed and submitted or the Summary will be returned and processing of any application(s) will be delayed.

If the Summary of Site Condition is to accompany a recommendation by an Approved Professional that a service be provided as described in section 7.1 of the Contaminated Sites Regulation, the following must also be submitted with the package:

[ ] a completed Contaminated Sites Service Application form

[ ] a contaminated sites legal instrument cover letter (hard copy and electronic version)

[ ] a completed draft contaminated sites legal instrument

[ ] the applicable fees

[ ] a signed Summary of Site Condition (hard copy and electronic version with PDF format preferred).

Failure to accurately fill out the Summary of Site Condition may result in delays issuing the legal instrument.

Part 1: Cover Page

(To be completed by the Approved Professional)

Current Site Owner: *(Attach additional sheets with names and contact information for additional site owners as required)*	**Mailing Address:** Company Name: Address: City: Contact Name: Phone: Fax: E-mail:	 Postal Code:
Applicant *(If instrument is being applied for)* [ ] Same as above, or:	**Mailing Address:** Company Name: Address: City: Contact Name: Phone: Fax: E-mail:	 Postal Code:
Agent [ ] Same as applicant above, or:	**Mailing Address:** Company Name: Address: City: Contact Name: Phone: Fax: E-mail:	 Postal Code:

Approved Professional(s) *(If making a recommendation under the CSR or another submission)*	**Mailing Address:** Company Name: Address: City: Postal Code: Approved Professional Name: Phone: Fax: E-mail: Scope of review completed by Approved Professional: Company Name: Address: City: Postal Code: Approved Professional Name: Phone: Fax: E-mail: Scope of review completed by Approved Professional:
Reason for Completing this Summary [ ] Recommendation is being made, or: [ ] This is a submission without a recommendation under the CSR:	**Role of Approved Professional:** Reviews: [ ] Stage 1 preliminary site investigation report (Stage 1 PSI) [ ] Stage 2 preliminary site investigation report (Stage 2 PSI) [ ] Detailed site investigation report (DSI) [ ] Background substance concentrations report [ ] Remediation plan without risk assessment report [ ] Remediation plan with risk assessment report [ ] Confirmation of remediation report (CoR) [ ] Quantitative human health or ecological risk assessment report [ ] Screening level risk assessment report [ ] Other *(please specify)* Recommendation(s) *(With Regulatory Instrument)*: [ ] Determination *(Determination)* [ ] Approval in Principle, numerical standards *(AiP numerical standards)* [ ] Approval in Principle, risk-based standards *(AiP risk-based standards)* [ ] Contaminated Soil Relocation Agreement *(CSRA)* [ ] Certificate of Compliance, numerical standards *(CoC numerical standards)* [ ] Certificate of Compliance, risk-based standards *(CoC risk-based standards)* [ ] Other *(please specify)* Section 4 of the Summary of Site Condition does not need to be completed with the request for Certificate of Compliance if an Approval in Principle exists for the site, provided that no new information has been obtained for the site applicable to this section of the form.

Part 2: Executive Summary

(To be completed by the Approved Professional(s) reviewing site investigation, risk assessment, remediation or confirmation of remediation reports)

Site Location: *(The site and location plans are to be provided as Schedule A of the draft instrument.)*	
Subject Site:	
Civic Address(es):	
Site Common Name: *(if applicable)*	
Legal description(s) *or* metes and bounds: *(add additional pages if needed)*	
PID(s): *(or PIN(s) if untitled Crown land)*	
Centre of site: *(using NAD 83 convention)* *(accurate to ± 0.5 second)*	Latitude: .... degrees .... min .... secs Longitude: .... degrees .... min .... secs
Offsite impacted Properties ***or*** **Receiving Site:**	[ ] Offsite impacted propertie(s) – provide information for each [ ] Receiving site for Contaminated Soil Relocation Agreement [ ] Not Applicable
Civic Address(es):	
Site Common Name: *(if applicable)*	
Legal description(s) *or* metes and bounds (if a portion of a site): *(add additional pages if needed)*	
PID(s): *(or PIN(s) if untitled Crown land)*	
BC Site ID *(if applicable)*:	
Approximate Centre of site: *(accurate to ± 0.5 second)*	Latitude: .... degrees .... min .... secs Longitude: .... degrees .... min .... secs

Part 3: Document Summary

(List of all known site investigation, risk assessment (including screening level risk assessment), remediation plan and confirmation of remediation reports completed and directly supporting correspondence submitted (subject site and offsite impacted sites).

#	Document Title	Author / Company	Document Date

Part 4: Investigation Summary

4.1 Investigations Completed

		Yes	No	n/a
Stage 1 PSI	Completed?	[ ]	[ ]	[ ]
	Includes Stage 1 PSI information as listed in CSR S.58 and any current applicable ministry protocols, guidelines, checklists, etc.?	[ ]	[ ]	[ ]
Stage 2 PSI	Completed?	[ ]	[ ]	[ ]
	Includes Stage 2 PSI information as listed in CSR S.58 and any current applicable ministry protocols, guidelines, checklists, etc.?	[ ]	[ ]	[ ]
DSI	Completed?	[ ]	[ ]	[ ]
	Includes DSI information as listed in CSR S.59 and any current applicable ministry protocols, guidelines, checklists, etc.?	[ ]	[ ]	[ ]
Other Reports	Completed? *(Specify in Notes below)*	[ ]	[ ]	[ ]
	According to other guidelines? *(Provide explanation in notes below. Indicate how reports assist understanding of conditions and remediation.)*	[ ]	[ ]	[ ]
Notes:				

n/a – not applicable

If completed investigation reports are not adequate or if reports are titled differently or have a different scope than those listed above in accordance with the Contaminated Sites Regulation (i.e., PSI, DSI), complete Section 4.8 (Investigation or Interpretation Issues).

4.2 Site Conditions

Topography

Describe steepness and direction of slope and position of site in relation to surrounding land

Stratigraphy

Describe depth and thickness, grain size, etc. of typical stratigraphic components and note depth to cemented or very compact materials, bedrock/refusal, etc.

Hydrogeology

Describe groundwater levels, confining/semi-confining layers, flow direction and velocity

Surface Water Features

List name, direction and distance to nearest surface water bodies and the characteristics (e.g., relative size/flow) of the water body

Fresh water:

Marine waters:

4.3 Land Use

Location		Description of Current Land Use(s) / Activities
Onsite	Subject site	
Offsite	North	
	East	
	South	
	West	

Proposed land use of subject site: [ ] same as above or [ ] other *(please specify)*

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4.4 Applicable Numerical Concentration Standards and Criteria

(If more than one land or water use applies to the site, expand this section to specify additional land uses covered by the instrument, i.e. riparian areas, roadways, etc. Include a diagram to clearly show the areas with different standards.)

Soil (standards):

Property		CSR Land Use					
		AL	**PL**	**RL**	**CL**	**IL**	**Other**
Subject site	Current	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
	Proposed	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
Receiving site *(if completed in support of a Contaminated Soil Relocation Agreement)*		[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
Offsite impacted property / management area		[ ]	[ ]	[ ]	[ ]	[ ]	[ ]

If Other is specified above, please explain: *(applicable or excluded guidance, protocols or policies specific to the site)*

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Water (standards):
(Check all that apply)

	AW fresh	**AW marine**	**IW**	**LW**	**DW**	**No Water Use**
Groundwater (CSR Schedules 6 & 10)	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
	Ambient fresh	Ambient marine				
Surface Water (Ambient Guidelines and/or Criteria)	[ ]	[ ]	[ ]	[ ]	[ ]	

Sediment (criteria CSR Schedule 9)

Type of Aquatic Life		Type of habitat		
[ ] Freshwater	[ ] Marine/Estuarine	[ ] Sensitive	[ ] Typical	[ ] Not applicable

4.5 APEC and PCOC Summary

(Not applicable for a receiving site in a Contaminated Soil Relocation Agreement)

Provide reference to a figure showing onsite and offsite areas of potential environmental concern (APEC) and contaminants of potential concern associated with each APEC: Report # ....., Figure # ..... Page # .....

Area of Potential Environmental Concern (APEC)		Potential Contaminant of Concern (PCOC) *(indicate products, chemicals, waste type, etc. and/or analytical parameter)*	Check where analyses completed					
#	**Description** *(describe location in relation to process source, waste, filling, land use or activity, etc. giving rise to APEC, and if APEC is primary due to soil or water contamination)*		Soil	Sediment	Ground water	Surface Water	Vapour	Other (explain)
			[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
			[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
			[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
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			[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
			[ ]	[ ]	[ ]	[ ]	[ ]	[ ]

Other (please explain):

APEC #	

4.6 AEC and Contaminant Summary

Stage 2 PSI – Provide reference to figure(s) showing the areas of environmental concern (AEC) and contaminants of concern associated with each AEC in onsite and offsite soil, water, sediment and/or vapour. Sample locations and corresponding analytical results shall be shown on each figure and in tabular form with reference to applicable standards:

Environmental medium .... Report # ..... Figure # ..... Page # .....

Environmental medium .... Report # ..... Figure # ..... Page # .....

Environmental medium .... Report # ..... Figure # ..... Page # .....

DSI – Provide references to figures (plan and section), with contours, showing the specific lateral and vertical distribution of each contaminant of concern in onsite and offsite soil, sediment, water and vapour. Sections must be longitudinal and transverse with respect to groundwater flow and include physical conditions (e.g. stratigraphy, water table etc.). Sample locations with corresponding analytical results used to develop each figure must be shown on the figure and in tabular form with reference to applicable standards:

Environmental medium .... Report # ..... Figure # ..... Page # .....

Environmental medium .... Report # ..... Figure # ..... Page # .....

Environmental medium .... Report # ..... Figure # ..... Page # .....

AEC / APEC # *(Use same #s as for APECs in Table above)*	**Contaminant of Concern**	**Medium** *(e.g., soil, groundwater, sediment, vapour, surface water, other)*	**Maximum Measured Concentration** *(indicate units)*	**Extent of Contamination**	
				Area (m^2)	**Depth Range (m)**
Notes:					

4.7 Offsite Migration

	Yes	No
Is there evidence that one or more substances has migrated or is likely to have migrated to a neighbouring site and is or is likely causing contamination of the neighbouring property?	[ ]	[ ]
Has any sampling occurred offsite for PCOCs in any media?	[ ]	[ ]
Have preferential pathways been assessed? (including assessment of all neighbouring underground utility rights-of-way)	[ ]	[ ]

If yes to the first question, complete the following:

There is evidence of [ ] historical, or [ ] current offsite transport of contaminants from the site in:

[ ] groundwater;
[ ] surface water;
[ ] vapours; and/or
[ ] other

Briefly describe the nature of and evidence for offsite migration (either known, suspected or potential)

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The impacted offsite lands are categorized as: [ ] having a potable groundwater source;
[ ] being aquatic habitat, as formally defined;
[ ] agricultural lands
[ ] residential or urban parklands
[ ] commercial land
[ ] industrial land

4.8 Investigation or Interpretation Issues to be Addressed

Identify any issues regarding investigations or interpretations if the PSI and DSI information may not satisfy the requirements of CSR Sections 58 and 59 and applicable protocols and guidance documents. Briefly describe how these deficiencies will be addressed (examples include destroyed wells, completion of detailed delineation following building demolition or other proposed work at a later stage of remediation).

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Part 5: Remediation Summary

5.1 Remediation Reporting Summary

		Yes	No	n/a
Risk Assessment	Completed?	[ ]	[ ]	[ ]
	Includes quantitative human health and ecological risk assessment report information or screening level risk assessment per EMA, CSR and current applicable ministry protocols, guidelines, checklists?	[ ]	[ ]	[ ]
Remediation Plan	Completed?	[ ]	[ ]	[ ]
	Includes CSR specified information for a Remediation Plan *(see CSR S.1, 16, 47)* and current applicable ministry protocols, guidelines, checklists, etc.?	[ ]	[ ]	[ ]
Confirmation of Remediation	Completed?	[ ]	[ ]	[ ]
	Includes CSR specified information *(see CSR S.49)* and any current applicable ministry protocols, guidelines, checklists for COR reports?	[ ]	[ ]	[ ]
Other Reports	Completed?	[ ]	[ ]	[ ]
	According to other guidelines? *(Provide explanation in notes below. Indicate how reports assist understanding of conditions and / or remediation.)*	[ ]	[ ]	[ ]
Notes:				

If completed remediation reports are not adequate or if reports have a different scope than those listed above in accordance with the CSR complete Section 5.6 – Outstanding Remediation Issues.

5.2 Proposed or Completed Remedial Activities

(Describe all aspects of remediation, including regulatory actions and activities to comply with numerical and/or risk-based standards)

Regulatory

(Notification of Independent Remediation, Approval in Principle, Certificate of Compliance, Determination, Restrictive Covenant, etc.)

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If commitments or conditions to be met are included in an Approval in Principle issued for the site, list these conditions and identify how they were met though remedial activities.

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Remediation to comply with numerical standards/criteria

(Excavation/disposal of soil, Treatment of soil; Treatment of groundwater, etc.)

Remediation to comply with risk-based standards

Are either of the following intended for use at the site, or have they been carried out?

	Intended		Carried Out	
Screening Level Risk Assessment	[ ] Yes	[ ] No	[ ] Yes	[ ] No
Quantitative Risk Assessment	[ ] Yes	[ ] No	[ ] Yes	[ ] No

If yes for any above, complete Section 5.5 (Summary of Residual Contamination)

Describe risk management/exposure reduction methods intended or implemented and indicate the status of any measures. *(e.g.,* Physical/engineering: *monitoring, capping or barriers to exposure;* Institutional: *registration of restrictive covenants, financial security, etc.)*

Provide a reference to signed and stamped design drawings provided by a professional engineer for works installed at site boundaries to prevent recontamination of a site.

Report # .... Page # .... or Appendix # ....

5.3 Summary of Remediation Plan

	AEC #	Contaminant(s) of Concern	Remediated to the following standard *(proposed or completed)*				Remediation Schedule		
							Remediation Complete?		
	(Use same #s as for APECs in Table above)		Numerical (Standard, guideline or criteria)	Back-ground (attach Protocol 4 or 9 approval if applic-able)	Hazardous Waste standard	Risk-based	Yes	No	Proposed or Actual completion date
Soil									
Groundwater									
Sediment									

Surface Water									
Soil Vapour									

In the AEC column, specify as N/A (not applicable) if remediation or assessment is not required in this environmental medium.

5.4 Summary of Contaminant Treatment or Removal

(Identify and describe all contamination removed from or treated onsite. Ensure section 6.2 is completed if no CSRA is required or required only for a portion of soil removed)

Provide references to figure(s) showing the lateral and vertical extent of any treated or removed contamination. Confirmatory sample locations and corresponding analytical results shall be shown on each figure and in tabular form with reference to applicable standards:

Environmental medium .... Report # ..... Figure # ..... Page # .....

Environmental medium .... Report # ..... Figure # ..... Page # .....

Environmental medium .... Report # ..... Figure # ..... Page # .....

AEC/APEC # *(Use same #s as for APECS in Table above)*	**Contaminant(s) of Concern**	**Medium** *(e.g., soil, groundwater, sediment, surface water, vapour, other)*	**Material Removed**	
			Volume (m^3 or L)	**Disposal Location** *(indicate if treated onsite)*

5.5 Summary of Residual Contamination after Remediation
(Identify and describe all contamination that exceeds CSR numerical standards, after the remediation described above has been implemented.)

AEC/ APEC # *(Use same #s as for APECS in Table above)*	Contaminant of Concern	Medium *(e.g., soil, groundwater, sediment, surface water, vapour, other)*	Maximum Measured Concentration (indicate units)	Extent of Contamination	
				Area (m^2)	Depth Range (m)

5.6 Remediation Issues
Identify remaining issues if the remediation plan, confirmation of remediation report or risk assessment report does not include CSR specified information and current applicable ministry protocols, guidelines, checklists, etc. for these documents.

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Part 6: Summary of Soil Relocation

6.1 Relocation with a Contaminated Soil Relocation Agreement

Source Site
(Soil to be relocated under the CSRA (from Table 4.6). Investigation information may be limited to the soil that is the subject of the relocation agreement)

APEC # *(Use same #s as for APECS in Table above)*	Contaminant of Concern *(List separately)*	Classification of the soil to be Relocated *(</>AL, PL, RL, CL, IL; Column II, III, IV)*		Volume m^3
		Schedule 4, 5 or 10	Schedule 7	

Receiving Site

Soil to be relocated has been adequately characterized?				[ ] Yes	[ ] No
Total Volume of soil to be relocated?					m^3
Applicable CSR Land Use at receiving site	[ ] AL	[ ] PL	[ ] RL	[ ] CL	[ ] IL

Contaminant *(as indicated in CSR Schedule 7)*	**Maximum Contaminant Concentration in soil to be relocated (mg/kg)**	**Applicable CSR Schedule 4 or 5 standard at receiving site (mg/kg)**

Sufficient data on receiving site?	[ ] Yes	[ ] No

(Ensure to assess any modifying factors for the receiving site soils such as soil pH)

Conditions pertaining to relocation (CSR, Sec. 44):

Will the source and receiving municipality be notified before soil is relocated?	[ ] Yes	[ ] No
Will at least 4 business days be allowed to pass before soil is relocated?	[ ] Yes	[ ] No

6.2 Relocation without a Relocation Agreement

Other soil relocation not requiring a Contaminated Soil Relocation Agreement (CSRA):

Has or will contaminated soil be relocated without a CSRA?	[ ] Yes	[ ] No
Do exemptions apply? *(indicated below; see CSR Sec. 41)*		
Relocation of contaminated soil on the site at which the contaminated soil originates?	[ ] Yes	[ ] No
Relocation of contaminated soil which is contaminated due only to the presence of the local background concentration?	[ ] Yes	[ ] No
Relocation of contaminated soil within an area subject to a wide area remediation plan?	[ ] Yes	[ ] No
Relocation of contaminated soil originating from emergency cleanup of a spill?	[ ] Yes	[ ] No
Relocation of soil to an authorized hazardous waste storage or treatment facility? If yes, provide BC Generator Registration #...........	[ ] Yes	[ ] No
Relocation of contaminated soil to a destination outside British Columbia?	[ ] Yes	[ ] No
Relocation of contaminated soil from a specific site not exceeding 5 cubic metres in volume?	[ ] Yes	[ ] No
Relocation of contaminated soil to federal property?	[ ] Yes	[ ] No
Relocation to an authorized landfill that is exempt from a CSRA?	[ ] Yes	[ ] No

Part 7: Recommendation of Approved Professional(s)

7.1 Regulatory Instrument and Summary Recommendation

Based on the detailed technical information available for the site, as summarized in this Summary of Site Condition, I *Approved Professional Name* recommend that the following instrument be issued for the Subject Site.

[ ] A Determination under section 44 of *EMA*

[ ] An AiP under section 53 (1) of *EMA*

[ ] A CoC under section 53 (3) of *EMA*

[ ] A CSRA under section 55 (2) of *EMA*

[ ] Other (specify)

Although I understand that the basis of such recommendations should be formally evaluated only by reference to detailed technical guidance, the primary basis of this recommendation or these recommendations is as follows:

For a recommendation for a Determination:

- <On the basis of information provided and reviewed, it is my opinion that no CSR Schedule 2 activities have occurred at the subject site>, *or* < CSR Schedule 2 activities are known or suspected to have occurred at the subject site, therefore in my opinion contaminants may have been released onto the subject site so that the site would be classified as a contaminated site in accordance with the CSR> *or* < CSR Schedule 2 activities are known or suspected to have occurred at the subject site, but it is my opinion that the specific nature of such activities would not result in contamination so that the site would be classified as a contaminated site in accordance with the CSR>.
- A Preliminary Site Investigation addressing all identified areas of potential environmental concern (APECs) and potential contaminants of concern (PCOCs) was completed. No substances were identified in concentrations exceeding those identified in BC CSR Schedules 4, 5, 6, 7, 9, 10 or 11, as applicable. All PCOCs have been listed in Schedule B of the draft Determination.

For a recommendation for an Approval in Principle and for a Certificate of Compliance:

- A Preliminary Site Investigation addressing all identified areas of potential environmental concern (APECs) and potential contaminants of concern (PCOCs) was completed. One or more substances were identified at concentrations exceeding applicable standards or criteria in CSR Schedule 4, 5, 6, 7, 10 or 11 or criteria in Schedule 9.
- A Detailed Site Investigation addressing the locations and extent of all identified areas of environmental concern (AECs) and contaminants of concern was completed <and forms the basis of a remediation plan or risk assessment> *or* <was the basis for remediation of the site>.
- When this Summary of Site Condition was prepared <a remediation plan had been prepared that provides for remediating all identified locations and respective extent of all contaminants to either CSR numerical or risk-based standards> *or* <all contaminants and their respective locations and extent as identified in investigation and risk assessment reports had been remediated to CSR numerical concentration or risk-based standards or criteria (sediments) or both>.

For recommendation for a Contaminated Soil Relocation Agreement:

- The source site soil and receiving site have been adequately characterized to recommend issuance of a Contaminated Soil Relocation Agreement under Protocol 6.

7.2 Substances Remediated and Standards or Criteria

<Contaminants have been remediated to comply with standards or criteria listed in the following table:>
(If the site required remediation and has been remediated.)

	Substances Remediated for Each Type of Standard / Criteria	
	Numerical Standards (Criteria for Sediments, Vapour)	**Risk based Standards (Criteria for Sediments, Vapour)**
Soil		
Water		
Sediments		
Soil Vapour		
Other		

Use specific compound names as listed in the Contaminated Sites Regulation schedules.

The Director may accept the recommendations of an Approved Professional(s) involved in the review and submission of investigation, risk assessment or remediation reports based in part on the understanding that:

- As of <date>, the date of signing of this report, the Approved Professional, or Approved Professionals if more than one, is/are member(s) in good standing of the Roster of Approved Professionals, as maintained by the ministry, and member(s) of the Contaminated Sites Approved Professionals Society (CSAP Society);
- The Approved Professionals signing this Summary of Site Condition have reviewed Table 1, Protocol 6 for Contaminated Sites *(Eligibility of Applications for Review by Approved Professionals)* and confirm that the *Application for Contaminated Sites Services* may be processed in the manner for non-high risk sites under the Roster of Approved Professionals process;
- The reviewer has no obligation to undertake any inquiry into the validity, accuracy or precision of what is reported in the documents reviewed, unless there is reasonable cause to believe that there could be errors or oversights in those reports;
- *<as appropriate>* The subject site has been satisfactorily investigated for all areas of <potential> environmental concern and <potential> contaminants of concern to determine the lateral and vertical

extents of contamination with due regard to the *EMA*, the CSR, and the HWR;

- *<as appropriate>* The submitted documentation meets the requirements of Sections <1, 47, 49, 58 and 59> of the CSR;
- *<as appropriate>* The Screening Level Risk Assessment meets the requirements of Protocol 13;
- *<for AiPs>* The submitted remediation plan, if implemented in accordance with the specified conditions imposed in its draft Schedule "B" of the AIP, will result in the subject site being remediated in accordance with the applicable standards of the CSR and the HWR;
- *<for AiPs>* It is feasible to implement all provisions of the Remediation Plan and to achieve its objectives and the conditions of the AIP within 5 years of issuance of the AIP;
- *<for CoCs>* The confirmation of remediation report meets the requirements of section 49 (2) of the CSR;
- *<for CoCs>* The onsite management area(s) has/have been satisfactorily remediated in accordance with section 53 (3) of the *EMA* and section 49 (2) of the CSR in accordance with applicable standards as identified in the draft COC;
- *<for CoCs where contamination exists beyond the legal lot boundaries>* The offsite portion(s) of the site has/have been satisfactorily remediated in accordance with section 53 (3) of the *EMA* and section 49 (2) of the CSR and makes up part of this application *<or>* a Remediation Plan in accordance with requirements of the CSR, sections 1 and 47, has been prepared and application has been made for AIP for the offsite portions.
- *<for CoCs where contamination exists beyond the legal lot boundaries and engineered works are required to prevent recontamination of the site>* A signed and stamped design drawing has been provided by a professional engineer for works installed at site boundaries to prevent recontamination of the site. The signatory need not be the Approved Professional signing below.
- *<for Determination>* In accordance with section 15 (5) of the CSR, the subject site is *<or is not>* a contaminated site under section 44 (1) of the *EMA;*
- *<if a "direct" final determination>* In accordance with section 15 (5) of the CSR, the subject site is a contaminated site under section 44 (3) of the *EMA;*
- *<for CSRAs>* In accordance with section 43 (2) of the CSR, the soil to be relocated from the subject site complies with standards in CSR Schedule 7 and is suitable for relocation to the receiving site identified in this Summary of Site Condition.

The opinions, advice and recommendations expressed in this Summary of Site Condition are made in accordance with generally accepted principles and practices as recognized by members of the applicable profession or discipline practising at the same time and in the same or similar locations. This Summary of Site Condition does not provide a legal opinion or guarantee regarding compliance with applicable laws.

Name(s) of Approved Professional(s):	Signature(s) of Approved Professional(s):	Date:

7.3 Arm's Length Review

There may have been an arm's length review of one or more of the following recommendations to the Director of Waste Management:

1. Making a recommendation to a Director in support of an application for an Approval in Principle based on remediation to numerical standards or a screening level risk assessment where there is offsite migration at the site;
2. Making a recommendation to a director in support of an application for an Approval in Principle based on a risk assessment (other than a screening level risk assessment) and remediation to risk-based standards;
3. Making a recommendation to a Director in support of an application for a Certificate of Compliance based on remediation to numerical standards or a screening level risk assessment where there is offsite migration at the site;
4. Making a recommendation to a Director in support of an application for a Certificate of Compliance based on a risk assessment (other than a screening level risk assessment) and remediation to risk-based standards;
5. Making a recommendation to a Director in support of an application for a Contaminated Soil Relocation Agreement based on a screening level risk assessment for the parcel at which the soil is to be deposited where there is offsite migration at the source site;
6. Making a recommendation to a Director in support of an application for a Contaminated Soil Relocation Agreement based on a risk assessment (other than a screening level risk assessment) for the parcel at which the soil is to be deposited;
7. Making a recommendation to a Director in support of any other application based on risk assessment or risk management (other than a screening level risk assessment) not otherwise described in any other row in this list, as required under a protocol signed by a Director.

If this is the case, please have the Approved Professional who carried out the arm's length review sign below, specifying the type of arm's length review done for the site.

Type of Arm's Length Review (Insert number from list)	Name(s) of Approved Professional(s):	Signature(s) of Approved Professional(s):	Date:

Part 8: Statement of Site Owner/Agent/Lessee

8.1 Offsite Migration Notification

If it is known that one or more substances has migrated or is likely to have migrated to a neighbouring site and is or is likely causing contamination of the neighbouring site, have notifications been given?

(See CSR Sec. 57 and 60.1 for requirements)

	Yes	No
Have owners of impacted offsite properties been formally notified?	[ ]	[ ]
Has the ministry been formally notified?	[ ]	[ ]

8.2 Confirmations by Owner / Agent / Lessee Regarding Approved Professional

This is to acknowledge that <as the owner / as the agent on behalf of the owner / lessee> *(strike out and initial that which does not apply – if signing as the agent of the owner or lessee, written consent from the owner or lessee authorizing signature of this Summary of Site Condition must be attached)* of the site I have engaged *Approved Professional Name(s)* as the Approved Professional(s) to review site investigation, risk assessment and remediation reports and to make submission and application with recommendations, if applicable, for the regulatory instrument(s) as indicated in this Summary of Site Condition.

I agree to comply with any requirements on the site regarding monitoring and maintenance of works as documented in <schedule B of the draft contaminated sites legal instrument >.

I accept that if a risk assessment has been applied at the site, the risk assessment is valid only as long as conditions at the site do not change.

I have undertaken reasonable inquiry into the previous ownership and uses of the property and to the best of my knowledge I have provided to the Approved Professional, information relevant to the investigation and remediation of the environmental condition of the site, in the preparation of this document.

I acknowledge that this Summary of Site Condition becomes a public document after it has been received and acknowledged by the Director of Waste Management. Any party intending to purchase, lease, take a security interest in or occupy the site may review this document and any supporting documents to satisfy themselves with respect to the environmental condition of the site, and the extent of responsibility and liability that may arise from taking ownership of, taking a security interest in or occupying the site.

I have made no modifications to this document except as allowed by the form.

Name:
Address:
Signature:
Date:

Schedule 2

[am. B.C. Regs. 17/2002, s. 16; 239/2007, s. 5; 343/2008, s. 12.]

Industrial and Commercial Purposes and Activities

COLUMN I Item	COLUMN II Purpose or Activity
A	**Chemical industries and activities** 1. adhesives manufacturing or wholesale bulk storage 2. chemical manufacturing or wholesale bulk storage 3. explosives or ammunition manufacturing or wholesale bulk storage 4. fire retardant manufacturing or wholesale bulk storage 5. fertilizer manufacturing or wholesale bulk storage 6. ink or dye manufacturing or wholesale bulk storage 7. leather or hides tanning 8. paint, lacquer or varnish manufacturing, formulation, recycling or wholesale bulk storage 9. pharmaceutical products, or controlled substances as defined in the *Controlled Drugs and Substances Act* (Canada), manufacturing or operations 10. plastic products (foam or expanded plastic products) manufacturing 11. textile dying 12. pesticide manufacturing, formulation or wholesale bulk storage 13. resin or plastic monomer manufacturing, formulation or wholesale bulk storage
B	**Electrical equipment and activities** 1. battery (lead acid or other) manufacturing or wholesale bulk storage 2. communications stations using or storing equipment that contains PCBs 3. electrical equipment manufacturing, refurbishing or wholesale bulk storage 4. electrical transmission or distribution substations 5. electronic equipment manufacturing 6. transformer oil manufacture, processing or wholesale bulk storage 7. electrical power generating operations fuelled by coal or petroleum hydrocarbons and supplying electricity to a community or commercial or industrial operation
C	**Metal smelting, processing or finishing industries and activities** 1. foundries or scrap metal smelting 2. galvanizing 3. metal plating or finishing 4. metal salvage operations 5. nonferrous metal smelting or refining 6. welding or machine shops (repair or fabrication)
D	**Mining, milling or related industries and activities** 1. asbestos mining, milling, wholesale bulk storage or shipping 2. coal coke manufacture, wholesale bulk storage or shipping 3. coal or lignite mining, milling, wholesale bulk storage or shipping 4. milling reagent manufacture, wholesale bulk storage or shipping 5. nonferrous metal concentrate wholesale bulk storage or shipping 6. nonferrous metal mining or milling

INDUSTRIAL AND COMMERCIAL PURPOSES AND ACTIVITIES (CONTINUED)

COLUMN I Item	COLUMN II Purpose or Activity
E	**Miscellaneous industries, operations or activities** 1. appliance, equipment or engine repair, reconditioning, cleaning or salvage 2. ash deposit from boilers, incinerators, or other thermal facilities 3. asphalt tar manufacture, wholesale storage and distribution 4. coal gasification (manufactured gas production) 5. medical, chemical, radiological or biological laboratories 6. rifle or pistol firing ranges 7. road salt storage facilities 8. measuring instruments (containing mercury) manufacture, repair or wholesale bulk storage 9. dry cleaning facilities or operations and dry cleaning chemical storage 10. sites which have been or likely have been contaminated by substances migrating from other properties 11. controlled substances, as defined in the *Controlled Drugs and Substances Act* (Canada), manufacturing or operations
F	**Petroleum and natural gas drilling, production, processing, retailing, distribution and storage other than the storage of residential heating fuel in tanks** 1. petroleum or natural gas drilling 2. petroleum or natural gas production facilities 3. natural gas processing 4. petroleum coke manufacture, wholesale bulk storage or shipping 5. petroleum product, other than compressed gas, dispensing facilities, including service stations and card locks 6. petroleum, natural gas or sulphur pipeline rights of way excluding rights of way for pipelines used to distribute natural gas to consumers in a community 7. petroleum product, other than compressed gas, or produced water storage in above ground or underground tanks 8. petroleum product, other than compressed gas, wholesale bulk storage or distribution 9. petroleum refining wholesale bulk storage or shipping 10. solvent manufacturing or wholesale bulk storage 11. sulphur handling, processing or wholesale bulk storage and distribution
G	**Transportation industries, operations and related activities** 1. aircraft maintenance, cleaning or salvage 2. automotive, truck, bus, subway or other motor vehicle repair, salvage or wrecking 3. bulk commodity storage or shipping (e.g. coal) 4. dry docks, ship building or boat repair and maintenance, including paint removal from hulls 5. marine equipment salvage 6. rail car or locomotive maintenance, cleaning, salvage or related uses, including railyards 7. truck, rail or marine bulk freight handling

Industrial and Commercial Purposes and Activities (continued)

COLUMN I Item	COLUMN II Purpose or Activity
H	**Waste disposal and recycling operations and activities**
	1. antifreeze bulk storage or recycling
	2. barrel, drum or tank reconditioning or salvage
	3. battery (lead acid or other) recycling
	4. biomedical waste disposal
	5. bulk manure stockpiling and high rate land application or disposal (nonfarm applications only)
	6. construction demolition material, including without limitation asphalt and concrete, landfilling
	7. contaminated soil storage, treatment or disposal
	8. dredged waste disposal
	9. drycleaning waste disposal
	10. electrical equipment recycling
	11. industrial waste lagoons or impoundments
	12. industrial waste storage, recycling or landfilling
	13. industrial woodwaste (log yard waste, hogfuel) disposal
	14. mine tailings waste disposal
	15. municipal waste storage, recycling, composting or landfilling
	16. organic or petroleum material landspreading (landfarming)
	17. sandblasting waste disposal
	18. septic tank pumpage storage or disposal
	19. sewage lagoons or impoundments
	20. special waste storage, treatment or disposal
	21. sludge drying or composting
	22. street or yard snow removal dumping
	23. waste oil reprocessing, recycling or bulk storage
	24. wire reclaiming operations
I	**Wood, pulp and paper products and related industries and activities**
	1. particle board manufacturing
	2. pulp mill operations
	3. pulp and paper manufacturing
	4. treated wood storage at the site of treatment
	5. veneer or plywood manufacturing
	6. wafer board manufacturing
	7. wood treatment (antisapstain or preservation)
	8. wood treatment chemical manufacturing, wholesale bulk storage
	9. sawmills

This is Exhibit "8"
referred to in the Affidavit
of Aaron Welch
sworn before me this 4^{th} day of
February, 2010.

A Notary Public in and for the Province of
British Columbia

Exhibit 8

B.C. Reg. 63/88
O.C. 268/88

Deposited February 18, 1988
effective April 1, 1988

Environmental Management Act

HAZARDOUS WASTE REGULATION

[Includes amendments up to B.C. Reg. 63/2009, April 1, 2009]

Contents

PART 1 – INTERPRETATION AND APPLICATION

Interpretation

1 (1) In this regulation:

"100 year flood" means a flood of such a magnitude that the chance of it being equalled or exceeded in any given year is one in one hundred;

"200 year flood" means a flood of such magnitude that the chance of it being equalled or exceeded in any given year is one in two hundred;

"200 year floodplain" means land where the chance of a flood occurring in any given year is at least one in two hundred;

"Act" means the *Environmental Management Act*;

"aquifer" includes any soil or rock formation that has sufficient porosity and water yielding ability to permit the extraction or injection of water at reasonably useful rates;

"authorized consignee" means a consignee who has

(a) a registered site number and an operational plan approved by a director, or

(b) a written authorization from a director to accept hazardous waste;

"biomedical waste" means waste generated by

(a) human or animal health care facilities,

(b) medical or veterinary research and teaching establishments,

(c) health care teaching establishments,

(d) clinical testing or research laboratories, and

(e) facilities involved in the production or testing of vaccines,

and includes

(f) human anatomical waste, consisting of human tissue, organs and body parts,

(g) animal waste, including

(i) animal tissues, organs, body parts, carcasses and bedding, and

(ii) animal blood and blood products, consisting of

(A) animal fluid blood and blood products,

(B) items saturated or dripping with animal blood,

(C) body fluids contaminated with animal blood, and

(D) animal body fluids removed for diagnosis or during surgery, treatment or autopsy,

(h) microbiology laboratory waste consisting of

(i) laboratory cultures,

(ii) stocks of specimens of micro-organisms,

(iii) live or attenuated vaccines,

(iv) human or animal cell cultures used in research, and

laboratory material that has come into contact with any of the above,

(i) human blood and blood products, consisting of

(i) human fluid blood and blood products,

(ii) items saturated or dripping with human blood,

(iii) body fluids contaminated with human blood, and

(iv) human body fluids removed for diagnosis or during surgery, treatment or autopsy, and

(j) clinical and laboratory waste sharps consisting of needles, syringes, blades or laboratory glass capable of causing punctures or cuts,

but does not include

(k) waste from animal husbandry,

(l) household waste,

(m) waste controlled in accordance with the *Health of Animals Act* (Canada),

(n) waste generated in food production, general building maintenance or office administration activities in a facility referred to in paragraphs (a) to (e), or

(o) microbiology laboratory waste, human blood and body fluid waste or waste sharps after those wastes have been disinfected or decontaminated by an approved process,

(p) waste described in paragraph (g) after a medical or infection control professional has certified that the waste does not contain a virus or agent listed in Risk Group 2, 3 or 4, as defined in the federal transportation of dangerous goods regulations,

(q) human teeth, hair or nails,

(r) animal teeth, hair, nails, hooves or feathers, or

(s) human urine or feces;

"buffer zone" means land used to separate a facility from other land;

"bulk load" means a shipment in which 2 or more individual hazardous waste consignments are carried together within a larger container;

"carrier" means a person to whom section 10 (2) of the Act applies because the person transports more than the quantity of hazardous waste prescribed in section 46 (1) of this regulation;

"cell" means a compartment within a landfill;

"chlorobiphenyls" means the chlorobiphenyls that have the molecular formula $C_{12}H_{10-n}Cl_n$ in which "n" is greater than 2;

"consignee" means a person to whom section 10 (3) of the Act applies because the person receives more than the quantity of hazardous waste prescribed in section 46 (1) of this regulation;

"consignor" means a person to whom section 10 (1) of the Act applies because the person

(a) produces or stores hazardous waste, and

(b) causes or allows more than the quantity of hazardous waste prescribed in section 46 (1) of this regulation to be transported from the property where it is produced or stored;

"container" means a portable receptacle in which waste is stored, transported, treated, disposed of, or otherwise handled;

"dangerous goods" means dangerous goods as defined in section 2 of the federal Act and as regulated in the federal dangerous goods regulations, except for the exemption for dangerous goods within manufacturing or processing facilities under section 1.25 of the federal dangerous goods regulations;

"dioxin TEQ" means the dioxin toxicity equivalent value which is determined by adding the products of the measured concentrations of each dioxin and furan congener listed in Column 1 of Schedule 1 multiplied by the toxicity equivalency factor (TEF) listed opposite in Column 2, as measured by test methods approved by a director;

"displacement" means the relative movement of any 2 sides of a fault measured in any direction;

"disposal" means the introduction of waste into the environment through any discharge, deposit, emission or release to any land, water or air by means of facilities designed, constructed and operated so as to minimize the effect on the environment;

"disposal in a secure building" means the storage of hazardous waste that is intended to be permanent in an above ground secure building;

"facility" means any works that are designed to or do handle, store, treat, destroy or dispose of hazardous waste, and includes recycle facilities, storage facilities, treatment facilities, incinerators, thermal treatment facilities, mobile facilities, secure landfills, piles, surface impoundments, land treatment facilities, secure buildings and in situ management facilities, but does not include an historical hazardous waste contaminated site;

"fault" means a geological fracture along which rocks on one side have been displaced with respect to those on the other side;

"federal Act" means the *Transportation of Dangerous Goods Act, 1992* (Canada), as amended from time to time;

"federal dangerous goods regulations" means the Transportation of Dangerous Goods Regulations, SOR/2001-286, as amended from time to time;

"federal interprovincial movement regulations" means the Interprovincial Movement of Hazardous Waste Regulations, SOR/2002-301, as amended from time to time;

"free liquid" means any quantity of a liquid which is separated from a solid when subjected to the Free Liquid Test Procedure described in Part 3 of Schedule 4;

"groundwater" means water below the ground surface in a zone of saturation;

"hazardous waste" means

(a) dangerous goods if they

(i) are no longer used for their original purpose, and

(ii) meet the criteria for Class 2, 3, 4, 5, 6, 8 or 9 of the federal dangerous goods regulations,

including those that are recycled, treated, abandoned, stored or disposed of, intended for recycling, treatment or disposal or in storage or transit before recycling, treatment or disposal,

(b) PCB wastes,

(b.1) biomedical wastes,

(c) wastes containing dioxin,

(d) waste oil,

(e) waste asbestos,

(f) waste pest control product containers and wastes containing pest control products, including wastes produced in the production of treated wood products using pest control products,

(g) leachable toxic waste,

(h) waste containing tetrachloroethylene,

(h.1) wastes listed in Schedule 7,

(h.2) Repealed. [B.C. Reg. 261/2006, s. 1 (b).]

(i) waste containing polycyclic aromatic hydrocarbon, and

(i.1) Repealed. [B.C. Reg. 319/2004, s. 3 (e).]

but does not include

(j) household refuse that is collected from residential premises,

(k) domestic sewage,

(l) dangerous goods that are defective, surplus or otherwise not usable for their intended purpose and that are in the process of being returned directly to a manufacturer or supplier,

(m) asphalts and tars used in the manufacture of asphaltic concrete and roofing materials,

(n) and (o) Repealed. [B.C. Reg. 214/2004, s. 1 (l).]

(p) waste wood products treated with wood preservatives or wood protection products registered under the *Pest Control Products Act* (Canada),

(q) household hazardous waste that

(i) is removed from a return collection facility in accordance with an authorization from the owner of the return collection facility, and

(ii) is to be reused for its originally intended purpose,

(r) wood ash, or pulp mill dregs and grit, that would be hazardous waste only because they are classified under the federal dangerous goods regulations as class 8, or

(s) waste that

(i) has a pH greater than or equal to 2.0 and less than or equal to 12.5, and

(ii) would be a hazardous waste only because it is classified under the federal dangerous goods regulations as class 8 because of pH;

"historical hazardous waste contaminated site" means any land or groundwater which

(a) was contaminated with hazardous waste on or before April 1, 1988, and

(b) is no longer used for any activity which adds new hazardous waste contamination to the land at that location;

"holocene fault" means a fault which is or has been active or has had displacement during the last 11 000 years;

"household hazardous waste" means a hazardous waste that

(a) results from any of the following involving anything in a "product category" as defined in the Recycling Regulation, B.C. Reg. 449/2004:

(i) a domestic activity at a residence,

(ii) personal use, or

(iii) a person's use in relation to his or her own residence, and

(b) under a regulation must be accepted at a return collection facility;

"household hazardous waste collection facility" means a permanent place that is operated for the collection and storage of household hazardous waste;

"hydrocarbon contaminated soil" means soil, sand, gravel, rock or similar naturally occurring material which is only contaminated with a petroleum product including, but not limited to, gasoline, diesel, fuel oil, hydraulic oil and lubricating oil;

"ignitable" means having the properties of

(a) gases in Class 2.1,

(b) flammable liquids in Class 3, or

(c) flammable solids, substances liable to spontaneous combustion or substances that on contact with water emit flammable gases in Class 4

of the federal dangerous goods regulations;

"impervious" means having a permeability not greater than 1 x 10^{-7} cm per second when subjected to a head of 0.305 m of water;

"incinerator" means a thermal treatment facility using controlled flame combustion;

"incompatible hazardous waste" means a hazardous waste which, when in contact with another hazardous waste or substance and under normal conditions of storage or transportation, may react to produce

(a) heat,

(b) a gas,

(c) a corrosive substance, or

(d) a toxic substance;

"indoor" means enclosed and protected from precipitation and wind as in a building but does not include a shipping container used for passive storage;

"in situ management facility" means a facility used to

(a) prevent or control the movement or release of hazardous waste contaminants, or

(b) treat or destroy hazardous waste contaminants in soil or groundwater

at an historical hazardous waste contaminated site in such a way that the physical location of the hazardous waste contaminants and the soil is not substantially altered;

"labpack" means a drum or a barrel with a maximum capacity of 454 litres that

(a) is used to transport several containers of hazardous waste for storage, recycle or disposal, and

(b) includes one or more inner linings that contain absorbent or cushioned packaging for safety of storage or transport of the containers of hazardous waste;

"land treatment" means the treatment of hazardous waste by applying it to land;

"leachate" means any liquid, including suspended materials which it contains, which has percolated through or drained from a hazardous waste facility;

"leachable toxic waste" means waste when subject to the extraction procedure described in the US EPA Method 1311 produces an extract with a contaminant concentration greater than those prescribed in Table 1 of Schedule 4;

"liner" means a continuous layer of synthetic or natural clay or earth materials, placed beneath and at the sides of a secure landfill, a surface impoundment or a pile, and intended to restrict the downward or lateral escape of hazardous waste or leachate;

"manage" means to handle, transport, store, treat, destroy or dispose of hazardous waste;

"manifest" means the form prescribed under section 46 (3) (a) or (b), as applicable;

"mobile facility" means any movable or transportable facility that is designed, constructed and operated to treat or destroy hazardous waste;

"mobile household hazardous waste collection facility" means a movable or transportable truck or trailer that is operated for the collection and storage of household hazardous waste;

"off site facility" means a facility that is not an on site facility;

"on site facility" means a facility located on the property where the hazardous waste that it deals with is or was produced, and that is used solely to deal with the hazardous waste produced on that property, and for this purpose non-contiguous properties owned by the same person but connected by

(a) a right of way which the person controls and to which the public does not have access, or

(b) not more than 1 km of highway as defined in the *Motor Vehicle Act*,

must be considered to be the same property;

"owner" means the person who owns a facility or part of a facility and includes an operator who is authorized by the owner to act as the owner's agent;

"passive storage" means storage of hazardous waste in a facility where the only activity that takes place is placement, retrieval or inspection of the hazardous waste;

"PCB" means a chlorobiphenyl;

"PCB equipment" means a manufactured item that contains or is contaminated with PCB liquids or PCB solids and includes transformers, capacitors and containers;

"PCB liquid" means any liquid containing more than 50 parts per million by weight of chlorobiphenyls;

"PCB solid" means any material or substance other than PCB liquid that contains or is contaminated with chlorobiphenyls at a concentration greater than 50 parts per million by weight of chlorobiphenyls;

"PCB wastes" means PCB liquid, PCB solid and PCB equipment that have been taken out of service for the purpose of treatment, recycling, reuse or disposal or for the purpose of storage prior to treatment, recycling, reuse or disposal;

"pest control product" means a product registered as a pest control product under the *Pest Control Products Act* (Canada);

"polycyclic aromatic hydrocarbon TEQ" or **"PAH TEQ"** means the polycyclic aromatic hydrocarbon toxicity equivalent value relative to benzo[a]pyrene which is determined by adding the products of the measured concentrations of each listed PAH in Column 1 of Schedule 1.1 multiplied by the toxicity equivalency factor (TEF) listed opposite in Column 2, as measured by test methods approved by a director;

"principal organic hazardous constituents" or **"POHC"** means one or more organic components of a hazardous waste that are designated by a director;

"product of incomplete combustion" or **"PIC"** means a carbon containing compound, other than carbon dioxide, present in the exhaust stream of a thermal treatment facility;

"Provincial identification number" means

(a) a generator registration number,

(b) a licence to transport number, or

(c) a registered site number;

"radioactive waste" means waste containing a prescribed substance as defined in the *Atomic Energy Control Act* in sufficient quantity or concentration to require a licence for possession or use under that Act and regulations made under that Act;

"reactive" means waste that

(a) is an explosive substance as defined by Class 1 of the federal dangerous goods regulations,

(b) is an oxidizing substance as defined by Class 5 of the federal dangerous goods regulations,

(c) is normally unstable and readily undergoes violent change without detonating,

(d) reacts violently with water or air,

(e) forms potentially explosive mixtures with water,

(f) when mixed with water, generates toxic gases, vapours or fumes in a quantity sufficient to present danger to human health or the environment,

(g) is a cyanide or sulphide bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapours or fumes in a quantity sufficient to present danger to human health or the environment,

(h) is capable of detonation or explosive reaction if it is subject to a strong initiating source or if heated under confinement,

(i) is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure, or

(j) polymerizes in whole or in part by chemical action and causes damage by generating heat or increasing in volume;

"recharge area" means any land within which water enters an aquifer;

"recycle" means to wholly utilize hazardous waste or residue from a hazardous waste management facility

(a) in an agricultural, commercial, manufacturing or industrial process or operation, where the principal purpose of the process or operation is not waste management,

(b) by promptly packaging it for retail sale to meet a market demand, or

(c) by offering it for retail sale to meet a market demand,

but does not include

(d) the application of hazardous waste or residue into or onto land, or

(e) the disposal of hazardous waste or residue by burning, burning as a fuel or mixing with a fuel before burning;

"return collection facility" means a household hazardous waste collection facility or a mobile household hazardous waste collection facility;

"seasonally high water table" means the highest level of rise of the free surface of water below the ground surface at any time during the year;

"secure building" means an above ground indoor facility that meets the requirements set out in Division 8 of Part 4 of this regulation;

"secure disposal" means disposal in a secure building or secure landfill;

"secure landfill" means a disposal facility where hazardous waste is placed in or on land and that is designed, constructed and operated to prevent any pollution from being caused by the facility outside the area of the facility;

"sewage" means effluent from domestic sources but does not include effluent from industrial sources;

"shipping name", in relation to waste, means

(a) in the case of dangerous goods, the shipping name as defined in the federal dangerous goods regulations,

(b) in the case of hazardous waste described by paragraph (h.1) of the definition of "hazardous waste", its type number under Schedule 7, and

(c) otherwise, the hazardous waste as it is described in the definition of "hazardous waste";

"slope failure" means a measurable downward and outward movement of soil, rocks, snow, ice, mud or debris caused by gravity acting on an unstable slope;

"small inside container" means an inner packaging, receptacle or container with a maximum capacity of 100 L;

"storage" means the storage of hazardous waste with the intention to move the hazardous waste for subsequent management;

"storm sewer" means a manmade drain, ditch or sewer used primarily to carry natural precipitation runoff;

"surface impoundment" or **"impoundment"** means a facility which is

(a) intended for the storage of hazardous waste, and

(b) a man-made excavation or dyked area formed primarily of earthen materials;

"tank" means a stationary device constructed of non-earthen materials such as wood, concrete, steel or plastic which provides containment and is designed for the storage of hazardous waste;

"thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures;

"treatment" means the handling or processing of hazardous waste in such a manner as to change the physical, chemical or biological character or composition of the hazardous waste, and **"treat"** has a corresponding meaning;

"unconfined aquifer" is an aquifer that extends downward from the surface with no low permeability material above it;

"underground injection" means the emplacement of fluids underground through a bored, drilled, driven or dug well;

"uppermost aquifer" means an aquifer that is nearest the natural ground surface as well as lower aquifers that are hydraulically connected with this aquifer within the boundaries of the waste disposal site;

"washout" means the movement of hazardous waste from any hazardous waste facility as a result of flooding;

"waste asbestos" means a waste containing friable asbestos fibres or asbestos dust in a concentration greater than 1% by weight either at the time of manufacture, or as determined using a method specified in section 40 (1);

"waste containing dioxin" means a waste containing dioxin TEQ in a concentration greater than 100 parts per billion by weight;

"waste containing polycyclic aromatic hydrocarbon" means waste containing polycyclic aromatic hydrocarbons (PAH) in a total concentration greater than 100 parts per million measured as polycyclic aromatic hydrocarbon TEQ by weight;

"waste containing tetrachloroethylene" means waste containing tetrachloroethylene in a concentration greater than 500 parts per million by weight;

"waste oil" means automotive lubricating oil, cutting oil, fuel oil, gear oil, hydraulic oil or any other refined petroleum based oil or synthetic oil where the oils are in the waste in a total concentration greater than 3% by weight and the oils through use, storage or handling have become unsuitable for their original purpose due to the presence of impurities or loss of original properties;

"waste pile" means any non-containerized accumulation of solid, nonflowing hazardous waste that is being stored or treated;

"wetland" includes any land such as a tidal flat, marsh, swamp, bog or fen which

(a) is frequently inundated and for that reason has developed an organic soil, and

(b) occurs in an area which is lower lying than its surroundings.

(2) If, under this regulation, anything is required to be approved, the approval

(a) must be in writing,

(b) may be made subject to the conditions or requirements the person giving the approval considers necessary or advisable, and

(c) must be obtained from a director unless another person's approval is specifically required.

[am. B.C. Regs. 10/89, s. 1; 106/89, s. 1; 132/92, s. 1; 52/95, s. 1; 214/2004, s. 1; 319/2004, ss. 2 and 3; 261/2006, ss. 1 to 5; 375/2008, ss. 1 and 2.]

1.1 Repealed. [B.C. Reg. 319/2004, s. 4.]

General

2 (1) If a facility is described by the definition of more than one kind of facility, the provisions of this regulation that apply in relation to each of those kinds of facility apply in relation to it.

(2) If the minister has set a date by which an off site facility that existed before April 1, 1988 must comply with the siting standards, operational requirements and performance standards established in this regulation, the off site facility need not comply until that date.

(3) The siting standards contained in this regulation do not apply in respect of an on site facility that existed on April 1, 1988 until the minister orders that those standards apply.

(4) If the minister has set a date by which an on site facility that existed before April 1, 1988 must comply with the operational requirements and performance standards established in this regulation, the on site facility need not comply until that date.

(5) This regulation, except sections 17.1 and 46 (1), does not apply in relation to hazardous waste that is produced or accumulated in a quantity of less than 5 kilograms or 5 litres in a 30 day period.

(6) The owner of an on site treatment facility that is used solely to reduce the volume of hazardous waste is exempt from Parts 2 and 3 and Division 3 of Part 4..

(7) The owner of a recycling facility is exempt from Parts 2 and 3 and Division 1 of Part 4, if

(a) the substances in the waste causing the waste to be classified as a hazardous waste are normally contained in the material fed into the process, or produced by the process, of the recycling facility, and

(b) in the case of an off site recycling facility, the hazardous waste is less than 5% by weight of all the material fed into the process.

(8) Sections 3 to 9, 12, 13, 15 to 35, 37 and 40 do not apply in relation to a facility if only mine tailings or mine waste rock are managed at the facility.

(9) A director, in an individual case, may substitute another requirement for a requirement of this regulation, except a requirement in relation to which the minister is authorized under this regulation to substitute requirements, if the director considers that

(a) the substitution is necessary to protect the public or the environment, or

(b) the intent of the original requirement will be met by the substitution.

(10) A person who knowingly provides false or misleading information in a form required under this regulation commits an offence and is liable on conviction to a fine not exceeding $200 000.

(11) Subject to subsection (12), sections 3, 6 to 13, 25, 28 and 33 do not apply to a facility used to manage hazardous waste from an historical hazardous waste contaminated site if

(a) the facility is located on the historical hazardous waste contaminated site or on other land that the director may approve,

(b) any requirement imposed by the director under subsection (12) is met, and

(c) in the case of an in situ management facility, the person who constructs the facility and the person who operates the facility receive a director's prior approval of the construction or operation.

(12) If a director considers it necessary for the protection of the public or the environment, the director may impose a requirement, in relation to a facility exempted under subsection (11), that the director considers will accomplish the same purpose as a requirement in a provision from which the facility is exempt.

(13) and (14) Repealed. [B.C. Reg. 375/2008, s. 3.]

[en. B.C. Reg. 319/2004, s. 4; am. B.C. Reg. 375/2008, s. 3.]

PART 2 – MINIMUM SITING STANDARDS FOR ALL HAZARDOUS WASTE FACILITIES

Siting standards

3 A person must not establish, construct or operate any hazardous waste facility

(a) in a 200 year floodplain unless the hazardous waste facility

(i) is designed, constructed, operated and maintained to prevent washout, or

(ii) was in operation on the day this paragraph comes into force, in which case the facility must continue to be protected to the 100 year flood level,

(b) within 100 m of a holocene fault,

(c) in a place which is subject to tsunamis unless the hazardous waste facility is designed, constructed, operated and maintained to prevent washout of any hazardous waste by a tsunami,

(d) within 100 m of any land which is subject to slope failure, or

(e) within the boundaries of any

(i) national, Provincial, regional or municipal park,

(ii) wildlife management area as designated under section 4 of the *Wildlife Act*,

(iii) critical wildlife area or wildlife sanctuary designated under section 5 of the *Wildlife Act*,

(iv) land acquired and administered under section 3 of the *Wildlife Act*,

(v) ecological reserve designated under the *Ecological Reserve Act*,

(vi) bird sanctuary designated under the regulations pursuant to the *Migratory Birds Convention Act* (Canada), or

(vii) wildlife area designated under the *Canada Wildlife Act* (Canada).

[am. B.C. Regs. 132/92, s. 3; 319/2004, s. 2; 375/2008, s. 1.]

PART 3 – OPERATIONAL REQUIREMENTS FOR ALL HAZARDOUS WASTE FACILITIES

Plans

4 (1) Before beginning the construction or installation of a hazardous waste facility, the owner must obtain approval of any of the following that apply:

(a) plans and specifications of new works;

(b) plans for the modification of existing works;

(c) a new operational plan;

(d) a modified operational plan.

(2) An operational plan under subsection (1) (c) must specify all of the following:

(a) which hazardous wastes will be stored, treated, recycled or disposed of at the facility;

(a.1) the maximum quantity of each hazardous waste specified under paragraph (a) that the owner estimates will be stored at the facility at any time;

(a.2) the facility's maximum daily capacity for treating, recycling or disposing of each hazardous waste specified under paragraph (a);

(b) details of the monitoring that will be carried out, including its content and frequency;

(c) details of the reporting that will be provided to a director, including its content and frequency;

(d) details of auditing activities.

(2.1) The plans and specification referred to in subsection (1) (a) and (b) must include the plans and specifications for the facility's spill containment system.

(2.2) On or before January 31, 2007, an owner that has not had an operational plan in relation to a facility approved under this section must submit for approval an operational plan that complies with subsections (2) and (2.1).

(3) An owner who obtains the approval required under subsection (1) must carry out the construction, installation and operation of the hazardous waste facility in accordance with the approved plans.

[en. B.C. Reg. 319/2004, s. 5; am. B.C. Regs. 261/2006, s. 6; 375/2008, s. 1.]

Waste information

5 (1) An owner of a facility must not accept, handle, store, treat, destroy or dispose of hazardous waste at the facility or allow it to be accepted, handled, stored, treated, destroyed or disposed of at the facility without taking reasonable measures to identify all hazards associated with the hazardous waste through

(a) physical, chemical or biological analyses,

(b) published scientific documentation,

(c) consultation with the waste generator, or

(d) consultation with the manufacturer in the case of manufactured goods which become waste,

and without limiting the generality of this, the owner must again inquire into and ascertain those hazards wherever that owner has reason to believe that

(e) a process or operation generating a hazardous waste delivered to the facility has changed, or

(f) the description of a hazardous waste received at the facility does not match the description of the hazardous waste on the accompanying waste manifest.

(2) The owner of a facility must not accept a hazardous waste that

(a) does not match the description on the accompanying manifest, or

(b) is not accompanied by a manifest,

and where any person attempts to deliver such waste to the facility, the owner of the facility must immediately notify a director by telephone to seek

(c) authorization to accept the hazardous waste, or

(d) other instructions.

(3) A person must not accept, at any hazardous waste facility, hazardous waste which is described as a quantity more than 100 kg or 100 l on the accompanying manifest without first determining the quantity of waste delivered by measuring the weight or volume of the shipment.

(4) Where the quantity of hazardous waste received at a hazardous waste facility is either

(a) 5% greater than, or

(b) 5% less than

the quantity described in Part A of the manifest, the owner of the facility must

(c) describe the occurrence of the discrepancy on the manifest,

(d) submit a copy of the manifest, including the description required under paragraph (c), to the director within 3 days of receiving the hazardous waste, and

(e) include the description of the discrepancy in the annual summary required under subsection (5).

(5) If there has been an occurrence of a discrepancy as described in subsection (4), the owner of a hazardous waste facility must

(a) prepare an annual summary of all occurrences of discrepancies for the previous year,

(b) include in the annual summary an explanation of actions taken to reduce further occurrences of discrepancies, and

(c) submit the annual summary to the director within 60 days of the end of the calendar year in which the discrepancies occurred.

[am. B.C. Regs. 319/2004, ss. 2 and 6; 261/2006, s. 7; 375/2008, ss. 1 and 4.]

Waste record

6 (1) The owner of a hazardous waste facility must keep for inspection by an officer an operating record at his or her facility and must record in a written or retrievable electronic form the following information for each hazardous waste received, stored or shipped:

(a) the description including

(i) the name and identification number as described in the federal dangerous goods regulations, and

(ii) the physical state (i.e. whether it is solid, liquid, gaseous or a combination of one or more of these);

(b) the quantity in kilograms or litres;

(c) the method and date of storing, repacking, treating or disposing at the facility, cross-referenced to specific manifest document numbers applicable to the hazardous waste;

(d) the location of each hazardous waste within the facility and the quantity at each location.

(2) The owner of a hazardous waste facility must keep the records required under subsection (1) for a minimum of 2 years after the waste has been removed from the facility.

[am. B.C. Regs. 132/92, s. 4; 214/2004, s. 4; 319/2004, s. 2; 375/2008, ss. 1 and 5.]

Weather protection

7 A person must not operate a hazardous waste facility unless the facility has been designed, constructed and maintained so that elements of the weather such as precipitation, heat, frost, wind and humidity have no detrimental effect on the capability of the facility to manage hazardous waste.

[am. B.C. Regs. 319/2004, s. 2; 375/2008, s. 1.]

Access security

8 A person must not operate a hazardous waste facility unless access to the facility by unauthorized persons or by animals is prevented by

(a) a 24 hour surveillance system that continuously monitors and controls entry to the facility, and for this purpose television monitors or an approved system, or surveillance guards present at the facility must be used, or

(b) a barrier such as

(i) a 2.13 m high chain link fence topped with 3 strands of barbed wire to prevent scaling of the fence, or equally effective approved barrier, and

(ii) a means of controlled entry, at all times, through gates or other entrances,

(c) locks or locked covers on all valves, pumps, electrical controls and other operational controls which would be accessible if the prevention measures referred to in paragraph (a) or (b) above were breached, and

(d) a sign, legible from a distance of at least 10 m, reading

(i) "DANGER – UNAUTHORIZED PERSONNEL KEEP OUT",

(ii) "DANGER – AUTHORIZED PERSONNEL ONLY", or

(iii) "RESTRICTED AREA – AUTHORIZED PERSONNEL ONLY",

or equivalent wording, posted at each entrance to the facility and at such other locations as a director may fix.

[am. B.C. Regs. 132/92, s. 5; 319/2004, ss. 2 and 7; 375/2008, s. 1.]

Prevention of fire, explosion and accidental reactions

9 (1) The owner of a hazardous waste facility must prevent the accidental ignition or reaction of ignitable or reactive waste by protecting such waste from sources of ignition or reaction such as open flames, smoking, grinding and welding, hot surfaces, frictional heat, static, electrical or mechanical sparks, spontaneous ignition from heat producing chemical reactions and radiant heat by means of

(a) electrical spark grounding where the potential for static buildup exists,

(b) suitable separation distances or a barrier with a minimum fire rating of 2 hours between the waste and ignition sources, and

(c) a warning sign, legible from a distance of 10 m, reading "DANGER – IGNITABLE/REACTIVE HAZARDOUS WASTE, NO OPEN FLAMES, SMOKING OR SPARKS".

(2) The owner of any indoor hazardous waste facility which manages reactive or ignitable hazardous waste must

(a) provide and maintain a continuous 24 hour fire alarm system with

(i) smoke sensing alarms, and

(ii) heat sensing alarms,

capable of automatically stopping any forced air ventilation systems in the facility and summoning a 24 hour external emergency response through

(iii) a local fire department,

(iv) a local response team, or

(v) on site security staff who have immediate communication access to a local response agency,

(b) provide and maintain a fire suppression system specified by the Fire Commissioner or a local assistant to the Fire Commissioner as defined in the *Fire Services Act*, or where not so specified provide and maintain

(i) a permanent, automatic system which uses foam, inert gas or dry chemical, or

(ii) one portable ABC rated fire extinguisher with a minimum 10 kg capacity for every 250 m^2 of the facility's space,

(c) provide and maintain sufficient aisle space between containers of hazardous waste to allow the unobstructed movement of persons, fire protection equipment, spill control equipment and decontamination equipment to any part of the facility,

(d) design and construct the facility so that the walls, doors and floor are noncombustible with a minimum fire rating of 2 hours, and

(e) ensure that any heat required for the facility is provided only by indirect means such as hot water, steam or electrical resistance and not by any device which uses an open flame within 10 m of where wastes are located, nor by any other device prohibited by the Fire Commissioner or a local assistant to the Fire Commissioner under the *Fire Services Act*.

(3) The owner of a hazardous waste facility that treats, stores or disposes of ignitable or reactive waste must take precautions to prevent reactions which may do any of the following:

(a) generate extreme heat or pressure, fire or explosions;

(b) produce uncontrolled toxic mists, fumes, dusts or gases in sufficient quantities to threaten human health or the environment;

(c) produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosion;

(d) damage the structural integrity of the facility.

[am. B.C. Regs. 10/89, s. 3; 132/92, s. 6; 319/2004, s. 2; 375/2008, s. 1.]

Spill protection and reporting

10 The owner of a hazardous waste facility must

(a) provide and maintain an approved spill containment system to contain on site any release of spilled hazardous waste,

(b) inspect the facility monthly and, where any free liquid hazardous waste is stored at the facility,

(i) provide and maintain a 24 hour spill alarm system appropriate for the hazardous waste managed at the facility, or

(ii) inspect the facility weekly for any irregularities such as malfunctions, deterioration, operator error, leaks or spills which may lead to the escape of hazardous waste from the facility or may pose a threat to human health,

(c) maintain at the facility a record of inspections conducted as required by paragraph (b) showing

(i) any irregularities in the facility,

(ii) dates that any such irregularities were discovered,

(iii) corrective action taken, and

(iv) date of corrective action, and

(d) immediately report any irregularities to a director.

[am. B.C. Regs. 132/92, s. 7; 319/2004, ss. 2 and 8; 375/2008, s. 1.]

Contingency plan

11 The owner of a hazardous waste facility must

(a) prepare and maintain in up-to-date readiness a contingency plan, approved by a director, which documents procedures to be followed during emergencies, including

(i) shut down procedures,

(ii) communication networks to be used, and

(iii) notification procedures for

(A) police departments in the vicinity,

(B) fire departments in the vicinity,

(C) emergency response teams,

(D) ambulance and medical services,

(E) contractors carrying on business in the vicinity,

(F) schools, hospitals and residents,

(G) federal, Provincial and municipal governments,

(iv) evacuation procedures for facility staff,

(v) abatement measures,

(vi) inventories of spill response and cleanup equipment available

(A) at the facility,

(B) from contractors carrying on business in the vicinity,

(C) from agencies operating in the vicinity, and

(D) from regional suppliers,

(b) appoint one person and at least one alternate to act as an Emergency Response Coordinator with authority to carry out action in accordance with the contingency plan,

(c) provide a copy of the contingency plan to

(i) the Emergency Response Coordinator,

(ii) each alternate Emergency Response Coordinator, and

(iii) a director, and

(d) provide clean up equipment, sorbents and other material and protective equipment and clothing, for all emergency response staff at the facility, appropriate for all the hazardous wastes managed at the facility.

[am. B.C. Regs. 10/89, s. 4; 319/2004, ss. 2 and 9; 261/2006, s. 8; 375/2008, s. 1.]

Emergency systems testing

12 (1) The owner of a hazardous waste facility must test or inspect

(a) the fire and explosion protection systems described in section 9 (2),

(b) the spill protection systems described in section 10 (a) and (b), and

(c) the contingency plan described in section 11 (a),

at least once a year to ensure that such protective measures, systems, procedures, equipment and clothing are capable of proper operation in an emergency.

(2) The owner of a hazardous waste facility must make a written record of each test carried out as required by subsection (1) and must include in the record

(a) the measures, systems, procedures, equipment and clothing tested,

(b) a description of the test methods,

(c) the date of the tests on each component,

(d) the results of the tests, and

(e) description and date of any corrective action

and the record must be available for inspection by an officer.

(3) Where a facility manages more than 20 tonnes of hazardous waste in a calendar year, the owner of the facility must submit a copy of the record referred to in subsection (2) to a director within 90 days after each test.

[am. B.C. Regs. 132/92, s. 8; 319/2004, ss. 2 and 10; 375/2008, s. 1.]

Personnel training

13 (1) The owner of a hazardous waste facility must ensure that every person employed in the operation of the facility receives training which includes instruction on

(a) the employed person's duties and responsibilities,

(b) use of personnel protective equipment,

(c) fire and explosion response procedures,

(d) spill response procedures,

(e) communications and alarm systems,

(f) use of abatement and cleanup equipment,

(g) shut down operations, and

(h) hazards of all hazardous waste managed at the facility,

before beginning employment in an operational capacity.

(2) The owner of any facility must provide to each operational staff member an annual review of the training required by subsection (1).

(3) An owner of a facility referred to in subsection (1) must maintain and must produce for inspection whenever required by an officer a record of

(a) all persons employed in the operations of the facility and their duties and responsibilities,

(b) a description of the level of training received by each person so employed, and

(c) the date of the last training session for each person so employed.

[am. B.C. Regs. 132/92, s. 9; 319/2004, s. 2; 375/2008, s. 1.]

Closure

14 (1) The owner of a hazardous waste facility must not operate the facility unless that owner has prepared a written closure plan and has received approval of the plan.

(2) A closure plan must include

(a) a schedule of how and when the facility will be closed,

(b) a description of decontamination procedures to be followed,

(c) a description and estimate of the quantity of any hazardous waste residues which will remain at the site after closure, and

(d) an estimate of the total time required to close the facility.

(3) The owner of a hazardous waste facility must, whenever changes in the operating plans, facility design or the expected year of closure are intended, submit amendments to the closure plan for approval.

(4) The owner of a hazardous waste facility must

(a) notify a director within 90 days after receiving or producing the final quantity of hazardous waste at the facility, and

(b) complete the closure of the facility within the period specified in, and in accordance with, the approved closure plan, or, where the closure plan has been amended, in accordance with the approved closure plan and its approved amendments.

[am. B.C. Regs. 319/2004, ss. 2 and 11; 261/2006, s. 9; 375/2008, s. 1.]

PART 4 – ADDITIONAL REQUIREMENTS

Division 1 – Recycle Facilities

Operational requirements

15 (1) The owner of a recycle facility must provide an automatic means of stopping

(a) the process equipment, and

(b) the waste feed system

in the event of an accidental release or in circumstances which might lead to an accidental release of a hazardous waste.

(2) The owner of a recycle facility where liquid hazardous waste is being managed must

(a) use a dripless hose connection, or a containment system that provides equal or better protection than the protection provided by a dripless hose connection, when transferring liquid hazardous waste by means of detachable hoses or pipes, and

(b) ensure that all materials on pipes, pumps, containers and any other equipment which comes in contact with the hazardous waste is compatible with the hazardous waste.

[am. B.C. Regs. 319/2004, s. 2; 261/2006, s. 10; 375/2008, s. 1.]

Division 2 – Storage Facilities

Operational requirements

16 (1) The owner of a storage facility where free liquid hazardous waste is stored in containers or tanks must

(a) provide space to allow for manual, visual inspection for leaks,

(b) provide and maintain an impervious containment system sufficient to hold the larger of

(i) 110% of the largest volume of free liquid hazardous waste in any given container or tank, or

(ii) 25% of the total volume of free liquid hazardous waste in storage,

(c) provide controlled forced air ventilation to any indoor facility so that 0.3 $m^3/min/m^2$ of a facility is exhausted at all times unless a facility is used solely for passive storage,

(d) provide overflow protection for tanks by means of

(i) fixed piping to an empty adjacent tank with a capacity equal to or greater than 20% of the protected tank,

(ii) a high level alarm set at 90% of the full liquid level of the tank, or

(iii) an automatic feed cutoff system set at 95% of the full liquid level of the tank container,

(e) use a dripless hose connection, or a containment system that provides equal or better protection than the protection provided by a dripless hose connection, when transferring liquid hazardous waste by means of detachable hoses or pipes,

(f) ensure that all materials on pipes, pumps, containers and any other equipment which comes in contact with the hazardous waste is compatible with the hazardous waste, and

(g) ensure that all hazardous waste transfer lines, hoses and pipes are equipped with automatic shutoff or close on failure valves which close off the flow of hazardous waste in the event of a sudden accidental escape unless a method of containment is provided to prevent the release of free liquid hazardous waste.

(2) If an owner's primary business is not waste management and the owner's facility provides storage that is on site and passive storage, the owner

(a) despite section 4 (1), must prepare and maintain, but unless requested to do so by a director, need not obtain and must not seek approval of, the plans and specifications referred to in section 4 (1) (a) and (b),

(b) despite section 4 (1), unless requested to do so by a director,

(i) need not prepare or maintain, and

(ii) need not obtain, and must not seek approval of,

the operational plans referred to in section 4 (1) (c) and (d),

(c) despite section 11, unless requested to do so by a director, need not obtain and must not seek approval of the contingency plan required by that section, and

(d) despite section 14 (1) and (3), unless requested to do so by a director, need not obtain and must not seek approval of the closure plan, or amendments to the closure plan, required by that section.

[am. B.C. Regs. 132/92, s. 10; 319/2004, s. 2; 261/2006, ss. 10 and 11; 375/2008, ss. 1 and 7.]

Performance standards

17 (1) The owner of a storage facility must ensure that

(a) any emissions to the atmosphere resulting from the operation of the storage facility are controlled to meet approved emission specifications, and

(b) any discharge of liquid effluent to the environment, to storm sewers or to a municipal or industrial effluent treatment works which results from the operation of the storage facility meets the effluent criteria prescribed in Schedule 1.2.

(2) A director may require an owner of a storage facility to give security for performance of the owner's obligations under the Act and this regulation in the amount and form and subject to the conditions the director may specify.

[am. B.C. Regs. 132/92, s. 11; 319/2004, s. 12; 375/2008, ss. 1 and 8.]

Additional requirements for storage of PCB wastes

17.1 (1) Notwithstanding section 2 (3) to (6) and (8), all storage facilities where

(a) 1.0 kilogram or more of PCBs,

(b) 100 litres or more of PCB liquid, or

(c) 100 kilograms or more of PCB solids

are stored must comply with sections 3 to 14, 16, 17 and this section.

(2) For the purpose of determining the quantity, volume or weight by which PCBs, PCB liquids or PCB solids exceed the amount specified in subsection (1), the total amounts stored at each location owned or controlled by the same owner or operator must be added together.

(3) The owner of a storage facility used to store PCB wastes must ensure that

(a) drums up to 205 litre capacity used for PCB solids

(i) Repealed. [B.C. Reg. 132/92, s. 12 (a).]

(ii) are made of 18 gauge steel or heavier,

(iii) have a securely attached, close fitting removable steel lid and a gasket of PCB resistant material, and

(iv) are painted to prevent rusting,

(b) drums up to 205 litre capacity used for PCB liquids

(i) Repealed. [B.C. Reg. 132/92, s. 12 (b).]

(ii) are made of 16 gauge steel for PCB liquids placed in storage or repackaged on or after April 1, 1992 and 18 gauge steel for PCB liquids placed in storage before April 1, 1992,

(iii) have a closed top that is fitted with 2 screw plug bungs, and

(iv) are painted to prevent rusting,

(c) all containers used for PCB wastes, and all PCB equipment except transformers on skids, must be placed on pallets or an alternate system of storage that allows for visual inspection for leaks and easy removal of the waste,

(d) drums of PCB wastes must not be stacked more than 2 drums high,

(e) containers of PCB wastes other than drums are not stacked unless the containers have been specifically designed for stacking and in such case that they are not stacked more than 2 containers high,

(f) an up-to-date inventory and site map indicating where all PCBs are stored at the facility and a fire safety plan acceptable to the local assistant to the fire commissioner

(i) are provided to a director,

(ii) are provided to the local assistant to the fire commissioner, and

(iii) are kept on site for inspection by an officer,

(g) capacitors containing 0.5 kilogram or more of chlorobiphenyls are labelled with either Environment Canada's serialized, black and white "CAUTION/ATTENTION PCB" label, measuring 76 mm by 76 mm, or a reasonable alternative, unless the capacitor was stored in a container before this section came into effect,

(h) electrical transformers, electromagnets and other equipment containing chlorobiphenyls in a concentration exceeding 1% by weight are labelled with either Environment Canada's serialized, black and white "ATTENTION PCB" label, measuring 150 mm by 150 mm, or a reasonable alternative,

(i) electrical transformers, electromagnets and other equipment containing chlorobiphenyls in a concentration exceeding 50 parts per million by weight but not greater than 1% by weight are labelled with either Environment Canada's "ATTENTION – Contaminated with PCBs" label, or a reasonable alternative,

(i.1) containers containing chlorobiphenyls in a concentration exceeding 1% by weight are labelled with either Environment Canada's "ATTENTION – PCB Waste" label, or a reasonable alternative,

(j) the floor or other surface of the storage site on which undrained PCB equipment or PCB liquids are stored, whether indoors or outdoors, must be constructed of steel, concrete or other durable material,

(k) where undrained PCB equipment or PCB liquids are stored on a floor or other surface of the storage site, whether indoors or outdoors, the floor or surface of the site must be provided with curbing or sides sufficient to contain

(i) in the case where a single item is being stored, 125% of the volume of the PCB liquid in the item, and

(ii) in the case where more than one item is being stored, the greater of twice the volume in the largest item or 25% of the volume of all the PCB liquids stored on the floor or surface,

(l) where the material of the floor or other surface of the storage site or the curbing or sides referred to in paragraph (k) are capable of absorbing PCBs, they are sealed with a durable PCB resistant coating,

(m) where undrained PCB equipment or PCB liquids are stored on a floor or other surface of the storage site, any existing floor drains, sumps or other openings in the floor are closed and sealed to prevent the escape of liquid,

(n) doors to storage sites, fencing and other security barriers enclosing storage sites are labelled with Environment Canada's non-serialized, black and white "ATTENTION PCB" label, measuring 150 mm by 150 mm, or a reasonable alternative.

(4) Repealed. [B.C. Reg. 132/92, s. 13.]

[en. B.C. Reg. 10/89, s. 5; am. B.C. Regs. 132/92, ss. 12, 13; 319/2004, s. 13; 261/2006, s. 12; 375/2008, ss. 1 and 9.]

Division 3 – Requirements For Treatment Facilities

Operational requirements

18 (1) The owner of a treatment facility must provide an automatic means of stopping

(a) the process equipment, and

(b) the waste feed system

in the event of an accidental release or in circumstances which might lead to an accidental release of hazardous waste.

(2) Before beginning operation of a treatment facility the owner must conduct an approved demonstration trial to demonstrate the effectiveness of each process intended to treat a hazardous waste that will be received at the facility.

(3) The demonstration trial referred to in subsection (2) must provide

(a) an adequate test of the treatment process to be used,

(b) a qualitative and quantitative description of the physical, chemical and biological properties of

(i) the hazardous waste to be treated,

(ii) any liquid or solid residues remaining after treatment, and

(iii) any emissions to the atmosphere resulting from the treatment process,

(c) a description of operating conditions in the treatment process including but not limited to

(i) temperatures,

(ii) pressures, and

(iii) residence times, and

(d) a description of any conditions which may cause a detrimental effect on human health or the environment.

(4) The owner of a treatment facility must submit a report with all the information described in subsection (3) to a director before beginning operation of the treatment facility.

[am. B.C. Regs. 319/2004, ss. 2 and 14; 261/2006, s. 13; 375/2008, s. 1.]

Performance standards

19 (1) The owner of a treatment facility must ensure that

(a) any discharge of liquid effluent to the environment, to storm sewers or to a municipal or industrial effluent treatment works which results from the operation of the treatment facility meets the effluent criteria prescribed in Schedule 1.2, and

(b) any emissions to the atmosphere resulting from

(i) a treatment facility process, or

(ii) the ventilation system of a treatment facility,

meet approved emission specifications.

(2) The owner of a treatment facility must not allow residue to be discharged from the treatment facility unless

(a) the residue is managed at a hazardous waste management facility in accordance with this regulation, or

(b) the owner demonstrates to the satisfaction of a director in accordance with test protocols or methods approved by a director under section 53 (1) that the residue no longer poses a hazard to human health or to the environment and that the residue is suitable for

(i) disposal to a landfill authorized by a permit, approval under section 15 of the Act, order or waste management plan, or

(ii) some other purpose under an approved management option.

(3) Where an owner has demonstrated to a director in accordance with subsection (2) that a residue no longer poses a hazard to human health or to the environment, the director may, notwithstanding section 39, authorize disposal of the residue to a landfill other than a secure landfill.

[am. B.C. Regs. 132/92, ss. 11, 14; 319/2004, ss. 2 and 15; 261/2006, s. 14; 375/2008, s. 1.]

Division 4 – Requirements for Incinerators and Thermal Facilities

Operational requirements

20 (1) Before beginning construction or installation of an incinerator or thermal treatment facility, the owner must

(a) provide a detailed engineering description of the incinerator or thermal treatment facility including the following information:

(i) manufacturer's name and model number (if available);

(ii) type of incinerator or thermal treatment facility;

(iii) internal dimension of the incinerator, or thermal treatment facility including the cross sectional area of the process chamber;

(iv) description of any auxiliary fuel system including fuel type and feed rate;

(v) capacity of air supply and exhaust systems;

(vi) description of the automatic waste feed cutoff system or systems;

(vii) any stack gas monitoring and pollution control equipment;

(viii) nozzle and burner design if the thermal treatment facility is an incinerator;

(ix) construction materials;

(x) location and description of temperature, pressure and flow sensing and control devices,

(b) predict the maximum ambient ground level concentration of emissions from the facility by means of an approved atmospheric dispersion model, and

(c) submit a report with the information described in paragraphs (a) and (b) to the district director or a director, as applicable.

(2) Before beginning operation of an incinerator or thermal treatment facility, the owner must

(a) conduct a demonstration trial in an approved manner to demonstrate the effectiveness of the facility to treat or destroy hazardous waste, and must conduct the trial for a sufficient time under normal operating conditions to obtain

(i) a qualitative and quantitative description of the physical, chemical and biological properties of

(A) the hazardous waste to be incinerated or thermally treated including all principal organic hazardous constituents (POHCs),

(B) any air emissions including all POHCs, products of incomplete combustion (PICs) and parameters listed in Schedule 2,

(C) any liquid effluent discharges including all POHCs, PICs and parameters listed in Schedule 1.2, and

(D) any solid residues including all POHCs, PICs and trace metals listed in Schedule 2,

(ii) a determination of the destruction and removal efficiency (DRE), using Equation 1:

$$DRE = \frac{W_{in} - W_{out}}{W_{in}} \times 100\% \qquad \text{Equation 1}$$

where W_{in} = Mass feed rate of one POHC in the waste feed into the incinerator or thermal treatment facility,

W_{out} = Mass emission rate of the same POHC present in the exhaust emissions,

(iii) a determination of the combustion efficiency (CE), using Equation 2:

$$CE = \frac{CO_2}{CO_2 + CO} \times 100\% \qquad \text{Equation 2}$$

where CO_2 = Concentration of carbon dioxide in exhaust emissions,

CO = Concentration of carbon monoxide in the exhaust emissions,

(iv) a determination of operating conditions including but not limited to

(A) the temperature in the combustion zone or the zone of active thermal treatment,

(B) the residence time of gases in the combustion zone or the zone of active thermal treatment, and

(C) the concentration of excess oxygen in the exhaust emissions

whereby the DRE in Equation 1 was determined, and

(v) a determination of specific

(A) meteorological conditions, and

(B) ambient concentrations of POHCs, PICs and other contaminants

as approved, and

(b) submit a report with the information described in paragraph (a) to the district director or a director, as applicable.

(3) The requirement in subsection (2) (a) (iii) does not apply to thermal treatment facilities which generate CO_2 from sources other than the combustion process.

(4) The owner of an incinerator or thermal treatment facility must

(a) provide an alarm system and an automatic cutoff system to stop the hazardous waste feed to the facility when operating conditions specified in the permit are not met,

(b) test the automatic cutoff system weekly, and

(c) report any malfunction of the automatic cutoff system to the district director or a director, as applicable, within 24 hours after it occurs.

(5) The owner of an incinerator or thermal treatment facility must inspect the facility and all associated equipment such as pumps, valves, conveyors, pipes, etc. daily for any leaks, spills, fugitive emissions and signs of tampering or malfunction.

(6) Any leaks, spills or fugitive emissions from any incinerator or thermal treatment facility must be controlled by keeping the works sealed or by maintaining the internal pressure lower than the atmospheric pressure.

(7) The owner of an incinerator or thermal treatment facility must continuously measure and record for inspection by an officer

(a) the temperature in the combustion zone or the zone of active thermal treatment,

(b) the waste feed rate,

(c) the gas flow rate at the exit from the combustion zone or the zone of active thermal treatment, and

(d) carbon monoxide, carbon dioxide and oxygen concentrations in the exhaust gas.

(8) The owner of an incinerator or thermal treatment facility must monitor any process emissions for approved parameters at approved intervals.

(9) A report of the emissions monitoring including methods and results must be submitted to the district director or a director, as applicable, within 60 days after completion of the emissions monitoring referred to in subsection (8).

(10) The owner of an incinerator or thermal treatment facility must monitor the ambient air quality and meteorological conditions using approved methods.

(11) A report of the ambient air quality monitoring referred to subsection (10) must be submitted to the district director or a director, as applicable, within 60 days of the end of each calendar quarter.

[am. B.C. Regs. 10/89, s. 6; 132/92, s. 15; 319/2004, ss. 2 and 16; 375/2008, s. 1.]

Performance standards

21 (1) The owner of an incinerator or thermal treatment facility must ensure that during operation

(a) the DRE (Equation 1) of the facility is equal to or greater than that specified in Table 1,

Table 1

Item	Parameter	DRE Standards
1	Principal Organic Hazardous Constituents (POHCs)	99.99%
2	Polychlorinated biphenyls (PCBs)	99.9999%
3	Polychlorinated dibenzofurans	99.9999%
4	Polychlorinated dibenzo-p-dioxins	99.9999%

(b) the operating conditions are maintained at levels shown by the demonstration trial referred to in section 20 (2) to be necessary to meet the DRE criteria in Table 1,

(c) the CE (Equation 2) of an incinerator is equal to or greater than 99.9%,

(d) the exhaust emissions meet the emission standards as specified in Schedule 2, and

(e) any discharge of liquid effluent to the environment or to any system of waste disposal operated by a municipality or other public authority which results from the operation of an incinerator or thermal treatment facility meets the effluent standards prescribed in Schedule 1.2.

(2) Section 20 (2) and subsections (1) (a), (b), (c) and (d) do not apply to any industrial utility boiler used for destruction of wastes containing low levels of PCBs or PCP, where

(i) the PCB or PCP content of the waste is less than 500 parts per million,

(ii) the minimum rated capacity of the boiler is 15 MW,

(iii) the boiler is operated at a minimum of 90% of the design steam generating capacity when the waste is fed into the boiler,

(iv) the mass flow rate of the wastes does not exceed 10% of mass flow rate of the fuel into the boiler,

(v) the carbon monoxide concentration in the exhaust gas is not greater than 50 parts per million for a boiler using gaseous or liquid fuel and the carbon monoxide concentration in the exhaust gas for a boiler using solid fuel is not greater than 100 parts per million,

(vi) the excess oxygen must be a minimum of 3% when the wastes are being burned, and

(vii) the concentrations of carbon monoxide and oxygen in the exhaust gas are monitored in an approved manner when the wastes are being burned.

(3) The owner of an incinerator or thermal treatment facility must not allow solid residue to be discharged from it unless

(a) the residue is managed at a hazardous waste management facility in accordance with this regulation, or

(b) the owner demonstrates to the satisfaction of a director in accordance with test protocols or methods approved by a director under section 53 (1) that the residue no longer poses a hazard to human health or to the environment and that the residue is suitable for

(i) disposal to a landfill authorized by a permit, approval under section 15 of the Act, order or waste management plan, or

(ii) some other purpose under an approved management option.

(4) Where an owner has demonstrated to a director in accordance with subsection (3) that a residue no longer poses a hazard to human health or to the environment, the director may, notwithstanding section 39, authorize disposal of the residue to a landfill other than a secure landfill.

[am. B.C. Regs. 132/92, s. 16; 319/2004, ss. 2 and 17; 261/2006, s. 14; 375/2008, s. 1.]

Division 5 – Mobile Facilities

Siting requirements

22 Notwithstanding section 3, where the minister is satisfied that an equivalent level of safety will be maintained, the minister may specify less restrictive siting standards for specific sites on which any mobile facility

(a) operates for less than a total of 1 800 hours in any continuous 3 year period, and

(b) treats or destroys less than 1 000 tonnes of hazardous waste during the 3 year period specified in paragraph (a).

[am. B.C. Regs. 319/2004, s. 2; 261/2006, s. 15.]

Operational requirements

23 (1) Before a mobile facility is transported, the owner or operator of the facility must drain all open ended

(a) hoses,

(b) pipes, and

(c) containers

of any hazardous waste or hazardous reagents and ensure that the hazardous waste or reagents are not released to the environment.

(2) In addition to the annual emergency system testing as required in section 12, the owner of a mobile facility must repeat the test required in section 12 before beginning operation at any new location.

[am. B.C. Regs. 319/2004, s. 2; 375/2008, s. 1.]

Performance standards

24 The owner of a mobile facility must comply with the performance requirements pertaining to the appropriate specific type of facilities as prescribed in this Part.

[am. B.C. Reg. 375/2008, s. 1.]

Division 6 – Secure Landfills

Permit requirement

24.1 (1) A person must not operate a secure landfill unless a permit has been issued under section 14 of the Act to operate the landfill.

(2) Subsection (1) does not apply in relation to an on-site hazardous waste landfill associated with contaminated site remediation activities.

[en. B.C. Reg. 319/2004, s. 18; am. B.C. Reg. 375/2008, s. 1.]

Siting requirements

25 (1) A person must not locate a secure landfill within a wetland area or an area immediately adjacent to a wetland so that natural drainage from the secure landfill would flow directly into a wetland area.

(2) A person must not locate a secure landfill on a site which has a predicted maximum peak seismic acceleration, in percent of gravity, greater than 8% with a probability of 10% exceedence in 50 years as determined from the National Building Code of Canada.

(3) A person must not locate a secure landfill where the landfill (including the underlying dual liners) cannot be constructed

(a) entirely above the seasonally high water table, and

(b) with a minimum separation depth of 3 m of unsaturated soil material with a permeability less than 1×10^{-6} cm/s above a seasonally high water table including the zone of capillary rise.

(4) A person must not locate a secure landfill in a recharge area for an unconfined aquifer with one or more high capacity wells (> 100 L/minute) or a significant number of lower capacity wells used for fish hatcheries, domestic, irrigation, industrial, municipal or livestock watering supply.

(5) A person must not locate a secure landfill where it (including the underlying dual liners) would be underlain by less than 5 m of fine grained unconsolidated material with a permeability of less than 1×10^{-6} cm/s over fractured or permeable bedrock formations (e.g. sandstone, limestone, dolomite).

(6) A person must not locate a secure landfill within 300 m of any nonintermittent watercourse or any other permanent waterbody.

(7) A person must not locate a secure landfill within

(a) a designated community water supply watershed, Category I, as defined in <u>Guidelines for Watershed Management of Crown Lands used as Community Water Supplies</u>,

(b) the Greater Victoria Water District watershed, or

(c) the Greater Vancouver Water District watershed.

(8) A person must not locate a secure landfill within an area where

(a) on average, when calculated on a monthly basis, Pt is greater than Et + Ws, and

(b) on average, when calculated on an annual basis, Pt is greater than Et.

(9) In subsection (8), the formula used must be based on the following:

Pt = precipitation falling on the surface of the closed secure landfill;

Et = maximum possible loss of water from the surface of the closed secure landfill to the atmosphere by evaporation and by transpiration;

Ws = available soil water storage in any month in the final cover of the closed secure landfill (maximum value is total available water storage capacity of the final cover).

(10) A person must not locate a secure landfill unless the person owns and provides an approved secure buffer zone surrounding the active area of the secure landfill.

[am. B.C. Regs. 132/92, s. 17; 261/2006, s. 16; 375/2008, s. 1.]

Operational requirements

26 (1) The owner of a secure landfill must

(a) at appropriate times during construction and installation, inspect

(i) synthetic liners and covers to ensure tight seams and joints and the absence of punctures, blisters or tears, and

(ii) soil or clay liners for imperfections (e.g. lenses, cracks, channels)

which would increase permeability,

(b) during operation, inspect weekly and immediately after any storm event or catastrophic events

(i) liners, covers and drainage control facilities for evidence of deterioration, malfunction, leaks or improper operation, and

(ii) leak detection and leachate collection systems to ensure proper functioning and to determine if leachate is being generated or is accumulating, and

(c) immediately repair or correct any defects or malfunctioning works as determined by any inspections specified in paragraphs (a) and (b) to maintain the integrity of all works.

(2) The owner of a secure landfill must carry out an approved monitoring program by

(a) establishing a groundwater monitoring system with a sufficient number of wells, installed at appropriate locations (upgradient and downgradient) and depths to yield from the uppermost aquifer groundwater samples that

(i) represent the quality of groundwater that would not be affected by any leakage from a secure landfill facility, and

(ii) represent the quality of groundwater that would be affected by leachate, if any, from the secure landfill,

(b) ensuring the quality of groundwater monitoring data by

(i) casing sampling wells with appropriate materials to ensure the integrity of the boreholes,

(ii) preventing contamination

(A) of any part of the well during construction, and

(B) from the surface during operation, and

(iii) implementing procedures for

(A) decontamination of sampling equipment,

(B) sample collection,

(C) sample preservation and shipment,

(D) sample custody, and

(E) analytical procedures and quality assurance,

(c) selecting indicator parameters (e.g. specific conductance, pH, total organic carbon) and chemical constituents for analysis of groundwater that

(i) provide a reliable indication of the quality of groundwater below the secure landfill from the perspective of human health hazards and environmental quality,

(ii) reflect the physical and chemical characteristics of the waste in the secure landfill, and

(iii) provide a reliable indication of movement of any contaminant with groundwater flow,

(d) sampling groundwater sufficiently often to provide data that is representative of varying groundwater flow conditions, but in any case no less frequently than once every 3 months,

(e) measuring the groundwater surface elevation each time the groundwater is sampled,

(f) measuring volumes, sampling and analyzing any leachate collected by the leachate collection system,

(g) ensuring detection of any liquid leaking into the space between the 2 liners, and

(h) reporting monitoring results at intervals specified by a director.

(3) The owner of a secure landfill must, as one or more cells are being filled,

(a) operate under cover of a portable structure that acts as a roof to keep out rain and snow, or

(b) design another system to prevent leachate generation during operation.

(4) The owner of a secure landfill must, as operations proceed,

(a) record on a map the exact location and dimensions, including depth of each cell in relation to permanently surveyed benchmarks,

(b) record the contents of each cell and the location of each hazardous waste type within each cell, and

(c) keep records referred to in paragraphs (a) and (b) available for inspection by an officer.

(5) The owner of a secure landfill must,

(a) within 3 days after detection of leakage into the space between the 2 liners, report the leakage to a director, and

(b) within 3 days after receiving monitoring data indicating non-compliance with respect to groundwater conditions, notify a director.

(6) The owner of a secure landfill must empty any leachate or runoff storage facilities so as to maintain sufficient capacity to collect leachate and runoff at all times.

[am. B.C. Regs. 319/2004, ss. 2 and 19; 375/2008, s. 1.]

Performance standards

27 (1) The owner of a secure landfill must not use or operate the secure landfill to dispose of any waste listed in Schedule 3.

(2) The owner of a secure landfill must design, construct, install and maintain a dual liner system

(a) to prevent any migration of wastes out of the landfill to the adjacent subsurface soil or groundwater during the operating life and after closure,

(b) with both liners constructed of impervious materials that prevent wastes from passing into or through the liner during the life of the facility, and

(i) if composed of soil or clay, each being not less than 0.5 m thick, and

(ii) if synthetic, each being at least 1 mm thick,

(c) with both liners constructed of materials having appropriate chemical properties, strength and thickness to prevent failure due to any of the following:

(i) pressure gradients;

(ii) contact with the waste or leachate to which the liners may be exposed;

(iii) climatic conditions;

(iv) stress of installation and operations, and

(d) with the liner system placed on base materials capable of providing support and resistance to pressure gradients above and below the liner system to prevent failure due to compression, uplift or settlement.

(3) The owner of a secure landfill must design, construct, install and maintain a leachate detection, collection and removal system that includes the following minimum characteristics:

(a) a leak detection system between the 2 liners to detect any leaks or migration of liquid into the space between the liners;

(b) a leachate collection system that is

(i) installed at a slope greater than 2%, in a porous material drainage layer with a minimum thickness of 0.75 m and permeability greater than $1x10^{-3}$ cm/s immediately above the upper liner,

(ii) constructed of materials that are

(A) chemically resistant to waste placed in the landfill and any leachate which might be generated, and

(B) of sufficient strength to prevent failure due to pressure of overlying loads in the secure landfill, and

(iii) designed and constructed to prevent clogging during the life of the facility;

(c) a storage facility suitable to allow removal of leachate.

(4) A secure landfill is in a non-compliance situation, with regard to groundwater quality, when analytical data from upgradient and downgradient groundwater monitoring wells for any parameters or chemical constituents are significantly different using approved statistical methods.

(5) The owner of a secure landfill must design, construct and maintain

(a) a system capable of preventing water from draining onto any cells of the secure landfill, and

(b) a system to collect and control water draining from any cells of the secure landfill during a storm with a magnitude that is exceeded, on average, only once in 25 years.

(6) The owner of a secure landfill must ensure that any discharge of liquid effluent to the environment, to storm sewers or to a municipal or industrial effluent treatment works from the secure landfill meets the effluent criteria prescribed in Schedule 1.2.

(7) If particulate matter subject to wind dispersal is placed in the secure landfill, the owner must cover or otherwise manage the facility to prevent dispersal by wind.

(8) The owner of a secure landfill must, during closure of the landfill or any cell,

(a) make any modifications to works including drainage control, leachate collection, leak detection, monitoring and storage facilities to ensure long term operation with minimum maintenance and security,

(b) install and construct for the secure landfill a final cover with the following minimum characteristics:

(i) design and construction to function with minimum maintenance;

(ii) a foundation layer with a minimum thickness of 0.75 m constructed of soil, or other suitable granular material, compacted to maximum density at optimum moisture content according to acceptable engineering practice, to ensure the overall structural integrity of the final cover;

(iii) an intermediate layer of

(A) not less than 0.50 m of impervious soil or clay, or

(B) an impervious synthetic material not less than 1 mm thick;

(iv) a top layer of not less than 0.5 m of soil

(A) not containing waste, leachate or other material which would contaminate infiltrating water, and

(B) which would provide a suitable long term rooting medium;

(v) graded and maintained to prevent ponding and having slopes of 3% to 5%;

(vi) vegetation which

(A) is suitable to the area,

(B) is established by approved agronomic practices, and

(C) does not have a rooting depth greater than the depth of the top layer.

(9) An owner of a secure landfill must, before closure, prepare, to the satisfaction of a director, a post closure plan for

(a) maintaining the integrity and effectiveness of the final cover,

(b) maintaining and monitoring the leak detection system, reporting any migration of leachate through the liner,

(c) maintaining and operating the leachate collection and removal system and keeping records of any leachate removed,

(d) maintaining and operating the groundwater monitoring system,

(e) maintaining the drainage control system, and

(f) protecting and maintaining the survey benchmarks.

(10) On completion of closure the owner of the secure landfill site (including its buffer zone) must

(a) comply with the post closure plan approved under subsection (9), and

(b) transfer title of the property to the Crown.

[am. B.C. Regs. 132/92, s. 11; 319/2004, s. 20; 375/2008, s. 1.]

Division 7 – Waste Piles, Surface Impoundments and Land Treatment Facilities

Siting requirements for waste piles, surface impoundments and land treatment facilities

28 (1) A person must not locate a waste pile, surface impoundment or land treatment facility within a wetland area or an area immediately adjacent to a wetland so that natural drainage from the waste pile, surface impoundment or land treatment facility would flow directly into the wetland area.

(2) A person must not locate a waste pile or surface impoundment where it cannot be constructed

(a) entirely above the seasonally high water table, and

(b) with a minimum separation depth of 3 m of unsaturated soil material with a permeability less than 1×10^{-6} cm/s above a seasonally high water table including the zone of capillary rise.

(3) A person must not locate a land treatment facility where it cannot be constructed

(a) entirely above the seasonally high water table, and

(b) with a minimum separation depth of 1 m of unsaturated soil with a permeability less than 1×10^{-6} cm/s above a seasonally high water table including the zone of capillary rise.

(4) A person must not locate a waste pile, surface impoundment or land treatment facility in a recharge area for an unconfined aquifer with one or more high capacity wells (>100 L/minute) or a significant number of lower capacity wells used for fish hatcheries, domestic, irrigation, industrial, municipal or livestock watering supply.

(5) A person must not locate a waste pile, surface impoundment or land treatment facility where it would be underlain by less than 5 m of fine grained, unconsolidated material with a permeability less than 1×10^{-6} cm/s over fractured or permeable bedrock formations (e.g. sandstone, limestone, dolomite).

(6) A person must not locate a waste pile, surface impoundment or land treatment facility within 150 m of any nonintermittent watercourse or any other permanent waterbody.

(7) A person must not locate a waste pile, surface impoundment or land treatment facility within

(a) a designated community water supply watershed, Category I, as defined in Guidelines for Watershed Management of Crown Lands used as Community Water Supplies,

(b) the Greater Victoria Water District watershed, or

(c) the Greater Vancouver Water District watershed.

[am. B.C. Reg. 375/2008, s. 1.]

Operational requirements for waste piles, surface impoundments and land treatment facilities

29 (1) The owner of a waste pile, surface impoundment or land treatment facility must

(a) at appropriate times during construction and installation inspect any

(i) synthetic liners to ensure tight seams and joints and the absence of punctures, blisters or tears, and

(ii) soil or clay liners for imperfections (e.g. lenses, cracks, channels)

which would increase permeability,

(b) during operation inspect weekly and immediately after any storm or catastrophic events

(i) any liners and drainage control facilities for evidence of deterioration, malfunction, leaks or improper operation, and

(ii) leak detection and leachate collection systems to ensure proper functioning and to determine if leachate is being generated or is accumulating, and

(c) immediately undertake to repair or correct any defects or malfunctioning works as determined by any inspections specified in paragraphs (a) and (b) to maintain the integrity of all works.

(2) The owner of a waste pile, surface impoundment or land treatment facility must carry out an approved monitoring program by

(a) establishing a groundwater monitoring system with a sufficient number of wells, installed at appropriate locations (upgradient and downgradient) and depths, to yield groundwater samples from the uppermost aquifer that

(i) represent the quality of groundwater that would not be affected by leakage or leachate, if any, from a surface impoundment, waste pile or land treatment facility, and

(ii) represent the quality of groundwater that would be affected by leakage or leachate, if any, from a surface impoundment or by leachate from a waste pile or land treatment facility,

(b) ensuring the quality of groundwater monitoring data by

(i) casing sampling wells with appropriate materials to ensure the integrity of the boreholes,

(ii) preventing contamination

(A) of any part of the well during construction, and

(B) from the surface during operation, and

(iii) implementing procedures for

(A) decontamination of sampling equipment,

(B) sample collection,

(C) sample preservation and shipment,

(D) sample custody, and

(E) analytical procedures and quality assurance,

(c) selecting indicator parameters (e.g. specific conductance, pH, total organic carbon) and chemical constituents for analysis of groundwater that

(i) provide a reliable indication of the quality of groundwater below the waste pile, surface impoundment or land treatment facility from the perspective of human health hazards and environmental quality,

(ii) reflect the physical and chemical characteristics of the waste being stored or treated, and

(iii) provide a reliable indication of movement of any contaminant with groundwater flow,

(d) sampling groundwater sufficiently often to provide data that is representative of varying groundwater flow conditions, but in any case no less frequently than once every 3 months,

(e) measuring the groundwater surface elevation each time the groundwater is sampled,

(f) measuring volumes, sampling and analyzing leachate or leakage collected, if any, by the leachate collection system,

(g) ensuring detection of any liquid leaking through a liner where a liner is required, and

(h) reporting monitoring results at intervals specified by a director.

(3) The owner of a waste pile, surface impoundment or land treatment facility must

(a) within 3 days after detection of leakage through a liner, report the leakage to a director, and

(b) within 3 days after receiving monitoring data indicating non-compliance with respect to groundwater conditions, notify a director.

(4) The owner of a waste pile, surface impoundment or land treatment facility must empty any leachate or runoff storage facilities so as to maintain sufficient capacity to collect leachate and runoff at all times.

[am. B.C. Regs. 319/2004, s. 21; 375/2008, s. 1.]

Performance standards for waste piles

30 (1) The owner of a waste pile must not use a waste pile to store

(a) waste materials which are or contain free liquids,

(b) ignitable or reactive waste, or

(c) liquids in containers.

(2) The owner of a waste pile must design, construct, install, maintain and operate

(a) an approved containment system to prevent release of any hazardous waste or leachate,

(b) an approved leak detection system to detect any leaks or migration of liquid through any required liners, and

(c) an approved leachate collection system.

(3) A waste pile is in a non-compliance situation, with regard to groundwater quality, when analytical data from upgradient and downgradient groundwater monitoring wells for any parameters or chemical constituents are significantly different using approved statistical methods.

(4) The owner of a waste pile must design, construct and maintain a system capable of preventing water from draining onto the site containing the waste pile during a storm with a magnitude that is exceeded, on average, only once in 25 years.

(5) The owner of a waste pile must ensure that any discharge of liquid effluent to the environment, to storm sewers or to a municipal or industrial effluent treatment works which results from the waste pile meets the effluent criteria prescribed in Schedule 1.2.

(6) If particulate matter, subject to wind dispersal, is placed on the waste pile, the owner must cover or otherwise manage the facility to prevent dispersal by wind.

(7) The owner of a waste pile must during closure remove

(a) all stored waste, and

(b) any affected underlying soil to an approved depth.

[am. B.C. Regs. 132/92, s. 11; 319/2004, s. 2; 375/2008, s. 1.]

Performance standards for surface impoundments

31 (1) The owner of a surface impoundment must not use a surface impoundment to store or treat ignitable or reactive waste.

(2) The owner of a surface impoundment must design, construct, install and maintain

(a) sufficient depth in the impoundment to ensure a freeboard of 0.5 m at all times,

(b) an inner, fenced buffer area, 20 m wide, immediately surrounding the impoundment, and

(c) devices to immediately shut off flow of hazardous waste to the impoundment in the event of any malfunction of the works.

(3) The owner of a surface impoundment must design, construct, install and maintain an approved liner system

(a) to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil or groundwater during the operating life and closure period,

(b) constructed of impervious materials that prevent wastes from passing into the liner system during the life of the facility, and that

(i) if composed of soil or clay materials, is not less than 0.5 m thick, and

(ii) if synthetic, is at least 1 mm thick,

(c) constructed of materials having appropriate chemical properties, strength and thickness to prevent failure due to

(i) pressure gradients,

(ii) contact with the waste or leachate to which it may be exposed,

(iii) climatic conditions, and

(iv) the stress of installation and daily operations, and

(d) placed on base materials capable of providing support and resistance to pressure gradients above and below the liner system to prevent failure due to compression, uplift or settlement.

(4) The owner of a surface impoundment must design, construct, install and maintain

(a) an approved leak detection system to detect any leaks or migration of liquid through any required liners, and

(b) an approved leachate collection system.

(5) A surface impoundment is in a non-compliance situation, with regard to groundwater quality, when analytical data from upgradient and downgradient groundwater monitoring wells for any parameters or chemical constituents are significantly different using approved statistical methods.

(6) The owner of a surface impoundment must design, construct, install and maintain a system capable of preventing surface water from entering the surface impoundment during a storm with a magnitude that is exceeded, on average, only once in 25 years.

(7) The owner of a surface impoundment must ensure that any discharge of liquid effluent to the environment, to storm sewers or to a municipal or industrial effluent treatment works from the surface impoundment meets the effluent criteria prescribed in Schedule 1.2.

(8) If particulate matter, subject to wind dispersal, is placed in a surface impoundment, the owner must cover or otherwise manage the facility to prevent dispersal by wind.

(9) The owner of a surface impoundment must during closure remove

(a) all stored waste, and

(b) any affected underlying soil to an approved depth.

[am. B.C. Regs. 132/92, s. 11; 319/2004, s. 2; 375/2008, s. 1.]

Performance standards for land treatment

32 (1) The owner of a land treatment facility must treat only wastes which are approved for treatment in that facility.

(2) The owner of a land treatment facility must design, construct, install and maintain

(a) an approved system to prevent any release of hazardous waste or leachate,

(b) an approved leak detection system to detect any leaks or migration of liquid through any required liners, and

(c) an approved leachate collection system.

(3) A land treatment facility is in a non-compliance situation, with regard to groundwater quality, when analytical data from upgradient and downgradient groundwater monitoring wells for any parameters or chemical constituents are significantly different using approved statistical methods.

(4) The owner of a land treatment facility must design, construct, install and maintain

(a) a system capable of preventing surface water from draining onto the site containing the land treatment facility, and

(b) a system to collect and control water draining from a land treatment facility

during a storm with a magnitude that is exceeded, on average, only once in 25 years.

(5) The owner of a land treatment facility must ensure that any discharge of liquid effluent to the environment, to storm sewers or to a municipal or industrial effluent treatment works which results from the facility meets the effluent criteria prescribed in Schedule 1.2.

(6) If particulate matter, subject to wind dispersal, is placed on the surface of the land treatment facility, the owner must immediately incorporate the material into the land or otherwise manage the facility to prevent dispersal by wind.

(7) Unless otherwise approved by a director, the owner of a land treatment facility must, during closing, remove

(a) all residual hazardous waste, and

(b) any affected soil to an approved depth.

[am. B.C. Regs. 132/92, s. 11; 319/2004, s. 2; 261/2006, s. 17; 375/2008, ss. 1 and 10.]

Division 8 – Disposal in a Secure Building

Siting requirements

33 (1) A person must not locate a secure building within a wetland area or an area immediately adjacent to a wetland so that natural drainage from the secure building would flow directly into a wetland area.

(2) A person must not locate a secure building where it cannot be constructed

(a) entirely above the seasonally high water table, and

(b) with a minimum a separation depth of 3 m of unsaturated soil material with a permeability less than 1×10^{-6} cm/s above a seasonally high water table including the zone of capillary rise.

(3) A person must not locate a secure building where it would be underlain by less than 5 m of fine grained unconsolidated material with a permeability of less than 1×10^{-6} cm/s over fractured or permeable bedrock formations (e.g. sandstone, limestone, dolomite).

(4) A person must not locate a secure building within 100 m of any nonintermittent watercourse or any other permanent waterbody.

(5) A person must not locate a secure building within

(a) a designated community water supply watershed, Category I, as defined in <u>Guidelines for Watershed Management of Crown Lands used as Community Water Supplies</u>,

(b) the Greater Victoria Water District watershed, or

(c) the Greater Vancouver Water District watershed.

[am. B.C. Reg. 375/2008, ss. 1 and 12.]

Operational requirements

34 (1) The owner of a secure building must

(a) at appropriate times during construction and installation inspect

(i) synthetic liners to ensure tight seams and joints and the absence of punctures, blisters or tears,

(ii) floors, walls, doors, hatches and roofs for defects, and

(iii) clay liners for imperfections (e.g. lenses, cracks, channels)

which would increase permeability,

(b) during operation inspect weekly and immediately after any catastrophic event all floors, walls, doors, hatches, roofs and drainage control facilities, for evidence of deterioration, malfunction, leaks or improper operation, and

(c) immediately repair or correct any defects or malfunctioning works as determined by any inspections specified in paragraphs (a) and (b) so as to maintain the integrity of all works.

(2) The owner of a secure building must carry out an approved monitoring program by

(a) establishing a groundwater monitoring system with a sufficient number of wells, installed at appropriate locations (upgradient and downgradient) and depths, to yield from the uppermost aquifer groundwater samples that

(i) represent the quality of groundwater that would not be affected by leakage, if any, from a secure building, and

(ii) represent the quality of groundwater that would be affected by leachate, if any, from a secure building,

(b) ensuring the quality of groundwater monitoring data by

(i) casing sampling wells with appropriate materials to ensure the integrity of the boreholes,

(ii) preventing contamination

(A) of any part of the well during construction, and

(B) from the surface during operation, and

(iii) implementing procedures for

(A) decontamination of sampling equipment,

(B) sample collection,

(C) sample preservation and shipment,

(D) sample custody, and

(E) analytical procedures and quality assurance,

(c) selecting indicator parameters (e.g. specific conductance, pH, total organic carbon) and chemical constituents for analysis of groundwater that

(i) provide a reliable indication of the quality of groundwater below the secure landfill from the perspective of human health hazards and environmental quality,

(ii) reflect the physical and chemical characteristics of the waste, and

(iii) provide a reliable indication of movement of any contaminant with groundwater flow,

(d) sampling groundwater sufficiently often to provide data that is representative of varying groundwater flow conditions, but in any case no less frequently than once every 3 months,

(e) measuring the groundwater surface elevation each time the groundwater is sampled, and

(f) reporting monitoring results at intervals specified by a director.

(3) The owner of a secure building must, as operations proceed, record in tabular and graphic form the exact location and type of hazardous waste in relation to one or more permanently secured datum points and keep this information available for inspection by an officer.

(4) The owner of a secure building must

(a) within 3 days after detecting any defects or malfunctioning works, notify a director, and

(b) within 3 days after receiving monitoring data indicating non-compliance with respect to groundwater conditions, notify a director.

[am. B.C. Regs. 319/2004, ss. 2 and 2; 375/2008, ss. 1 and 12.]

Performance standards

35 (1) The owner of a secure building must not use it to store any waste which is listed in Schedule 3.

(2) The owner of a secure building must design, construct, install and maintain an approved liner system

(a) to prevent any migration of leakage from the secure building to any subsurface soil or groundwater during the operating life and closure period,

(b) constructed of impervious materials that prevent wastes from passing into the liner during the life of the facility, and that

(i) if composed of clay materials, is not less than 0.5 m thick, and

(ii) if synthetic, is at least 1 mm thick,

(c) constructed of materials having appropriate chemical properties, strength and thickness to prevent failure due to

(i) pressure gradients,

(ii) contact with leakage to which it may be exposed, and

(iii) stress of installation and operations, and

(d) placed on base materials capable of providing support and resistance to pressure gradients above and below the liner system to prevent failure due to compression, uplift or settlement.

(3) A secure building is in a non-compliance situation, with regard to groundwater quality, when analytical data from upgradient and downgradient groundwater monitoring wells for any parameters or chemical constituents are significantly different using approved statistical methods.

(4) The owner of a secure building must design, construct and maintain a system capable of preventing surface water from entering the secure building during a storm with a magnitude that is exceeded, on average, only once in 25 years.

(5) The owner of a secure building must ensure that any discharge of liquid effluent to the environment, to storm sewers or to a municipal or industrial effluent treatment works from the facility meets the effluent criteria prescribed in Schedule 1.2.

(6) The owner of a secure building must, before closure, prepare, to the satisfaction of a director, a post closure plan for

(a) maintaining the integrity and effectiveness of the entire structure including making repairs as necessary,

(b) maintaining and operating the groundwater monitoring system,

(c) maintaining the drainage control system, and

(d) protecting and maintaining the permanent datum points as references to locate the wastes within the facility.

(7) On completion of closure, the owner of the secure building must

(a) comply with the post closure plan approved under subsection (6), and

(b) transfer title for the property to the Crown.

(8) A director may require the owner of a secure building to give security for performance of the owner's obligations under the Act and this regulation in the amount and form, and subject to the conditions, the director may specify.

[am. B.C. Regs. 132/92, s. 11; 319/2004, s. 23; 375/2008, ss. 1 and 12.]

PART 5 – PROHIBITED MANAGEMENT PRACTICES

Mixing and dilution

36 A person must not mix or dilute hazardous waste with any solid or liquid, including waste, water or rain water, or otherwise take action by dividing a hazardous waste to evade this regulation or similar regulations in another jurisdiction.

[am. B.C. Regs. 132/92, s. 18; 319/2004, s. 2; 375/2008, s. 1.]

Underground injection

37 A person must not treat, store or dispose of hazardous waste by means of underground injection.

[am. B.C. Regs. 319/2004, s. 2; 375/2008, s. 1.]

Floating facilities

38 A person must not operate a hazardous waste facility on a boat, barge or other vessel while it is floating on fresh water, but nothing in this section prohibits the transportation of hazardous waste.

[am. B.C. Regs. 319/2004, s. 2; 375/2008, s. 1.]

Prohibition

39 A person must not deposit or discharge or allow or cause hazardous waste to be deposited or discharged into any system of waste disposal operated by a municipality or other public authority unless the deposition or discharge is expressly authorized by a permit, approval, order, regulation or a waste management plan approved by the minister.

[am. B.C. Regs. 319/2004, s. 2; 375/2008, s. 1.

PART 6 – MANAGEMENT OF SPECIFIC HAZARDOUS WASTES

Non-application of other Parts

39.1 (1) Subject to subsection (2), Parts 2, 3 and 4 do not apply to wastes managed in accordance with this Part.

(2) A director may order, in a particular case, that a provision of Part 2, 3 or 4 applies to waste managed in accordance with this Part.

[en. B.C. Reg. 319/2004, s. 24.]

Management of waste asbestos

40 (1) For the purposes of the definition of "waste asbestos" in section 1 (1) of this regulation, if the concentration of asbestos in the waste is not determined by weight at the time of manufacture, it must be determined using one of the following:

(a) Method 600-R-93-116, as amended from time to time, published by the United States Environmental Protection Agency;

(b) NIOSH Method 9002, as amended from time to time, from the *NIOSH Manual of Analytical Methods*, 4th Edition, published by the National Institute for Occupational Safety and Health, United States.

(2) A person must not deposit waste asbestos in a landfill other than a secure landfill unless

(a) a permit or an approval has been issued under the Act to operate the landfill, or the landfill is operated under a waste management plan,

(b) the waste asbestos is confined during handling, storage and transportation by

(i) dry airtight containment techniques such as

(A) packing in 6 mil plastic bags placed within a non-reuseable drum and then sealed, or

(B) packing in a 6 mil plastic bag placed within a second 6 mil plastic bag and then sealed, or

(ii) wet containment techniques such as saturation with water and containment in non-leaking sealed drums or equivalent, or

(iii) approved containment techniques,

(c) the waste asbestos is disposed of at the landfill by being immediately buried with a minimum of 0.5 m of cover material,

(d) approval of the landfill owner is received before disposal takes place, and

(e) the deposit is authorized by a director and carried out in accordance with the director's requirements.

[am. B.C. Regs. 132/92, s. 20; 319/2004, s. 25; 261/2006, s. 18; 375/2008, s. 1.]

Waste oil

41 (0.1) In this section, **"product fuel"** means a hydrocarbon for which a Canadian General Standards Board fuel specification exists.

(1) Subject to this section, waste oil may be disposed of

(a) in the manufacture of pavement, and

(b) by combustion as a fuel.

(2) A person must not without approval mix waste oil with any material in the manufacture of pavement unless the waste oil meets the following specifications:

Waste Oil Specifications for Manufacture of Pavement

Item	Parameter	Allowable Level
1	flash point	60°C minimum
2	total arsenic	20 mg/L maximum
3	total cadmium	3.0 mg/L maximum
4	total organic halogens (as Cl)	2 000 mg/L maximum
5	total chromium	10 mg/L maximum
6	total lead	1 000 mg/L maximum
7	total polychlorinated biphenyls	5.0 mg/L maximum
8	total zinc	1 000 mg/L maximum

(3) and (4) Repealed. [B.C. Reg. 319/2004, s. 26.]

(5) A person must not, without approval, use waste oil as a fuel unless it meets the following specifications:

Waste Oil Specifications for Use as a Fuel

Item	COLUMN I Parameter	COLUMN II Allowable Level for Fuel in a Cement Kiln	COLUMN III Allowable Level for Fuel in Uses Other Than for Cement Kilns
1	total arsenic	20 mg/L maximum	5.0 mg/L maximum
2	total cadmium	3.0 mg/L maximum	2.0 mg/L maximum
3	total organic halogens (as Cl)	3 000 mg/L maximum	1 500 mg/L maximum
4	total chromium	10 mg/L maximum	10 mg/L maximum
5	total lead	1 000 mg/L maximum	50 mg/L maximum
6	total polychlorinated biphenyls	500 mgL maximum	3.0 mg/L maximum

(5.1) A person using waste oil as a fuel, or storing waste oil for use as a fuel, without approval, must keep a written record, for inspection by an officer, demonstrating, through analysis using analytical methods specified in section 49, that the waste oil meets the specifications under subsection (5).

(6) Subject to subsection (7), a person must not mix or blend waste oil with any substance other than product fuel for use as fuel or to sell as fuel.

(7) A person may mix or blend waste oil with a substance other than product fuel for use as fuel or to sell as fuel if the person has obtained prior written approval from a director.

(8) A person must not use or sell a mixture or blend of waste oil with product fuel unless

(a) the waste oil, prior to the blending or mixing, meets the specifications set out in the table in subsection (5), and

(b) the person keeps a written record, for inspection by an officer, demonstrating, through analysis using analytical methods specified in section 49, that the waste oil meets the required specifications.

[am. B.C. Regs. 132/92, s. 21; 319/2004, s. 26; 261/2006, s. 19; 375/2008, ss. 1 and 13.]

Hydrocarbon contaminated soil

41.1 (1) Subject to subsection (2), hydrocarbon contaminated soil is authorized for

(a) treatment and storage on the site where the hydrocarbon contaminated soil was generated,

(b) treatment and storage at any landfill or facility for which an authorization has been issued under the Act, or

(c) use in the manufacture of asphalt,

if the hydrocarbon contaminated soil meets all of the following specifications:

Standards for Management of Hydrocarbon Contaminated Soil

Item	COLUMN I Parameter	COLUMN II Maximum Value (dry weight basis)
1	total benzene	25 mg/kg
2	total ethylbenzene	250 mg/kg
3	total toluene	150 mg/kg
4	total xylene	250 mg/kg
5	total oil	10%

(2) A person must not store, treat or use hydrocarbon contaminated soil under the authority of subsection (1) unless

(a) prior written notification of any proposed storage or treatment is provided to a director and the storage and treatment is carried out in accordance with the director's requirements,

(b) the hydrocarbon contaminated soil is a hazardous waste due only to the presence of one or more items listed in Column I of the table in subsection (1),

(c) the hydrocarbon contaminated soil is spread in single layers not exceeding 0.3 metres in thickness per year or a greater thickness approved by the director, which approval must specify a method of aeration to be used with the greater thickness, and

(d) the daily quantity of hydrocarbon contaminated soil, if disposed of in the manufacture of asphalt, is not more than 10% of the total material fed to the asphalt plant.

(2.1) Total oil for the purposes of the standard established by subsection (1) must be measured in accordance with the method established for the purposes of this regulation in the *British Columbia Laboratory Methods Manual: 2005 — for the Analysis of Water, Wastewater, Sediment, Biological Materials and Discrete Ambient Air Samples*, Victoria, August 2005, as updated from time to time, published by the minister.

(3) Hydrocarbon contaminated soil which has been treated so that it is no longer a hazardous waste may be disposed of in a landfill if

(a) approval of the landfill owner is received before disposal takes place, and

(b) the deposit is authorized by a director and carried out in accordance with requirements specified by the director.

[en. B.C. Reg. 132/92, s. 22; am. B.C. Regs. 319/2004, ss. 2 and 27; 261/2006, s. 20; 375/2008, ss. 1 and 14.]

Pest control product wastes and containers

42 (1) In this section:

"appropriate solvent" means a solvent that does not contain a pest control product and is capable of dissolving or removing a pest control product;

"empty" means

(a) to drain a liquid product residue from a container into a spray tank or mixing tank for a period of not less than 30 seconds,

(b) to remove an inner liner, where present, and shake all product residue into a spray tank or mixing tank, or

(c) to use all the product in a pressurized metal container without puncturing the container;

"pressure rinse" means to clean by means of pressurized spraying of an appropriate solvent into an empty container for at least 30 seconds so that all interior surfaces of the container are rinsed;

"product" means pest control product;

"rinse" means

(a) to introduce an appropriate solvent into an empty container in an amount not less than 20% of its volume,

(b) to close and shake the container so that the solvent makes contact with all interior surfaces, and

(c) to open and empty the container.

(2) Subject to this section, the disposal of

(a) a waste product container, and

(b) a waste containing a product

is authorized.

(3) A waste containing a product is designated as a hazardous waste if

(a) the waste fits the criteria for classes 3 to 6.1, 8 or 9 of the federal dangerous goods regulations, or

(b) the aquatic toxicity (the 96 hour LC_{50}) of the waste is less than 500 mg/L as measured by methods that are approved in accordance with section 49.

(4) A waste product container that is

(a) emptied and rinsed in the manner set out in this section, or

(b) labelled "Domestic" by the manufacturer and emptied

is not a hazardous waste.

(5) Prior to disposal of a waste product container, the owner of it must

(a) empty the container, and

(b) rinse it using the appropriate method indicated in the following table:

TABLE
Methods for Rinsing Waste Pest Control Product Containers

Item	Type of Container	Rinsing Method
1	Rigid plastic or metal (nonpressurized)	Pressure rinse, or single rinse 3 times
2	Rigid plastic or metal (pressurized)	No rinsing required
3	Glass bottle	Rinse 3 times
4	Paper bag	Rinse
5	Plastic bag	Rinse
6	Containers labelled "Domestic"	No rinsing required
7	Any container type not listed above	As approved

(6) The owner of a waste product container that has been emptied and rinsed must recycle the container or dispose of it

(a) in an approved landfill, or

(b) by burying it, but only if

(i) the burial location

(A) is on land owned or leased by the person owning the container, or

(B) is on land owned, leased or maintained in a tree farm licence, as defined in the *Forest Act*, by the person owning the container,

(ii) the burial location is on flat ground, not in a swale and at least 200 m from surface water or a well,

(iii) the ground does not consist of gravel, sand or other similarly porous material, and

(iv) the owner covers it with at least 0.5 m of soil immediately after burial.

(7) Waste produced by cleaning pesticide application equipment or by rinsing waste product containers under this section must, if practicable, be used in mixing a product solution but, if not practicable, it may be applied to land if the area to which it is applied

(a) is on land to which the product contained in the waste has been applied for purposes of pest control,

(b) is flat ground, not in a swale, and at least 200 m from surface water or any well, and

(c) does not consist of gravel, sand or other similarly porous material.

[am. B.C. Regs. 132/92, s. 23; 214/2004, s. 5; 319/2004, s. 2; 464/2004, s. 4 (a); 375/2008, s. 1.]

Waste paint

42.1 (1) Subject to this section, the treatment and recycling of waste paint is authorized at facilities owned and operated by a paint manufacturer or formulator.

(2) A person must not without approval recycle waste paint unless the paint meets the following specifications:

Waste Paint Specifications for Recycling

Item	Parameter	Allowable Level
1	PCB	2 mg/L
2	Lead	1.00%, by weight
3	Mercury	75 mg/L
4	Organic Chlorides as Cl	1.0%, by weight

(3) A person who treats or recycles waste paint must

(a) maintain records of quantities of waste paint recycled for 2 years from the date the paint is recycled, and

(b) report to a director, before January 31 in each year, the quantities recycled during the previous calendar year.

(4) Section 9 (1) (b) and (c) of the Act does not apply to waste paint stored at a recycling facility or at a paint wholesale or retail operation.

[en. B.C. Reg. 132/92, s. 24; am. B.C. Reg. 319/2004, s. 28; 375/2008, s. 1.]

Collection and storage of household hazardous waste

42.2 (1) The collection and storage of household hazardous waste at a return collection facility, in accordance with this section and sections 42.3, 42.4 and 50, is authorized.

(2) Section 10 of the Act does not apply if the household hazardous waste is transported directly to the return collection facility

(a) by an occupant of a residential property from his or her place of residence, or

(b) by a farmer from his or her farm.

(3) Despite section 48 of this regulation, for the purposes of section 9 (1) of the Act, the maximum amount of all categories of household hazardous waste authorized for storage at any one time under the authority of subsection (1) is 25 000 kg by weight or 25 000 litres by volume.

[en. B.C. Reg. 52/95, s. 2; am. B.C. Regs. 319/2004, s. 29; 261/2006, s. 21; 375/2008, s. 15.]

Requirements for establishment and operation of a return collection facility

42.3 (1) Every person who proposes to establish and operate a return collection facility must, at least 30 days before commencement of collection and storage at the return collection facility, do all of the following:

(a) provide to a director and to the municipality and regional district where the proposed return collection facility will be located or will operate, the following information:

(i) the street address of the proposed return collection facility;

(ii) the maximum quantity of each category of household hazardous waste described in Schedule 6 to be stored at the proposed return collection facility;

(iii) the name, address, telephone number and facsimile number of the owner of the proposed return collection facility;

(iv) the name, address, telephone number and facsimile number of a person available for 24 hour emergency contact;

(v) the proposed commencement date for the collection of household hazardous waste;

(vi) the name of each transporter and hazardous waste management company that will be initially responsible for the transportation and management of the household hazardous waste after it leaves the return collection facility;

(b) despite section 43 (1), (2) and (3), make a registration report and apply for a registered site number by completing and submitting to a director the information in Form 1 of Schedule 5 or, in the alternative, the information required by a form provided by a director for this purpose;

(c) despite section 43 (4), if there is a material change to the information submitted in a registration report, notify a director of the change by completing and submitting a report in Form 1 of Schedule 5 or, in the alternative, the information required by a form provided by a director for this purpose.

(2) Every return collection facility must comply with all of the following specifications:

(a) if household hazardous waste is stored in an indoor return collection facility, it must be designed, constructed, operated and maintained in compliance with the Building Regulations of British Columbia and the British Columbia Fire Code Regulation;

(b) it must conform to the land use, building and zoning requirements of the host municipality and regional district in which the return collection facility is located;

(c) it must be designed, constructed, operated and maintained so that the capability of the return collection facility to collect and store household hazardous waste is not adversely affected by the weather;

(d) it must be equipped with a suitable access security system to prevent unauthorized access by persons or by animals;

(e) it must have a sign at each entrance to the return collection facility which identifies it as a return collection facility and specifies

(i) the hours of operation of the return collection facility,

(ii) the categories of hazardous waste, as described in Schedule 6, accepted at the return collection facility and, if applicable, any appropriate safety warnings,

(iii) the name and telephone number of the owner of the return collection facility,

(iv) a 24-hour emergency contact number, and

(v) a prohibition against the depositing of materials outside the return collection facility;

(f) it must have an impervious spill containment system sufficient to hold 110% of the largest volume of free liquid household hazardous waste in any given container or tank;

(g) it must have a suitable controlled forced air ventilation system if household hazardous waste is stored in an indoor household hazardous waste collection facility.

(3) A person must not establish, construct, set-up or operate a return collection facility within the boundaries of

(a) a national, Provincial, regional or municipal park,

(b) a wildlife management area as designated under section 4 of the *Wildlife Act*,

(c) a critical wildlife area or wildlife sanctuary designated under section 5 of the *Wildlife Act*,

(d) land acquired and administered under section 3 of the *Wildlife Act*,

(e) an ecological reserve designated under the *Ecological Reserve Act*,

(f) a bird sanctuary designated under the regulations pursuant to the *Migratory Birds Convention Act* (Canada), or

(g) a wildlife area designated under the *Canada Wildlife Act* (Canada).

(4) A return collection facility must not discharge, into the environment, a storm sewer or a municipal or industrial effluent treatment works, effluent produced by the operation of the return collection facility unless the discharge meets the effluent standards prescribed in Schedule 1.2.

[en. B.C. Reg. 52/95, s. 2; am. B.C. Regs. 319/2004, ss. 2 and 30; 261/2006, s. 22; 375/2008, s. 16.]

Operating requirements for a return collection facility

42.4 (1) The owner of a return collection facility must keep an operating record at the return collection facility, for inspection by an officer, with the following information for each household hazardous waste stored at the return collection facility:

(a) a description of each household hazardous waste including the name and, if applicable, the product identification number, classification and packing group number as described in the federal dangerous goods regulations;

(b) a statement as to whether the household hazardous waste is a solid, liquid or gas or a combination of 2 or more of these;

(c) a record, updated at least weekly, of the quantity, in kilograms or litres, of each household hazardous waste described for the purposes of paragraph (a) in storage at the return collection facility.

(2) The records required under subsection (1) must be kept for a minimum of 2 years after the household hazardous waste has been removed from the return collection facility, and be made available for inspection by an officer.

(3) The owner of a household hazardous waste collection facility where household hazardous waste is stored must do all of the following:

(a) ensure that there is sufficient clearance between containers stored at the household hazardous waste collection facility to permit a visual inspection of the containers for leaks and spills;

(b) make a weekly inspection of the household hazardous waste collection facility for any irregularities including, without limitation, malfunctions, container damage, leaks and spills which may lead to the escape of the household hazardous waste from the household hazardous waste collection facility or may pose a threat to human health or the environment;

(c) maintain at the household hazardous waste collection facility, for inspection by an officer, a record of inspections conducted as required by paragraph (b) showing

(i) any irregularities at the household hazardous waste collection facility and the date the irregularities were discovered, and

(ii) the corrective action taken and the date the action was taken.

(4) The owner of a return collection facility must

(a) prepare and maintain a current contingency plan which documents procedures to be followed during emergencies, and

(b) test the contingency plan required by paragraph (a) if directed by a director, in writing, to conduct such a test.

(5) The owner of a return collection facility must ensure that

(a) each person employed at the return collection facility is adequately trained in the handling of each specific household hazardous waste handled by that person and accepted at the return collection facility, and

(b) at least one person employed at the return collection facility is adequately trained in the handling of all household hazardous wastes accepted at the return collection facility.

(6) The owner of a household hazardous waste collection facility must

(a) notify a director at least 90 days in advance of an impending closure of the household hazardous waste collection facility,

(b) prepare a written closure plan and obtain approval of the plan from a director, and

(c) complete the closure of the household hazardous waste collection facility in accordance with the approved closure plan.

(7) Repealed. [B.C. Reg. 464/2004, s. 4 (b).]

[en. B.C. Reg. 52/95, s. 2; am. B.C. Regs. 214/2004, s. 6; 319/2004, s. 31; 464/2004, s. 4 (b); 261/2006, s. 23.]

PART 7 – ADMINISTRATIVE REQUIREMENTS

Registration of hazardous waste

43 (1) A person who,

(a) within a 30 day period, produces, or

(b) at any time, stores at an on site facility

a quantity of a category of hazardous waste greater than the quantity set out in Column II of Schedule 6 opposite that category must register the hazardous waste and apply for a generator registration number by completing Form 1 of Schedule 5 and submitting it to the director.

(2) A person who,

(a) at any time, stores at a site a quantity of a category of hazardous waste greater than the quantity set out in Column II of Schedule 6 opposite that category that was generated at a different site, or

(b) in any one day period, treats, recycles or disposes of a quantity of a category of hazardous waste greater than the quantity set out in Column II of Schedule 6 opposite that category

must register the hazardous waste and apply for a registered site number by completing Form 1 of Schedule 5 and submitting it to the director.

(3) A person must comply with subsection (1) or (2) within 30 days of the date the applicable subsection first applies to the person.

(4) A person must notify a director of any material change in the information the person provided to a director in Form 1 by submitting a completed Form 1 of Schedule 5 describing the material change to a director within 30 days after the material change.

(5) Subsections (1) and (2) do not apply in relation to hazardous waste that is recycled at an on site facility if the hazardous waste is stored at the on site facility in compliance with this regulation.

(6) Notice for the purposes of section 9 (2) of the Act must be given by completing and submitting Form 1 of Schedule 5 to the director.

[en. B.C. Reg. 375/2008, s. 17; am. B.C. Reg. 63/2009.]

Provincial identification number

44 (1) A person must not cause or allow a quantity of a category of hazardous waste greater than the quantity set out in Column II of Schedule 6 opposite that category to be transported unless

(a) the person receiving the hazardous waste is an authorized consignee,

(b) the person transporting the waste, if so required under section 45, has a licence to transport hazardous waste, and

(c) the person causing or allowing the hazardous waste to be transported,

(i) if required to obtain a generator registration number from a director under section 43, writes that number on every manifest the person is required to complete under section 10 (1) of the Act in the space marked "Provincial ID No." in Part A of the manifest, or

(ii) if not required to obtain a generator registration number from a director under section 43, writes "not applicable" in the space marked "Provincial ID No." in Part A of the manifest.

(2) A person must not transport a quantity of a category of hazardous waste greater than the quantity set out in section 46 (1) unless

(a) the person receiving the hazardous waste is an authorized consignee, and

(b) the person transporting the hazardous waste,

(i) if required to obtain a licence to transport from a director under section 45, writes the licence to transport number in the space marked "Provincial ID No." in Part B of the manifest, or

(ii) if not required to obtain a licence to transport from a director under section 45, writes "not applicable" in the space marked "Provincial ID No." in Part B of the manifest.

(3) A person must not receive a quantity of a category of hazardous waste greater than the quantity set out in Column II of Schedule 6 opposite that category unless

(a) the person is an authorized consignee, and

(b) the person,

(i) if required to obtain a registered site number from a director under section 43, writes the registered site number in the space marked "Provincial ID No." in Part C of the manifest, or

(ii) if not required to obtain a registered site number from a director under section 43, writes the number from the written authorization of a director to receive the hazardous waste in the space marked "Provincial ID No." in Part C of the manifest.

[en. B.C. Reg. 375/2008, s. 18.]

Licence to transport

45 (1) A person must not, after 90 days from the effective date of this regulation, transport by road hazardous waste for which a manifest is required without having a licence issued under this section.

(2) Subsection (1) does not apply

(a) to transportation solely within the boundaries of property owned, leased or controlled by the person who stores or generates the hazardous waste being transported, or

(b) if the hazardous waste is

(i) transported by the person who generated it, and

(ii) less than a quantity set out in Column II of Schedule 6.

(3) Every applicant for a licence under subsection (1) must complete the application in Form 2 of Schedule 5 and submit it to a director.

(4) A director may, on receipt of an application setting out the information referred to in subsection (3), issue a transport licence with such conditions as he considers necessary for the protection of the environment.

(5) Where a holder of a transport licence violates the terms of his or her licence or contravenes the Act or a regulation under the Act, a director may suspend or cancel his or her licence.

(6) Before suspending or cancelling a licence, a director must allow the licensee to make representations to the director and may hold a hearing on the matter.

(7) The carrier must keep or cause to be kept a copy of the licence in the cab of the vehicle while it is being used to transport hazardous waste.

(8) Where there is a substantial change in the circumstances under which hazardous waste is transported, so that the information provided in the application for the licence is no longer accurate, the licence is void.

(9) A holder of a licence to transport must not transport hazardous waste to a person unless that person is an authorized consignee.

[am. B.C. Regs. 10/89, s. 9; 319/2004, ss. 2 and 34; 375/2008, s. 19; 375/2008, ss. 1 and 19.]

Classification of hazardous waste

45.1 (1) In this section, **"shipping name"**, **"UN number"**, **"class"**, **"packing group"** and **"infectious substance category"** have the same meaning as in the federal dangerous goods regulations.

(2) A person must not cause or allow hazardous waste to be transported unless the person classifies the waste in the following manner:

(a) the person determines if the waste is hazardous waste within the meaning of section 1;

(b) if the waste is hazardous waste within the meaning of section 1 and is not subject to the federal dangerous goods regulations, the person

(i) identifies on the manifest the name of the hazardous waste listed in paragraphs (b) to (i) of the definition of "hazardous waste" in section 1, and

(ii) clearly labels the container in accordance with section 50 (3) (c) of this regulation;

(c) if the waste is hazardous waste within the meaning of section 1 and is subject to the federal dangerous goods regulations the person

(i) includes the following information on the manifest:

(A) the shipping name;

(B) the UN number;

(C) the class;

(D) either the packing group or the infectious substance category, as applicable, and

(ii) clearly labels the container in accordance with section 50 (3) (c) of this regulation.

(3) A carrier must not accept a shipment of hazardous waste for transportation unless the following requirements are met:

(a) if the waste is hazardous waste within the meaning of section 1 and is not subject to the federal dangerous goods regulations,

(i) the name of the hazardous waste listed in paragraphs (b) to (i) of the definition of "hazardous waste" in section 1 is identified on the manifest, and

(ii) the container in which the hazardous waste is transported is clearly labelled in accordance with section 50 (3) (c) of this regulation;

(b) if the waste is hazardous waste within the meaning of section 1 and is subject to the federal dangerous goods regulations,

(i) the following information is on the manifest:

(A) the shipping name;

(B) the UN number;

(C) the class;

(D) either the packing group or the infectious substance category, as applicable, and

(ii) the container in which the hazardous waste is transported is clearly labelled in accordance with section 50 (3) (c) of this regulation;

(4) A consignee must not accept hazardous waste unless the following requirements are met:

(a) if the waste is hazardous waste within the meaning of section 1 and is not subject to the federal dangerous goods regulations,

(i) the name of the hazardous waste listed in paragraphs (b) to (i) of the definition of "hazardous waste" in section 1 is identified on the manifest, and

(ii) the container in which the hazardous waste is transported is clearly labelled in accordance with section 50 (3) (c) of this regulation;

(b) if the waste is hazardous waste within the meaning of section 1 and is subject to the federal dangerous goods regulations,

(i) the following information is on the manifest:

(A) the shipping name;

(B) the UN number;

(C) the class;

(D) either the packing group or the infectious substance category, as applicable, and

(ii) the container in which the hazardous waste is transported is clearly labelled in accordance with section 50 (3) (c) of this regulation.

[en. B.C. Reg. 375/2008, s. 20.]

Manifest requirements

46 (1) For the purposes of section 10 (1) (a), (2) and (3) of the Act, the prescribed quantity of hazardous waste is

(a) for solid hazardous waste, other than waste batteries, 5 kg,

(b) for liquid hazardous waste, other than waste oil, 5 L,

(c) for gaseous hazardous waste, any quantity that fits into a container that has a total liquid capacity of 5 L,

(d) for waste oil, 210 L,

(e) any quantity of liquid or solid hazardous waste that contain 500 grams or more of PCB,

(f) for waste batteries, 1 000 kg, and

(g) for waste paint, 210 L.

(2) The transportation of hazardous waste is exempt from section 10 of the Act if

(a) the hazardous waste is transported only over property owned, leased or controlled by the consignor and the distance between the shipping site and the receiving site is less than 100 km,

(b) the hazardous waste is transported on a public road for less than 3 km, or

(c) the hazardous waste is transported by a homeowner or farmer from his or her home or farm directly to a facility operated by the government or, a municipality or an agent of the government or a municipality.

(3) For the purposes of section 10 of the Act, the prescribed form of a manifest is

(a) if the hazardous waste being transported originated outside British Columbia, a form prescribed for that purpose by another province of Canada or by Canada, and

(b) if the hazardous waste being transported originated in British Columbia, a version of the "movement document", as defined in section 4 of the Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations (Canada), SOR 2005/149, that is issued, and imprinted with a unique manifest reference number, by the government.

(4) A manifest under subsection (3) (a) must be completed in the manner set out in the regulations of the province or Canada, as applicable.

(5) Subject to sections 47, 47.1 and 47.2, a manifest under subsection (3) (b) must be completed in accordance with the instructions printed on the back of the manifest.

(6) A carrier must carry the manifest in accordance with the requirements for carrying a shipping document in the federal dangerous goods regulations and section 10 (2) of the Act when transporting hazardous waste.

(7) A carrier who delivers hazardous waste to another carrier must provide the manifest relating to the hazardous waste to the next carrier.

(8) A manifest must be filed in the following manner:

(a) the consignor must send the applicable copy of the manifest, with Parts A and B completed, to a director within 3 days after providing the manifest to a carrier;

(b) the consignee must send the applicable copy of the manifest, with Parts A, B and C completed, to a director, the consignor and the carrier who delivered the hazardous waste to the consignee within 3 days after receiving the hazardous waste.

(8.1) If, after having made reasonable efforts to obtain the applicable copy of the manifest referred to in subsection 8 (b), the consignor is unable to obtain the applicable copy from the consignee, the consignor must notify a director within 10 days after having provided the manifest to a carrier that the consignor has been unable to obtain the applicable copy.

(9) Consignors, carriers and consignees must retain the applicable copy of a manifest at their principal place of business in British Columbia for a period of 2 years after the hazardous waste is delivered to the consignee.

[en. B.C. Reg. 319/2004, s. 35; am. B.C. Regs. 261/2006, s. 26; 375/2008, s. 21.]

Loads from multiple consignors

47 (1) If a carrier collects hazardous waste with the same shipping name from more than one consignor to establish a bulk load, the carrier may use one manifest for the bulk load.

(2) A carrier described in subsection (1) must

(a) complete a multiple consignors' form in Form 3 of Schedule 5, or a form containing equivalent information, and attach it to the manifest, and

(b) before transferring the bulk load to a consignee,

(i) complete Parts A and B of the manifest, entering the word "multiple" for the company name and shipping site address in Part A, and

(ii) distribute copies of the manifest and multiple consignors' form as indicated on the multiple consignors' form.

(3) On delivery of a shipment and documents by a carrier, a consignee must complete Part C of the manifest and retain the completed copy and copy C of the multiple consignors' form, or the form containing equivalent information, for a period of at least 2 years.

(4) On completion of the shipment, the carrier must retain copy 2 of the manifest and copy B of the multiple consignors' form, or the form containing equivalent information, for a period of at least 2 years.

[en. B.C. Reg. 319/2004, s. 3; am. B.C. Reg. 261/2006, s. 27; 375/2008, s. 1.]

Multiple carrier shipments

47.1 (1) Where a consignor uses 2 or more carriers for a single shipment, the consignor must

(a) use one manifest to record the shipment,

(b) complete Part A of the manifest and attach a multiple carriers form in Form 5 of Schedule 5, or a form containing equivalent information,

(c) complete Part B of the manifest by entering the words "see attached form" for the names of the carriers,

(d) send copy 1 of the manifest to the appropriate authority at the address shown on the reverse side of the manifest,

(e) attach the multiple carriers form referred to in paragraph (b) to copies 3, 4, 5 and 6 of the manifest and give it to the first carrier, and

(f) retain copies 2 and 6 of the manifest and copy D of the multiple carriers form, or the equivalent form, for a period of at least 2 years.

(2) If 2 or more carriers transport a single shipment, each carrier must

(a) upon acceptance of shipment from the consignor or another carrier, complete and sign the multiple carriers form and carry it and the manifest in the vehicle with the shipment, and deliver these forms to the consignee after delivering the shipment, and

(b) retain a copy of copy 4 of the manifest and a copy of copy B of the multiple carriers form for a period of at least 2 years.

(3) The consignee must

(a) complete Part C of the manifest,

(b) attach and distribute copies of the manifest and the multiple carriers form as indicated on the multiple carriers form, and

(c) retain copy 5 of the manifest and copy C of the multiple carriers form, or the equivalent form, for a period of at least 2 years.

[en. B.C. Reg 132/92, s. 28; am. B.C. Regs. 319/2004, s. 36; 375/2008, s. 1.]

Shipments of multiple different wastes

47.2 (1) Where a consignor ships more hazardous wastes than can be recorded on a single manifest, the consignor may use a single manifest to record the hazardous wastes shipped and must

(a) complete a multiple wastes form in Form 6 of Schedule 5, or a form containing equivalent information,

(b) complete Part A of the manifest and enter the words "see attached form" for the description of the waste,

(c) send copy 1 of the manifest to the appropriate authority at the address shown on the reverse side of the manifest,

(d) attach the completed multiple different wastes form, or equivalent form, to the manifest and give it to the carrier to be kept in the vehicle and delivered to the consignee after delivery of the shipment, and

(e) retain copies 2 and 6 of the manifest and copy D of the multiple different wastes form, or the equivalent form, for a period of at least 2 years.

(2) The carrier must

(a) complete Part B of the manifest,

(b) carry the manifest and the multiple different wastes form in the vehicle and deliver these forms to the consignee after delivering the shipment, and

(c) retain copy 4 of the manifest and copy B of the multiple different wastes form, or the equivalent form, for a period of at least 2 years.

(3) The consignee must

(a) complete Part C of the manifest,

(b) attach and distribute completed copies of the manifest and the multiple different wastes form, or the equivalent form, as indicated on the multiple different wastes form, and

(c) retain copy 5 of the manifest and copy C of the multiple different wastes form, or the equivalent form, for a period of at least 2 years.

[en. B.C. Reg. 132/92, s. 28; am. B.C. Regs. 319/2004, s. 2; 375/2008, s. 1.]

Storage of hazardous waste

48 Parts 2 and 3 and sections 16, 42.3 (2) and (3) and 42.4 (1) to (6) do not apply to storage facilities storing less than the quantity set out in Column II of Schedule 6.

[en. B.C. Reg. 319/2004, s. 37.]

Analytical methods

49 (1) Samples of hazardous waste must be analyzed

(a) by a method specified in this regulation,

(b) if this regulation does not otherwise specify a method for analyzing a sample of hazardous waste, by a method established under the *British Columbia Laboratory Methods Manual: 2005 — for the Analysis of Water, Wastewater, Sediment, Biological Materials and Discrete Ambient Air Samples*, Victoria, August 2005, as updated from time to time, published by the minister, and

(c) if neither this regulation nor the manual referred to in paragraph (b) provides a method for analyzing a sample of hazardous waste, by a method approved by a director.

(2) A director may vary a method described in subsection (1) in whole or in part, if, in the director's opinion, an alternate method is more appropriate in relation to

(a) particular hazardous wastes,

(b) particular waste management systems, or

(c) particular environmental circumstances.

(3) If a director makes a variation under subsection (2), samples of hazardous waste to which the variation applies must be analyzed in accordance with that variation.

[en. B.C. Reg. 261/2006, s. 28; am. B.C. Reg. 375/2008, s. 1.]

PART 8 – CONTAINERS FOR HAZARDOUS WASTE

Storage and transportation

50 (1) For the purposes of this section, materials are compatible with one another when, under normal conditions of storage or transport,

(a) hazardous waste will not be released into the environment,

(b) no heat, gas, corrosive or toxic substance is given off, and

(c) the effectiveness of the packaging of the hazardous waste is not reduced.

(2) Any person who

(a) transports hazardous waste, or

(b) is required to store hazardous waste in a container,

must use a container that is designed, constructed or lined with materials that are compatible with the waste.

(3) A person who uses a container to store or transport hazardous waste must

(a) keep the container closed at all material times during storage or transport,

(b) not open, handle, store or transport the container in a manner which may cause it to leak or rupture, and

(c) ensure that the outside of the container is clearly labeled with the shipping name of the hazardous waste it contains and, if the hazardous waste is a dangerous good, the class and UN number of that hazardous waste, both as set out in the federal dangerous goods regulations.

(4) A person must not store or transport in the same container

(a) two or more hazardous wastes which are not compatible, or

(b) a hazardous waste which is not compatible with any substance placed in the container.

(5) A person must not place hazardous waste in an unwashed container that previously held a material which is incompatible with that hazardous waste.

(6) A person must not store or transport hazardous waste in a small inside container within a labpack unless

(a) the container is enclosed within an open head metal labpack which

(i) has a tight fitting gasketted lid, and

(ii) is lined with a plastic bag not less than 4 mil thick,

(b) the container is not leaking and is securely sealed,

(c) any container of liquid hazardous waste is put inside a clear plastic bag not less than 4 mil thick which is sealed before being placed inside the labpack,

(d) the waste within the container is identifiable either by

(i) the original label on the container, or

(ii) a new label applied to the container or plastic bag stating the correct shipping name,

(e) sufficient inert packing material is used to fill all spaces between the inside containers so as to prevent accidental breakage and leakage, and

(f) a list of the contents and size of each container is

(i) retained for inspection by an officer while the hazardous waste is being stored,

(ii) attached to the manifest while the hazardous waste is being transported, and

(iii) attached, by the consignee, to the copies of the manifest which are sent to the appropriate authorities under the federal dangerous goods regulations.

(7) A person must not use a container which contains residues of hazardous waste to hold, store or transport food, animal feed or a product which may directly become part of the human food chain.

(8) A person must not store or transport hazardous waste unless it is placed in a container or otherwise secured so that under normal conditions of storage or transport the hazardous waste does not leak or escape into the environment.

[am. B.C. Regs. 132/92, s. 30; 214/2004, s. 8; 319/2004, ss. 2 and 39; 261/2006, s. 29; 375/2008, s. 1.]

PART 9 – SPECIFIC EXEMPTIONS

Application for change in requirements

51 (1) Any person who seeks a change in the requirements of this regulation may make application to a director by completing and submitting the form containing the matters set out in Form 4 of Schedule 5.

(2) An application may be filed by an agent of the applicant, and unless a director authorizes otherwise, an obligation imposed by this section on an applicant may be carried out by the agent of the applicant.

(3) The applicant must, within 15 days from the date of signing the application,

(a) post at a conspicuous place, at or near the point where the hazardous waste is produced or managed, a signed copy of the application, and

(b) file with a director 2 signed copies of the application.

(4) The applicant must, if required by a director, do one or more of the following:

(a) publish a copy of the application in one or more newspapers specified by the director;

(b) serve a signed copy of the application on a person who, in the opinion of the director, may be adversely affected by the proposed change in requirements;

(c) display a copy of the application in one or more branch post offices of Canada Post Corporation.

(5) Any person who may be adversely affected by the proposed change in requirements may, within 30 days of the last date of

(a) posting under subsection (3) (a),

(b) publication, service or display under subsection (4), or

(c) any publication of the application in the British Columbia Gazette

notify a director in writing stating how the person may be affected.

(6) The applicant, if required by a director, must meet with a person or persons who, in the opinion of the director, may be adversely affected by the proposed change in the requirements to explain and clarify the intent of the application.

(7) An applicant must demonstrate to the satisfaction of the director that

(a) the waste does not fit the criteria for classes 2 to 6, 8 or 9 of the federal dangerous goods regulations,

(b) the system used to manage or recycle the hazardous waste provides equal or better protection than the protection offered by this regulation, or

(c) site specific natural conditions mitigate the hazards associated with the hazardous waste,

to such an extent that human health and the environment will not be substantially impaired.

(8) A director may, on receipt of an application under this section

(a) request such additional information as the director requires to evaluate the application,

(b) refuse to grant the change in requirements, or

(c) grant all or part of the requested changes from any or all of the requirements of this regulation for a definite or indefinite period of time, and with such conditions as the director deems appropriate.

(9) On the granting or refusing of the application, a director must serve a signed copy of the director's decision on the applicant and must give notice of it to all persons who have submitted written notification under subsection (5).

(10) A director may cancel or amend a decision made under this section whenever

(a) new information shows that the previous decision was incorrect or incomplete,

(b) the previous decision was made in error, or

(c) the applicant provided incorrect material information in the application.

(10.1) A director may cancel a previous decision at the request of the applicant.

(11) Any decision made by a director under this section must be deemed to be a decision for purposes of Part 8 of the Act.

[am. B.C. Regs. 132/92, s. 31; 319/2004, ss. 2 and 40; 261/2006, s. 30; 375/2008, ss. 1 and 22.]

Hazardous wastes from accidental spills or abandonment

52 (1) A person is exempt from the requirements of this regulation for the purpose of managing hazardous waste that originates from an accidental spill, or the abandonment, of dangerous goods if the person satisfies a director that

(a) the person will manage the hazardous waste in a manner that will not pose a threat to human health or the environment, and

(b) the exemption is in the public interest.

(2) Part 7 of this regulation does not apply to an officer, as defined in the Act, during the performance of his or her duties where the officer is responding to an accidental spill or abandonment of dangerous goods.

[en. B.C. Reg. 132/92, s. 32; am. B.C. Reg. 319/2004, ss. 2 and 41.]

Delisting

53 (1) A director may approve test protocols or methods for the purposes of sections 19 (2) (b) and 21 (3) (b) and subsection (2).

(2) If a director is satisfied on the basis of test protocols or methods approved under subsection (1) that a hazardous waste or a class of hazardous waste and the residue from the treatment or incineration of the hazardous waste or class does not pose a threat to human health or the environment if dealt with in accordance with the test protocol or method, the hazardous waste or class is exempt from this regulation when dealt with in accordance with the test protocol or method.

[en. B.C. Reg. 319/2004, s. 42.]

PART 10 – TRANSITIONAL PROVISION

Transition – hazardous waste storage permits

54 During the period that this provision is in force in accordance with section 141 (3) of the Act, despite the repeal of section 10 of the *Waste Management Act*, a director may

(a) order that a specific permit issued under that section of the *Waste Management Act* authorizing the storage, treatment, disposal or recycling of hazardous waste remains valid and in force,

(b) exercise the authority under section 13 of the *Waste Management Act* in relation to a permit in respect of which the director has made an order under paragraph (a) as if that section had not been repealed, and

(c) cancel an order under paragraph (a).

[en. B.C. Reg. 319/2004, s. 43.]

This is Exhibit "9"
referred to in the Affidavit
of Aaron Welch
sworn before me this 4th day of
February, 2010.

A Notary Public in and for the Province of
British Columbia

Exhibit 9

B.C. Reg. 263/90
O.C. 1223/90

Deposited August 10, 1990

Environmental Management Act

SPILL REPORTING REGULATION

[includes amendments up to B.C. Reg. 376/2008, December 9, 2008]

Contents

Interpretation

1 In this regulation:

"Act" means the *Environmental Management Act*;

"PEP" means the Provincial Emergency Program continued under the *Emergency Program Act*;

"spill" means a release or discharge into the environment, not authorized under the Act, of a substance in an amount equal to or greater than the amount listed in Column 2 of the Schedule opposite that substance in Column 1;

"substance" means a substance, product, material or other thing listed in Column 1 of the Schedule to this regulation.

[am. B.C. Regs. 321/2004, s. 28 (a) and (b); 220/2006, Sch. s. 3.]

Report

2 (1) For the purposes of section 79 (5) of the Act, a person who had possession, charge or control of a substance immediately before its spill shall immediately report the spill to PEP by telephoning 1-800-663-3456.

(2) Where it appears to a person observing a spill that a report under subsection (1) has not been made, he or she shall make the report referred to in this section.

(3) A report under this section shall include, to the extent practical,

(a) the reporting person's name and telephone number,

(b) the name and telephone number of the person who caused the spill,

(c) the location and time of the spill,

(d) the type and quantity of the substance spilled,

(e) the cause and effect of the spill,

(f) details of action taken or proposed to comply with section 3,

(g) a description of the spill location and of the area surrounding the spill,

(h) the details of further action contemplated or required,

(i) the names of agencies on the scene, and

(j) the names of other persons or agencies advised concerning the spill.

[am. B.C. Reg. 220/2006, Sch. s. 4.]

Further action

3 Where a spill occurs, the person who immediately before the spill had possession, charge or control of the spilled substance shall take all reasonable and practical action, having due regard for the safety of the public and of himself or herself, to stop, contain and minimize the effects of the spill.

SCHEDULE

[en. B.C. Reg.376/2008.]

REPORTABLE LEVELS FOR CERTAIN SUBSTANCES

1 In this Schedule:

"Federal Regulations" means the Transportation of Dangerous Goods Regulations made under the Transportation of Dangerous Goods Act (Canada);

"Hazardous Waste Regulation" means B.C. Reg. 63/88.

Item	Column 1 Substance spilled	Column 2 Specified amount
1	Class 1, Explosives as defined in section 2.9 of the Federal Regulations	Any quantity that could pose a danger to public safety or 50 kg
2	Class 2.1, Flammable Gases, other than natural gas, as defined in section 2.14 (a) of the Federal Regulations	10 kg
3	Class 2.2 Non-Flammable and Non-Toxic Gases as defined in section 2.14 (b) of the Federal Regulations	10 kg
4	Class 2.3, Toxic Gases as defined in section 2.14 (c) of the Federal Regulations	5 kg
5	Class 3, Flammable Liquids as defined in section 2.18 of the Federal Regulations	100 L
6	Class 4, Flammable Solids as defined in section 2.20 of the Federal Regulations	25 kg
7	Class 5.1, Oxidizing Substances as defined in section 2.24 (a) of the Federal Regulations	50 kg or 50 L
8	Class 5.2, Organic Peroxides as defined in section 2.24 (b) of the Federal Regulations	1 kg or 1 L
9	Class 6.1, Toxic Substances as defined in section 2.27 (a) of the Federal Regulations	5 kg or 5 L
10	Class 6.2, Infectious Substances as defined in section 2.27 (b) of the Federal Regulations	1 kg or 1 L, or less if the waste poses a danger to public safety or the environment
11	Class 7, Radioactive Materials as defined in section 2.37 of the Federal Regulations	Any quantity that could pose a danger to public safety and an emission level greater than the emission level established in section 20 of the "Packaging and Transport of Nuclear Substances Regulations"

12	Class 8, Corrosives as defined in section 2.40 of the Federal Regulations	5 kg or 5 L
13	Class 9, Miscellaneous Products, Substances or Organisms as defined in section 2.43 of the Federal Regulations	25 kg or 25 L
14	waste containing dioxin as defined in section 1 of the Hazardous Waste Regulation	1 kg or 1 L, or less if the waste poses a danger to public safety or the environment
15	leachable toxic waste as defined in section 1 of the Hazardous Waste Regulation	25 kg or 25 L
16	waste containing polycyclic aromatic hydrocarbons as defined in section 1 of the hazardous Waste Regulation	5 kg or 5 L
17	waste asbestos as defined in section 1 of the Hazardous Waste Regulation	50 kg
18	waste oil as defined in section 1 of the Hazardous Waste Regulation	100 L
19	waste containing a pest control product as defined in section 1 of the Hazardous Waste Regulation	5 kg or 5 L
20	PCB Wastes as defined in section 1 of the Hazardous Waste Regulation	25 kg or 25 L
21	waste containing tetrachloroethylene as defined in section 1 of the Hazardous Waste Regulation	50 kg or 50 L
22	biomedical waste as defined in section 1 of the Hazardous Waste Regulation	1 kg or 1 L, or less if the waste poses a danger to public safety or the environment
23	A hazardous waste as defined in section 1 of the Hazardous Waste Regulation and not covered under items 1 – 22	25 kg or 25 L
24	A substance, not covered by items 1 to 23, that can cause pollution	200 kg or 200 L
25	Natural gas	10 kg, if there is a breakage in a pipeline or fitting operated above 100 psi that results in a sudden and uncontrolled release of natural gas

[Provisions of the *Environmental Management Act*, S.B.C. 2003, c. 53, relevant to the enactment of this regulation: sections 53, 79 (5) and 92]

This is Exhibit "10"
referred to in the Affidavit
of Aaron Welch
sworn before me this 4th day of
February, 2010.

A Notary Public in and for the Province of
British Columbia

Exhibit 10

B.C. Reg. 320/2004
O.C. 723/2004

Deposited July 8, 2004
effective July 8, 2004

Environmental Management Act

WASTE DISCHARGE REGULATION

[includes amendments up to B.C. Reg. 377/2008, December 9, 2008]

Contents

Interpretation

1 In this regulation:

"Act" means the *Environmental Management Act*;

"vehicle" has the same meaning as in the *Motor Vehicle Act*;

"written" or **"in writing"** includes written messages transmitted electronically.

Prescribed industries, trades, businesses, operations and activities

2 (1) The industries, trades and businesses, and classes of industries, trades and businesses, listed in the Table in Schedule 1 and in column 1 of the Table in Schedule 2 are prescribed for the purposes of section 6 (2) of the Act.

(2) The activities and operations, and classes of activities and operations, listed in the Table in Schedule 1 and in column 1 of the Table in Schedule 2 are prescribed for the purposes of section 6 (3) of the Act.

Operations exempt from the Act

3 (1) In this section:

"coarse coal refuse" means granular residual solids composed of rock fragments and coal-like material, excluding tailings, from the preparation of marketable coal in a coal preparation plant;

"domestic sewage" has the same meaning as in the Sewerage System Regulation, B.C. Reg. 326/2004;

"overburden" means naturally-occurring, unconsolidated or poorly consolidated, mineral or organic matter overlying bedrock, including but not limited to glacial till, gravel, clay and soil;

"sewerage system" has the same meaning as in the Sewerage System Regulation, B.C. Reg. 326/2004;

"tailings" means fine waste materials

(a) originating from a concentrator or coal preparation plant, and

(b) remaining in a water suspension;

"waste rock" means rock and granular residual solids, excluding tailings,

(a) removed from a mine or from a metal or industrial mineral concentrator, and

(b) containing insufficient valuable constituents to warrant further processing.

(2) The discharge of domestic sewage to a sewerage system is exempt from the Act and the regulations if the Sewerage System Regulation applies to the construction and maintenance of the sewerage system and one or both of the following apply:

(a) the domestic sewage is not discharged into surface water, as defined in the Sewerage System Regulation, or marine waters;

(b) the discharge is from a sewerage system serving a single family residence or a duplex.

(3) Repealed. [B.C. Reg. 132/2006, s. 5.]

(3.1) In subsections (4), (5), (6) and (6.1), **"industrial wood residue"** does not include the residue of wood treated with glue, paint, a preservative or another substance harmful to plants or animals.

(4) The use of industrial wood residue for foundation material at construction sites is exempt from section 6 (2) and 6 (3) of the Act if the material is applied under the direction of a professional engineer.

(5) The use of industrial wood residue

(a) as plant mulch or in residential gardens,

(b) as foundation material for animal bedding, and

(c) in sports areas

is exempt from section 6 (2) and 6 (3) of the Act.

(6) The use of industrial wood residue as a soil conditioner or ground cover in non-agricultural operations is exempt from section 6 (2) and 6 (3) of the Act if

(a) less than 100 m^3/year is spread on a single property, and

(b) it is applied in accordance with good agronomic practices.

(6.1) The limitation in subsection (6) (a) does not apply if the industrial wood residue is applied as a soil conditioner or ground cover to land used for forestry.

(7) The emissions and ash from a commercially available auxiliary fuel fired refuse incinerator that serves a remote industrial, recreational, exploration or construction camp designed to accommodate fewer than 100 persons are exempt from the application of section 6 (2) and 6 (3) of the Act.

(8) Emissions from the combustion, in a commercial pet crematorium, of the corpses of pets are exempt from the application of section 6 (2) and 6 (3) of the Act.

(9) Repealed. [B.C. Reg. 377/2008.]

(10) A person is exempt from section 6 (2) and 6 (3) of the Act in relation to the discharge to the environment of coarse coal refuse, waste rock or overburden if the coarse coal refuse, waste rock or overburden is managed in accordance with a permit issued under section 10 of the *Mines Act*.

[am. B.C. Regs. 464/2004, s. 5 (a); 132/2006, s. 5; 220/2006, Sch. s. 5; 287/2006; 377/2008.]

Exemption from section 6 (2) and (3) of the Act by compliance with code of practice

4 (1) If

(a) a person introduces waste into the environment

(i) in the course of conducting an industry, trade or business, or an industry, trade or business in a class, listed in column 1 of the Table in Schedule 2, or

(ii) that is produced in the course of carrying on an activity or operation listed in column 1 of the Table in Schedule 2,

(b) the introduction of the waste is governed by a code of practice, the title of which is set out opposite the industry, trade, business, activity or operation, or class of industry, trade, business, activity or operation, in column 2 of the Table in Schedule 2,

(c) the introduction of the waste is carried out in accordance with the code of practice, and

(d) the person's registration under subsection (2), if required under the code of practice, is effective,

the person is, subject to section 4.1 (1) of this regulation, exempt from section 6 (2) and (3) of the Act in relation to the introduction of that waste into the environment.

(2) In order to effect a registration referred to in subsection (1) (d), the person must provide to a director the following information, as applicable, in a form approved by the director:

(a) if the person is an individual, the person's full name and residential address;

(b) if the person is a corporation or entity that is registered with the Registrar of Companies under an Act that provides for an address at or to which records may, under that Act, be served on the corporation or entity

(i) the registered name of the corporation or entity, and

(ii) that address;

(c) if the person is a corporation not referred to in paragraph (b),

(i) the name of the corporation, and

(ii) the address of the corporation's head office in British Columbia, or if the corporation does not have a head office in British Columbia, the address of the corporation's head office;

(d) if the person is a partnership, the name of the partnership, the full name of each partner, and the head office in British Columbia of the partnership;

(e) if the person is a corporation or entity operating under a name other than its registered name, the name under which the corporation or entity conducts or carries out the prescribed industry, trade, business, operation or activity;

(f) the name and address and contact numbers of an individual who is located at or near the site where the introduction of waste into the environment will occur and who is the local contact for the purposes of the discharge;

(g) the address and legal description of the location of the facility that produces the waste, and the address, legal description and latitude and longitude of the site where the introduction of waste into the environment will occur;

(h) the industry, trade, business, activity or operation, or class of industry, trade, business, activity or operation, in relation to which the waste is or will be introduced into the environment, as set out in Column 1 of the table in Schedule 2;

(i) the title of the code of practice that governs the discharge of waste;

(j) if the person previously held an authorization under the Act to discharge waste or has previously registered under this regulation in relation to a code of practice, the ministry's file number for that authorization or registration;

(k) other information that is relevant to the exemption and specified by the minister as required for the purposes of a registration under the applicable code of practice;

(l) other information that is relevant to the exemption and specified by a director in a particular case.

(3) A registration under subsection (2) must

(a) be provided to a director by registered mail, transmitted electronically or delivered personally to a director, and

(b) be accompanied by

(i) the first annual fee calculated in accordance with section 9 (1), and

(ii) a written record of the fee calculation in a form approved by the director.

(4) For a person who is required under a code of practice to register for an exemption under this section, the exemption takes effect on the effective date of the regis-

tration which, in relation to a particular registration, is the earlier of the following dates:

(a) the date a director sends a notice in writing signed by the director stating that the person's registration is effective;

(b) the date that is 45 days after the date the person delivers the registration and fee under subsection (3) to a director.

(5) A person whose registration is effective under subsection (4) must

(a) pay the annual fee calculated under section 9 (1) on each anniversary of the effective date of the registration, and

(b) provide a director with written notice within 30 days after

(i) a change in information provided in the person's registration, or

(ii) ceasing to conduct the industry, trade or business or to carry on the activity or operation, at the facility referred to in subsection (2) (g).

(6) Despite subsection (4), a registration ceases to be effective

(a) on the day following an anniversary referred to in subsection (5) (a) if the annual fee was not paid in accordance with that subsection, or

(b) 30 days after a change referred to in subsection (5) (b) if notice was not provided in accordance with that subsection.

(7) The minister, in a code of practice, may specify in relation to an industry, trade, business, activity or operation, or a class of industry, trade, business, activity or operation, whether registration is required for an exemption under this section.

(8) For greater certainty, if

(a) the discharge of waste from an activity or operation of an industry, trade or business described in subsection (1) (a) is not governed by the code of practice set out opposite the title of the industry, trade or business in the Table in Schedule 2, and

(b) the activity or operation is listed in the Table in Schedule 1 or in column 1 of the Table in Schedule 2,

registration under this section in relation to the code of practice described in paragraph (a) does not exempt the person conducting the industry, trade or business from section 6 (2) or (3) of the Act in relation to the discharge described in that paragraph.

[am. B.C. Regs. 464/2004, s. 5 (b); 220/2006, Sch. s. 6; 365/2008, s. (a).]

Exemption relating to produced water from coalbed gas operations

4.1 (1) A person who introduces produced water into the environment in the course of conducting a coalbed gas exploration and production industry is exempt from section 6 (2) and (3) of the Act in relation to the introduction of the produced water, but only if, in addition to the conditions in section 4 (1) of this regulation, all of the following conditions are met:

(a) the person's registration under section 4 of this regulation and section 8 of the relevant code of practice became effective before the date on which this section came into force;

(b) the produced water is from a well or test hole to which that registration relates;

(c) the production of water from that well or test hole began before that date;

(d) the coalbed gas exploration and production industry carried out by that person has not begun commercial production.

(2) In this section:

"produced water" has the same meaning as in the relevant code of practice;

"relevant code of practice" means the Code of Practice For The Discharge of Produced Water From Coalbed Gas Operations, B.C. Reg. 156/2005;

"test hole" means a test hole for which an authorization was granted under section 93 of the *Petroleum and Natural Gas Act* before the date on which this section came into force;

"well" means a well for which an authorization was granted under section 93 of the *Petroleum and Natural Gas Act* before the date on which this section came into force.

[en. B.C. Reg. 365/2008, s. (b).]

False statement in registration

5 (1) A person who knowingly provides false or misleading information in a registration under section 4 (2) commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding $200 000.

Other code of practice requirements

6 (1) A person who is exempt from section 6 (2) or (3) of the Act because of compliance with section 4 (1) *[exemption by compliance with code of practice]* of this regulation must also comply with the requirements of the code of practice not described in section 4 (1) (c) of this regulation.

(2) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding $200 000.

Substituted requirements

7 (1) The minister or a director, on his or her own initiative, may, by order, substitute a different requirement for a requirement contained in a code of practice if, in the individual case, the minister or the director considers that

(a) the substitution is necessary to protect the public or the environment, or

(b) the intent of the code of practice is met by the substituted requirement.

(2) If the minister or a director makes a substitution under subsection (1), he or she may order that notification of the substitution be given to the public in the manner the minister or director specifies.

(3) A director, on application under section 8, may, by order, substitute a different requirement for a requirement contained in a code of practice if he or she considers that, in the individual case, the intent of the code of practice will be met by the substituted requirement.

Application for substituted requirement

8 (1) A person who is exempt from section 6 (2) or (3) of the Act under section 4 (1) of this regulation may apply for a substitution described in section 7 (3) by filing with a director a copy of a completed application in the form specified by the director.

(2) A person who makes an application under subsection (1) must do all of the following:

(a) within 15 days after the date the application is filed with the director, post a readable copy of the application in a conspicuous place at all main entrances to the site where the introduction of waste into the environment will occur;

(b) keep the copy posted for a period of not less than 30 days;

(c) publish notice of the application in the form approved by the director in one or more newspapers specified by the director;

(d) advise the director in writing of the date the copy of the application was posted under paragraph (a) and the date notice was published under paragraph (c).

(3) If directed to do so by a director, a person who makes an application under subsection (1) must

(a) serve a signed copy of the application on any person who, in the director's opinion, may be adversely affected by an environmental impact of the proposed substituted requirement, and

(b) display a copy of the application in one or more branch post offices of Canada Post Corporation specified by the director.

(4) A person who may be adversely affected by an environmental impact of a proposed substitution under this section may notify a director and the applicant in writing, stating how the person is affected, within 30 days after the occurrence of the later of the following events:

(a) the application is posted or published under subsection (2);

(b) the application is served or displayed under subsection (3).

(5) If directed to do so by a director, the applicant must consult in the manner directed with a person who, in the director's opinion, may be adversely affected by an environmental impact of the proposed substitution to explain and clarify the intent of the application.

(6) An applicant must demonstrate to the satisfaction of a director that the substituted requirement requested meets the intent of the code of practice.

(7) A director, on receipt of an application under this section, may

(a) request additional information from the applicant if the director considers the information necessary for the evaluation of the application, and

(b) after the 30 day period referred to in subsection (4) is ended and having considered any information provided under that subsection,

(i) refuse to grant the substitution, or

(ii) grant any or all the requested substitutions to any or all the requirements of the code of practice, for a definite or indefinite period of time, and subject to the conditions the director considers appropriate.

(8) On granting or refusing an application, a director must

(a) serve a signed copy of his or her decision on the applicant, and

(b) give notice of it to all persons who gave notice under subsection (4).

(9) The fee for an application for a substitution is $150 per hour of time a public service employee is engaged in considering or processing the application and the director may

(a) require the fee or a portion of the fee from the applicant before beginning to process the application, and

(b) invoice the applicant for the fee.

(10) A director may cancel or amend a decision made under this section whenever new information demonstrates to the satisfaction of the director that

(a) the applicant provided false or misleading material information in the application, or

(b) the cancellation or amendment is necessary to protect the environment or the public.

(11) A decision granting an application under this section ceases to have effect if the fee under subsection (9) remains unpaid 30 days after the date of the invoice.

[am. B.C. Reg. 220/2006, Sch. s. 7.]

Annual fees

9 (1) The annual fee for a registration under section 4 (2) is the sum of the following amounts:

(a) the sum of the amounts of the base fee set out in Table 1 in Schedule 3 for each type of discharge that

(i) is authorized under the applicable code of practice, and

(ii) is discharged in the course of conducting the industry, trade, or business, or carrying out the activity or operation, to which the registration relates;

(b) the sum of the fees for each contaminant that is discharged under the code of practice and, under that code, is subject to a fee.

(2) For the purposes of subsection (1) (b), the fee for each contaminant is the maximum discharge multiplied by the maximum concentration multiplied by the applicable fee from Schedule 3, where

(a) maximum discharge is the maximum quantity of discharge

(i) specified in the registration, if the minister has specified under section 4 (2) (k) that the maximum discharge is information required for the purposes of a registration under section 4, or

(ii) specified in or calculated under the code of practice, as applicable, if subparagraph (i) does not apply,

calculated on an annual basis,

(b) maximum concentration is the maximum concentration of the contaminant authorized under the code of practice, and

(c) applicable fee from Schedule 3 is the unit fee for the contaminant set out in column 2 opposite the contaminant in Column 1 of Table 2, 3 or 4 of Schedule 3.

(3) As a limitation on subsection (1) (a), if a person

(a) has paid a base fee for a year in relation to a type of discharge, and

(b) at the same time or later obtains a discharge authorization or registers under a code of practice in relation to the same type of discharge for a period that overlaps with all or part of the year referred to in paragraph (a),

the person need not pay the part of the second base fee in relation to that type of discharge that applies to the overlapping part of that year.

(4) For the purposes of subsection (2), the minister may specify

(a) the contaminants regulated under the code of practice that are subject to fees, and

(b) how the maximum quantity of each contaminant is to be calculated.

(4.1) Despite subsection (1) (b), if neither the maximum discharge nor a calculation for maximum discharge is included in a code of practice and the minister has not exercised the authority under section 4 (2) (k) in relation to registrations under the applicable code, the first and subsequent annual fee for the purposes of section 4 (3) (b) and (5) (a) is the fee described in subsection (1) (a).

(5) If a substitution is ordered under section 7 (1) or (3) in relation to a requirement of a code of practice that affects the calculation of fees under this section, the order must specify how the maximum quantity of each contaminant must be calculated.

(6) If the annual fee in respect of a registration is changed by an order under section 7 (1) or (3), the change is effective on the next anniversary of the effective date of the registration.

[am. B.C. Regs. 464/2004, s. 5 (c)-(f); 220/2006, Sch. s. 8.]

Rebates of fees

10 A director may refund a fee paid under section 4 (3) (b) or (5) (a) only on a prorated basis and in the following circumstances:

(a) the registration under section 4 in respect of which the fee was paid is withdrawn by the person who paid the fee;

(b) the person has already paid an amount that under section 9 (3) the person was not required to pay.

Minister may amend Schedule 2

11 If the minister prescribes a code of practice in relation to an industry, trade, business, activity or operation listed in Column 1 of the Table in Schedule 2, the minister may amend the Table by adding the title of the code of practice to Column 2 opposite the industry, trade, business, activity or operation in Column 1.

[en. B.C. Reg. 464/2004, s. 5 (g).]

SCHEDULE 1

[am. B.C. Regs. 220/2006, Sch. ss. 9 to 11; 198/2007, s. 1 and 2.]

Definition

1 In this Schedule:

"burning" means the combustion of material without using a stack or chimney to vent the emitted products of combustion to the atmosphere;

"incineration" means the controlled combustion or thermal decomposition of material using a stack or chimney to vent the emitted products of the combustion or thermal decomposition to the atmosphere, and includes pyrolysis and gasification.

Industries, trades, businesses, operations and activities defined

2 In this Schedule:

"abrasives industry" means establishments engaged in manufacturing grinding wheels or other abrasive products;

"aluminum and aluminum alloy products industry" means establishments, except home-based businesses, educational facilities and establishments of hobbyists or artisans, engaged in manufacturing

(a) aluminum or aluminum alloys, or

(b) aluminum products including, but not limited to, pipe tubing, aluminum powder or diecast aluminum;

"asbestos mining industry" means establishments engaged in mining or milling asbestos;

"asphalt roofing manufacturing industry" means establishments involved in manufacturing asphalt saturated or tar saturated roofing or siding materials;

"biotechnology industry" means establishments that use living organisms or biological techniques for research and development or in a production process, if there is a potential for the entry of living organisms that can sustain or modify themselves to the detriment of an ecosystem into the natural environment or the food chain, and includes, but is not limited to, establishments engaged in the development or manufacture of antibiotics, insulin, interferon or recombinant DNA;

"burning of vegetative debris" means burning, without a stack or chimney to vent air contaminants, vegetative matter on the parcel of land from which it originated;

"burning or incineration of waste" means the burning, partial burning or incineration of waste material generated from an industry, trade or business;

"burning or incineration of wood residue" means the burning, partial burning or incineration of wood residue in a beehive burner, a modified or unmodified silo burner or a wood residue incinerator;

"cement and lime manufacturing industry" means establishments engaged in manufacturing lime or Portland cement;

"chemical and chemical products industry" means establishments, except home-based businesses, educational facilities and establishments of hobbyists or artisans, engaged in manufacturing industrial organic or inorganic chemicals, fertilizers, pesticides, plastics, synthetic resins or moulding compounds, and includes, but is not limited to, establishments manufacturing food supplements, vitamins or pharmaceuticals, except pharmaceuticals referred to in the definition of "biotechnology industry";

"clay industry" means establishments, except home-based businesses, educational facilities and establishments of hobbyists or artisans, engaged in manufacturing structural, ceramic, porcelain or china clay products;

"commercial waste management or waste disposal industry" means establishments primarily engaged in the commercial collection, handling, storage, treatment, destruction or disposal of waste soil, solids or liquids;

"contaminated site contaminant management" means an activity, at or away from a contaminated site, for the treatment, removal, recycling or destruction of contaminated substances from the site, if the activity involves a discharge of waste to the environment;

"dairy products industry" means establishments, except home-based businesses, educational facilities and establishments of hobbyists or artisans, engaged in processing fluid milk or manufacturing other dairy products;

"electrical or electronic products industry" means establishments, except home-based businesses, educational facilities and establishments of hobbyists or artisans, engaged in manufacturing or recycling electrical or electronic products, including batteries;

"electrical power industry" means establishments that

(a) are engaged in the production of electricity by the combustion of fuel, and

(b) have a rated production of more than 5 megawatts under peak load;

"flour, prepared cereal food or feed industry" means establishments, except home-based businesses, educational facilities and establishments of hobbyists or artisans, engaged in manufacturing cereal grain flour, prepared flour mixes, prepared cereal foods or feed;

"glass and glass products industry" means establishments, except home-based businesses, educational facilities and establishments of hobbyists or artisans, engaged in manufacturing glass, glass containers or other glass products, including establishments engaged in processing recycled glass;

"hazardous waste management" means the generation, transportation, treatment, recycling, storage, blending, disposal or destruction of hazardous waste;

"industrial fastener industry" means establishments engaged in manufacturing industrial metal fasteners;

"meat by-product processing industry" means establishments, except home-based businesses, educational facilities and establishments of hobbyists or artisans, engaged in processing or rendering by-products, other than fish oil, from the processing of red meat, poultry or fish;

"metal processing and metal products manufacturing industry" means establishments, except home-based businesses, educational facilities and establishments of hobbyists or artisans, engaged in manufacturing metal products that are also engaged in

(a) spray coating or dip coating metal and metal products, or

(b) galvanizing or electroplating;

"metal smelting, iron and steel foundry and metal refining industry" means establishments, except home-based businesses, educational facilities and establishments of hobbyists or artisans, engaged in

(a) smelting or refining metals or metal alloys including aluminum, or

(b) secondary smelting,

and includes, but is not limited to,

(c) establishments engaged in producing metal products by thermal melting and casting or moulding metals, including reclaimed metal;

"mining and coal mining industry" means establishments engaged in the mining of, or activities related to the mining of, metals, non-metals, coal, gemstones or industrial mineral ores or in beneficiating mineral ores but does not include

(a) establishments located in areas or places defined as "exploration sites" in section 65 of the Act, or

(b) Repealed. [B.C. Reg. 330/3006, Sch. s. 10 (j).]

(c) gravel, sand, crushed rock or dimensional stone quarries;

"municipal sewage management" means the management of domestic sewage, domestic waste water or liquid waste originating primarily from residences, but that may include contributions from

(a) holding tanks in recreational vehicles, boats and houseboats,

(b) commercial, institutional and industrial sources, and

(c) inflow and infiltration,

but does not include an operation exempted from the Act under section 3 of this regulation;

"municipal solid waste management" means activities and operations for the management, treatment or discharge of refuse that

(a) originates from residential, commercial, institutional, demolition, land clearing or construction sources, or

(b) is included in a waste management plan;

"municipal waste incineration or burning industry" means establishments engaged in the burning or incineration of waste, except hazardous waste,

(a) originating from residential, commercial or institutional sources or from demolition, land clearing or construction sources, or

(b) specified in a waste management plan;

"non-metallic mineral products industry" means establishments engaged in manufacturing non-metallic mineral products using a rotary kiln or dryer;

"oil and natural gas industry – large" means establishments engaged in exploring for, producing, transporting, storing or processing crude oil or natural gas that, in any 15 day period,

(a) discharge or remove 30 tonnes or more of total sulphur, not including any mass of sulphur discharged from the facility subsurface in acid gas, or

(b) discharge or remove 4 tonnes or more of volatile organic carbon compounds;

"ozone depleting substances and other halocarbons management" means establishments, activities or operations that use ozone depleting substances or other halocarbons or that sell, collect, recycle or manage ozone depleting substances or other halocarbons;

"paperboard industry" means establishments engaged in manufacturing paperboard, including recycled paperboard and building paper;

"paper industry" means establishments, except home-based businesses, educational facilities and establishments of hobbyists or artisans, engaged in manufacturing any type of paper, except paperboard and building paper, but including recycled paper;

"particle and wafer board industry" means establishments engaged in manufacturing boards or panels made from very small pieces of wood bonded together, and includes, but is not limited to, establishments that manufacture medium density fibre board or oriented strand board;

"pipeline transport industry with approved operating plan" means establishments that

(a) are engaged in operating or maintaining a pipeline in British Columbia for the transport of natural gas, and

(b) operate under a specific environmental operating plan approved by a director;

"pulp industry" means establishments engaged in manufacturing wood pulp;

"refined petroleum and coal products industry" means establishments engaged in

(a) manufacturing petroleum or coal products, including asphalt paving materials, emulsified asphalt, liquid asphalt, coal or coke briquettes, coal coke, petroleum coke, synthetic gasoline from coal, fuels, lubricating oils or greases, or

(b) re-processing of waste oil;

"sugar processing and refining industry" means establishments engaged in processing raw cane sugar, sugar beets, or starches to produce sucrose, glucose or fructose;

"veneer and plywood industry" means establishments engaged in manufacturing veneer, plywood or laminated wood products;

"wire and wire rope fabricating industry" means establishments engaged in manufacturing plain, coated or uncoated steel wire, flat, twisted or braided steel wire or steel rope.

TABLE

INDUSTRIES, TRADES, AND BUSINESSES, OPERATIONS AND ACTIVITIES

1	Abrasives Industry
2	Aluminum and Aluminum Alloy Products Industry
3	Asbestos Mining Industry
4	Asphalt Roof Manufacturing Industry
5	Biotechnology Industry
6	Burning of Vegetative Debris
7	Burning or Incineration of Waste
8	Burning or Incineration of Wood Residue
9	Cement and Lime Manufacturing Industry
10	Chemical and Chemical Products Industry
11	Clay Industry
12	Commercial Waste Management or Waste Disposal Industry
13	Contaminated Site Contaminant Management
14	Dairy Products Industry
15	Electrical or Electronic Products Industry
16	Electrical Power Industry
17	Flour, Prepared Cereal Food and Feed Industry
18	Glass and Glass Products Industry
19	Hazardous Waste Management
20	Industrial Fastener Industry
21	Metal Processing and Metal Products Manufacturing Industry
22	Metal Smelting, Iron and Steel Foundry and Metal Refining Industry
23	Mining and Coal Mining Industry
24	Municipal Sewage Management

TABLE (CONTINUED)

INDUSTRIES, TRADES, AND BUSINESSES, OPERATIONS AND ACTIVITIES

25	Municipal Solid Waste Management
26	Municipal Waste Incineration or Burning Industry
27	Non-Metallic Mineral Products Industry
28	Oil and Natural Gas Industry – Large
29	Ozone Depleting Substances and other Halocarbons Management
30	Paperboard Industry
31	Paper Industry
32	Particle and Wafer Board Industry
33	Pipeline Transport Industry with Approved Operating Plan
34	Plastic and Synthetic Resin Manufacturing Industry
35	Pulp Industry
36	Refined Petroleum and Coal Products Industry
37	Meat By-product Processing Industry
38	Sugar Processing and Refining Industry
39	Veneer and Plywood Industry
40	Wire and Wire Rope Fabricating Industry

SCHEDULE 2

[am. B.C. Regs. 464/2004, s. 6; 156/2005, s. (b); 220/2006, Sch. ss. 12 and 13; 198/2007, s. 3; 246/2007, s. (a) (ii); 210/2007 (M169/2007, s. (b)); 329/2007, s. (b).]

Industries, trades, businesses, operations and activities defined

1 (1) In this Schedule:

"agricultural operations" means operations or activities carried out on farms for purposes of agriculture, including, but not limited to,

(a) producing or keeping livestock, poultry, farmed game, fur bearing animals, crops, grain, vegetables, milk, eggs, honey, mushrooms, horticultural products, trees, tree fruits or berries, and

(b) operating machinery and equipment for agricultural waste management or for applying fertilizers and soil conditioners;

"antisapstain chemicals management" means activities and operations that apply chemicals to lumber to protect the lumber from staining;

"aquaculture – land-based industry" means establishments, except home-based businesses, educational facilities and establishments of hobbyists or artisans, engaged in land-based aquaculture, including but not limited to,

(a) those engaged, for the purposes of land-based aquaculture, in

(i) culturing or collecting freshwater or saltwater species of finfish or shellfish, or

(ii) harvesting other freshwater or saltwater products, and

(b) those engaged in operating finfish or shellfish hatcheries, rearing ponds or other similar facilities where finfish or shellfish are fed, nurtured, held, maintained or reared in fresh water or salt water to reach a size for release or for market sale;

"aquaculture – marine-based industry" means establishments, except home-based businesses, educational facilities and establishments of hobbyists or artisans, engaged in saltwater aquaculture, including but not limited to

(a) those engaged, for the purposes of saltwater aquaculture, in

(i) culturing or collecting all species of saltwater finfish,

(ii) trapping or otherwise catching saltwater shellfish, or

(iii) harvesting other sea products,

(b) those engaged in operating saltwater fish farms (finfish aquaculture), and

(c) those engaged in other activities that create waste and are incidental to saltwater fish farms, such as net washing;

"asphalt plant industry" means establishments that operate hot-mix asphalt plants, hot-in-place asphalt recycling plants or operations using cutback asphalt;

"beverage industry" means establishments, except home-based businesses, establishments of hobbyists and artisans and establishments providing goods, facilities or services to persons producing or manufacturing wine, beer or cider in the establishment for their own consumption or consumption at no charge by others, engaged in producing, or filling containers with, alcoholic or non-alcoholic beverages other than water;

"coalbed gas exploration and production industry" means establishments, at all stages of an operation from exploration through to abandonment, engaged in discharging to the environment produced water or related solids from a coalbed gas operation;

"composting operations" means composting of organic wastes or other feedstocks;

"concrete and concrete products industry" means establishments, except home-based businesses, educational facilities and establishments of hobbyists or artisans, engaged in manufacturing ready-mix concrete or concrete products;

"deep well disposal" means the disposal of waste fluids underground to porous rock formations, through wells or other means;

"fish products industry" means establishments, except home-based businesses, educational facilities and establishments of hobbyists or artisans, engaged in the processing, including but not limited to eviscerating, skinning, filleting, breading, pre-cooking or blanching of fish, molluscs, crustaceans, or other marine animals, and includes establishments engaged in processing fish oil or fish roe;

"fruit and vegetable processing industry" means establishments, except home-based businesses, educational facilities and establishments of hobbyists or artisans, engaged in processing fruits or vegetables by canning, drying, freezing or any other preservation process, and includes fruit or vegetable growers and cooperatives and producers of juices, pickles, ketchup and similar products;

"industrial non-hazardous waste landfills" means activities or operations, incidental to industrial operations, for the disposal to land of solid wastes that are not hazardous waste;

"naturally occurring radioactive materials management" means activities and operations associated with controlling or discharging naturally occurring radioactive materials that exceed the limits specified in Tables 5.1, 5.2 or 5.3 of the Canadian Guidelines for the Management of Naturally Occurring Radioactive Materials (NORMs),

(a) prepared by the Canadian NORM Working Group of the Federal Provincial Territorial Radiation Protection Committee,

(b) published by authority of the Ministry of Health (Canada), and

(c) as amended from time to time,

but does not include managing radon in buildings;

"oil and natural gas industry – small" means establishments engaged in exploring for producing, transporting, storing or processing crude oil or natural gas that, in any 15 day period,

(a) discharge or remove less than 30 tonnes of total sulphur, not including any mass of sulphur discharged from the facility subsurface in acid gas, and

(b) discharge or remove less than 4 tonnes of volatile organic carbon compounds;

"petroleum storage" means the storage or transfer, except by pipeline, of bulk petroleum products;

"pipeline transport industry" means establishments that are engaged in operating or maintaining pipelines for the transport of natural gas, crude oil or related products or commodities, but does not include those with an operating plan;

"placer mining industry" means establishments that mine placer minerals as defined in section 1 of the *Mineral Tenure Act*;

"plastics and composite products industry" means establishments, except home-based businesses, educational facilities and establishments of hobbyists or artisans, engaged in using synthetic resins to fabricate shapes or forms of plastic;

"poultry" includes domesticated chickens, turkeys, ducks, geese, guinea fowl, ratites, squab and pheasants;

"poultry processing industry" means establishments that are engaged in processing poultry for human consumption, but does not include establishments included in the definition of "meat by-product processing industry" in section 2 of Schedule 1;

"product storage – bulk solids" means activities and operations for the storage or handling of cement, lime, gypsum or gypsum products, elemental sulphur, coal, grain, flour, metal concentrates, industrial minerals, fertilizers or explosives;

"red-meat animals" include cattle, swine, sheep, fallow deer, farmed game and farmed bison;

"slaughter industry" means establishments engaged in processing red-meat animals for human consumption, but does not include establishments included in the definition of "meat by-product processing industry" in section 2 of Schedule 1;

"soil enhancement using wastes" means activities and operations applying organic or inorganic wastes to land as a soil conditioner or ground cover;

"vehicle dismantling and recycling industry" means establishments, except home-based businesses, educational facilities and establishments of hobbyists or artisans, engaged in wrecking or dismantling vehicles or in recycling or disposing of parts and other waste material from vehicles;

"vehicle, industrial machinery and parts and accessories manufacturing industry" means establishments engaged in manufacturing automobiles, buses, truck chassis, truck tractors or other vehicles, industrial machinery, vehicle engines or other transportation equipment, supplies or parts;

"wood processing industry – primary" means establishments, except establishments that are wood processing industry – secondary establishments, engaged in manufacturing lumber or lumber products, including, but not limited to, dimensional lumber, shingles and shakes;

"wood processing industry – secondary" means establishments, except home-based businesses, educational facilities and establishments of hobbyists or artisans, engaged in manufacturing wood or millwork products, including, but not limited to, finger-jointing products, prefabricated buildings, furniture, chopsticks and pellets;

"wood treatment industry" means establishments engaged in treating wood products against decay.

(2) For the purposes of the definitions of "poultry processing industry" and "slaughter industry" in subsection (1), **"processing"** includes holding, killing, defeathering, deboning, eviscerating, chilling, cooking, packaging, curing, smoking and canning.

TABLE

	COLUMN 1 INDUSTRIES, TRADES, BUSINESSES, OPERATIONS AND ACTIVITIES	COLUMN 2 CODE OF PRACTICE
1	Agricultural Operations	
2	Antisapstain Chemicals Management	
3	Aquaculture – Land-based Industry	
4	Aquaculture – Marine-based Industry	
5	Asphalt Plant Industry	
6	Beverage Industry	
7	Coalbed Gas Exploration and Production Industry	Code of Practice for the Discharge of Produced Water from Coalbed Gas Operations
8	Composting Operations	
9	Concrete and Concrete Products Industry	Code of Practice for the Concrete and Concrete Products Industry
10	Deep Well Disposal	
11	Fish Products Industry	
12	Fruit and Vegetable Processing Industry	
13	Industrial Non-hazardous Waste Landfills	
14	Naturally Occurring Radioactive Materials Management	
15	Oil and Natural Gas Industry – Small	
16	Petroleum Storage	
17	Pipeline Transport Industry	
18	Placer Mining Industry	
19	Plastics and Composite Products Industry	
20	Poultry Processing Industry	Code of Practice for the Slaughter and Poultry Processing Industries
21	Product Storage – Bulk Solids	
22	Slaughter Industry	Code of Practice for the Slaughter and Poultry Processing Industries
23	Soil Enhancement Using Wastes	Code of Practice for Soil Amendments
24	Vehicle Dismantling and Recycling Industry	
25	Vehicle, Industrial Machinery and Parts and Accessories Manufacturing Industry	

TABLE (CONTINUED)

COLUMN 1 INDUSTRIES, TRADES, BUSINESSES, OPERATIONS AND ACTIVITIES	COLUMN 2 CODE OF PRACTICE
26 Wood Processing Industry – Primary	
27 Wood Processing Industry – Secondary	
28 Wood Treatment Industry	

SCHEDULE 3

[am. B.C. Reg. 464/2004, s. 7.]

TABLE 1
BASE FEES

COLUMN 1 TYPE OF DISCHARGE	COLUMN 2 BASE FEE
Air	$100.00
Effluent	$100.00
Refuse	$100.00
Storage	$100.00

TABLE 2
CONTAMINANT FEES FOR AIR EMISSIONS

COLUMN 1 CONTAMINANT	COLUMN 2 FEE PER TONNE DISCHARGED		
	IF PAYMENT DATE BEFORE MARCH 31, 2005	IF PAYMENT DATE APRIL 1, 2005 – MARCH 31, 2006	IF PAYMENT DATE AFTER APRIL 1, 2006
Ammonia	$14.69	$15.74	$16.78
Asbestos*	$14.69	$15.74	$16.78
Carbon Monoxide	$0.39	$0.42	$0.45
Chlorine and Chlorine Oxides expressed as chlorine dioxide equivalent	$9.88	$10.58	$11.29
Fluorides	$589.68	$631.64	$673.60
Hydrocarbons	$14.69	$15.74	$16.78
Hydrogen Chloride	$9.88	$10.58	$11.29
Metals	$589.68	$631.64	$673.60
Nitrogen Oxides expressed as nitrogen dioxide equivalent	$9.88	$10.58	$11.29
Phenols	$14.69	$15.74	$16.78
Sulphur and Sulphur Oxides expressed as sulphur dioxide equivalent	$11.44	$12.25	$13.07

TABLE 2 (CONTINUED)
CONTAMINANT FEES FOR AIR EMISSIONS

COLUMN 1 CONTAMINANT	COLUMN 2 FEE PER TONNE DISCHARGED		
Total Particulate	$14.69	$15.74	$16.78
TRS	$491.40	$526.37	$561.33
VOCs	$14.69	$15.74	$16.78
Other contaminants not otherwise specified in this table	$14.69	$15.74	$16.78

*Units of Asbestos are equivalent to cubic metres of air emissions per minute at a concentration of 2 fibres per cubic centimetre.

TABLE 3
CONTAMINANT FEES FOR EFFLUENT

COLUMN 1 CONTAMINANT	COLUMN 2 FEE PER TONNE DISCHARGED		
	IF PAYMENT DATE BEFORE MARCH 31, 2005	IF PAYMENT DATE APRIL 1, 2005 – MARCH 31, 2006	IF PAYMENT DATE AFTER APRIL 1, 2006
Ammonia	$90.09	$96.50	$102.91
AOX	$239.20	$256.22	$273.24
Arsenic	$239.20	$256.22	$273.24
BOD	$18.07	$19.36	$20.64
Chlorine	$239.20	$256.22	$273.24
Cyanide	$239.20	$256.22	$273.24
Fluoride	$90.09	$96.50	$102.91
Metals	$239.20	$256.22	$273.24
Nitrogen and Nitrates	$36.01	$38.57	$41.13
Oil and Grease	$60.06	$64.33	$68.61
Other Petroleum Products	$60.06	$64.33	$68.61
Other Solids	$11.96	$12.81	$13.66
Phenols	$239.20	$256.22	$273.24
Phosphorus and Phosphates	$90.09	$96.50	$102.91
Sulphates	$3.51	$3.76	$4.01
	IF PAYMENT DATE BEFORE MARCH 31, 2005	IF PAYMENT DATE APRIL 1, 2005 – MARCH 31, 2006	IF PAYMENT DATE AFTER APRIL 1, 2006
Sulphides	$239.20	$256.22	$273.24
Surfactants	$60.06	$64.33	$68.61

TABLE 3 (CONTINUED)
CONTAMINANT FEES FOR EFFLUENT

COLUMN 1 CONTAMINANT	COLUMN 2 FEE PER TONNE DISCHARGED		
Suspended Solids	$11.96	$12.81	$13.66
Other contaminants not otherwise specified in this table.	$11.96	$12.81	$13.66

TABLE 4
CONTAMINANT FEES FOR REFUSE

COLUMN 1 CONTAMINANT	COLUMN 2 FEE		
	IF PAYMENT DATE BEFORE MARCH 31, 2005	IF PAYMENT DATE APRIL 1, 2005 – MARCH 31, 2006	IF PAYMENT DATE AFTER APRIL 1, 2006
Refuse per tonne	$0.65	$0.70	$0.74

[Provisions of the *Environmental Management Act*, S.B.C. 2003, c. 53, relevant to the enactment of this regulation: sections 21, 138 and 139]

This is Exhibit "11"
referred to in the Affidavit
of Aaron Welch
sworn before me this 4th day of
February, 2010.

A Notary Public in and for the Province of
British Columbia

Exhibit 11

CROWN PROCEEDING ACT

CHAPTER 89

[Updated to February 13, 2006]

Contents

Definitions

1 In this Act:

"agent", when used in relation to the government, includes an independent contractor employed by the government;

"Crown" means Her Majesty the Queen in right of British Columbia;

"officer of the government" includes a minister of the government and an employee of the government;

"order" includes a judgment, decree, rule, award and declaration;

"person" does not include the government;

"proceeding against the government" includes a claim by way of set off or counterclaim raised in proceedings by the government, an interpleader proceeding to which the government is a party, and a proceeding in which the government is a garnishee.

Liability of government

2 Subject to this Act,

(a) proceeding against the government by way of petition of right is abolished,

(b) a claim against the government that, if this Act had not been passed, might be enforced by petition of right, subject to the grant of a fiat by the

Lieutenant Governor, may be enforced as of right by proceeding against the government in accordance with this Act, without the grant of a fiat by the Lieutenant Governor,

(c) the government is subject to all the liabilities to which it would be liable if it were a person, and

(d) the law relating to indemnity and contribution is enforceable by and against the government for any liability to which it is subject, as if the government were a person.

Limitations on proceedings and liabilities

3 (1) This Act is subject to the *Workers Compensation Act* and does not apply to any of the following:

(a) proceedings under

(i) the *Income Tax Act*,

(ii) the *Corporation Capital Tax Act*, or

(iii) the *Logging Tax Act*;

(b) assurance fund proceedings under land title legislation;

(c) proceedings to which the *Federal Courts Jurisdiction Act* applies.

(2) Nothing in section 2 does any of the following:

(a) authorizes proceedings against the government for anything done or omitted to be done by a person acting in good faith while discharging or purporting to discharge responsibilities

(i) of a judicial nature vested in the person, or

(ii) that the person has in connection with the execution of judicial process;

(b) subjects the government to greater liability for the acts or omissions of an independent contractor employed by the government than that to which the government would be subject for those acts or omissions if it were a person;

(c) affects the right of the government to intervene in proceedings affecting its rights, property or profits;

(d) authorizes proceedings against the government for a cause of action that is enforceable against a corporation or other agency owned or controlled by the government;

(e) authorizes proceedings against the government for anything done in the proper enforcement of the criminal law or the penal provisions of an Act;

(f) subjects the government, in its capacity as a highway authority, to any greater liability than that to which a municipal corporation is subject in that capacity.

Institution of claims in the Supreme Court

4 (1) Subject to this Act, all proceedings against the government in the Supreme Court must be instituted and proceeded with under the *Supreme Court Act* and, if applicable, under the *Class Proceedings Act*.

(2) In proceedings against the government, the trial must be without a jury.

Institution of claims in the Provincial Court

5 (1) Without limiting section 4 but subject to subsections (3) and (4) of this section, proceedings may be brought against the government in the Provincial Court.

(2) Subject to this Act, all proceedings against the government in the Provincial Court must be instituted and proceeded with under the *Small Claims Act*.

(3) Nothing in this Act extends the jurisdiction of the Provincial Court beyond the jurisdiction available to it under section 3 of the *Small Claims Act*.

(4) In a proceeding against the government under the *Small Claims Act*, the Provincial Court does not have jurisdiction over

(a) a matter for which notice under section 8 of the *Constitutional Question Act* is required, or

(b) a matter involving the *Canadian Charter of Rights and Freedoms*.

Appeals and stays of proceedings

6 Subject to this Act, all enactments and rules of court for appeals and stays of proceedings apply to proceedings against the government and proceedings in which the government is a party.

Designation of government

7 In proceedings under this Act, the government must be designated "Her Majesty the Queen in right of the Province of British Columbia".

Service on government

8 A document to be served on the government

(a) must be served on the Attorney General at the Ministry of the Attorney General in the City of Victoria, and

(b) is sufficiently served if

(i) left there during office hours with a solicitor on the staff of the Attorney General at Victoria, or

(ii) mailed by registered mail to the Deputy Attorney General at Victoria.

Discovery and inspection of documents

9 (1) In proceedings against the government and proceedings in which the government is a party, if there are, in the rules of the court in which the proceedings are brought, rules relating to one or more of discovery and inspection of documents,

examinations for discovery and interrogatories, those rules apply as if the government were a corporation.

(2) Subsection (1) does not affect a rule of law that authorizes or requires the withholding of a document, or the refusal to answer a question, on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.

(3) If the government claims that the disclosure of the document or the answering of the question would be injurious to the public interest, the court may, after holding an inquiry it considers necessary and reasonable, and on finding that the public interest in the administration of justice should prevail over the public interest in withholding the document or answering the question, order, subject to conditions or restrictions it considers appropriate, production and discovery of the document or that the question be answered.

Interpleader

10 (1) Even if an application for relief is made by a sheriff or bailiff or other similar officer, the government may

(a) obtain relief by way of interpleader proceedings in the same manner as a person may obtain relief by way of those proceedings, and

(b) be made a party to the proceedings in the same manner as a person may be made a party to them.

(2) Subject to this Act, the interpleader provisions in the rules of court apply to the proceedings.

Rights of parties and authority of the court

11 (1) In proceedings against the government and proceedings in which the government is a party, the rights of the parties must, subject to this Act, be as nearly as possible the same as in a proceeding between persons, and the court may

(a) make an order, including an order as to costs, that it may make in proceedings between persons, and

(b) otherwise give the appropriate relief that the case may require.

(2) If, in proceedings against the government, relief is sought that might, in proceedings between persons, be granted by way of injunction or specific performance, the court

(a) must not grant an injunction or make an order for specific performance against the government;

(b) may make an order declaring the rights of the parties instead of an injunction or an order for specific performance.

(3) A person must not make use

(a) of a set off or counterclaim in proceedings by the government for the recovery of taxes, duties or penalties, or

(b) in proceedings of any nature by the government, of a set off or counterclaim arising out of a right or claim to repayment for taxes, duties or penalties.

(4) In a proceeding, the court

(a) must not grant an injunction or make an order against an officer of the government if the effect of granting the injunction or making the order would be to give relief against the government that could not have been obtained in proceedings against the government;

(b) may make an order declaring the rights of the parties instead of granting the injunction or making the order.

(5) Without leave of the court, a person must not make use of a set off or counterclaim in proceedings by the government, unless the subject matter of the set off or counterclaim relates to a matter under the administration of the particular government ministry for which the proceedings are brought by the government.

(6) In proceedings against the government in which the recovery of land or other property is claimed, the court

(a) must not make an order for the recovery of the land or the delivery of the property;

(b) may, instead, make an order declaring that the claimant is entitled, as against the government, to land or property or to possession of it.

Interest on judgments

12 A judgment debt due to or from the government bears interest in the same way as a judgment debt due from one person to another.

Certificate of judgment

13 (1) Subject to this Act, if in proceedings against the government and proceedings in which the government is a party, an order for costs or other order is made by a court against the government, the proper officer of the court must, on application, issue a certificate.

(2) If the court directs, a separate certificate must be issued for the costs, if any, ordered to be paid to the applicant.

(3) A certificate issued under this section may be served on the person named in the record as the solicitor, or as the person acting as solicitor, for the government.

(4) If the order provides for the payment of money by way of damages or otherwise, or of costs, the certificate must state the amount payable, and the Minister of Finance must, subject to this Act, pay out of the consolidated revenue fund to the person entitled, or to the person's order, the amount appearing by the certificate to be due, together with the interest, if any, lawfully due.

(5) The court which makes an order or a court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of the amount payable, or any part is suspended and, if the certificate has not been issued, may order the direction to be inserted in it.

(6) An execution or attachment or process of that nature must not be issued out of a court for enforcing payment by the government of money or costs.

Settlement

14 (1) If a claim is made against the government and the Attorney General certifies, either before or after proceedings authorized by this Act have been commenced, that

(a) the Attorney General considers that the claim, if pursued, could result in an order referred to in section 13 (4) for the payment of money by the government, and

(b) it is in the public interest to settle the claim in an amount set out in the certificate,

the Minister of Finance must pay that amount to the person making the claim.

(2) If a proceeding authorized by this Act has been commenced and the Attorney General certifies that it is in the public interest to make payment into court, the Minister of Finance must pay into court the amount set out in the certificate.

(3) [Repealed 1998-42-4.]

(4) Money paid by the Minister of Finance under this section must be paid out of the consolidated revenue fund.

Statement for Legislature

15 (1) The Comptroller General must in each fiscal year prepare for the Attorney General a statement recording for the preceding fiscal year all of the following:

(a) each certificate served under section 13;

(b) each certificate issued under section 14;

(c) the money paid out in respect of those certificates.

(2) On receipt of a statement under subsection (1), the Attorney General must annually, as soon as practicable, lay it before the Legislative Assembly.

Rights of government to rely on statutes

16 (1) This Act does not prejudice the right of the government to take advantage of an Act.

(2) In proceedings against the government, an Act that could, if the proceedings were between persons, be relied on by the defendant as a defence to the proceedings, whether in whole or in part, or otherwise, may, subject to an express provision to the contrary, be relied on by the government.

This is Exhibit "12"
referred to in the Affidavit
of Aaron Welch
sworn before me this 4th day of
February, 2010.

A Notary Public in and for the Province of
British Columbia

Exhibit 12

INTERPRETATION ACT

CHAPTER 238

[Updated to February 7, 2008]

Contents

Section

44 Mutatis mutandis
SCHEDULE

Definitions

1 In this Act, or in an enactment:

"Act" means an Act of the Legislature, whether referred to as a statute, code or by any other name, and, when referring to past legislation, includes an ordinance or proclamation made before 1871, that has the force of law;

"enact" includes to issue, make, establish or prescribe;

"enactment" means an Act or a regulation or a portion of an Act or regulation;

"public officer" includes a person in the public service of British Columbia;

"regulation" means a regulation, order, rule, form, tariff of costs or fees, proclamation, letters patent, commission, warrant, bylaw or other instrument enacted

(a) in execution of a power conferred under an Act, or

(b) by or under the authority of the Lieutenant Governor in Council,

but does not include an order of a court made in the course of an action or an order made by a public officer or administrative tribunal in a dispute between 2 or more persons;

"repeal" includes to revoke, cancel or rescind.

Application

2 (1) Every provision of this Act applies to every enactment, whether enacted before or after the commencement of this Act, unless a contrary intention appears in this Act or in the enactment.

(2) The provisions of this Act apply to this Act.

(3) Nothing in this Act excludes the application to an enactment of a rule of construction applicable to it and not inconsistent with this Act.

Date of commencement

3 (1) In this section, **"the date of assent"** for an Act reserved for the signification of the Governor General's pleasure, means the date of the signification by the Lieutenant Governor that the Governor General in Council assented to the Act.

(2) The date of the commencement of an Act or of a portion of it for which no other date of commencement is provided in the Act is the date of assent to the Act.

(3) If an Act contains a provision that the Act or a portion of it is to come into force on a day other than the date of assent to the Act or on proclamation or by regulation of the Lieutenant Governor in Council, that provision and the title of the Act are deemed to have come into force on the date of assent to the Act.

(3.1) If an Act contains a provision to the effect that the Act, or a portion of it, comes into force on a date that is earlier than the date of assent, that Act or portion referred to in the provision

(a) comes into force in accordance with the terms of the provision, and

(b) on coming into force, is deemed to have come into force on the earlier date referred to in the provision and is retroactive to the extent necessary to give it force and effect on and after that earlier date.

(4) The date of assent or signification is part of the Act.

(5) Every regulation of a class that is exempted from the application of the *Regulations Act* or to which that Act does not apply and that is not expressed to come into force on a particular day comes into force the day the regulation was enacted.

Time of commencement or repeal

4 (1) An enactment must be construed as commencing at the beginning of the day on which it comes into force.

(2) An enactment that is repealed and replaced ceases to have effect at the time the new enactment commences.

(3) Any other enactment ceases to have effect at the end of the day on which it expires or otherwise ceases to have effect.

(4) An enactment that has expired or otherwise ceased to have effect is deemed to be repealed for the purposes of this Act.

Preliminary proceedings and staggered commencement

5 (1) If an enactment that is not in force contains provisions conferring power to make regulations, or to do any other thing, to make the enactment effective on its coming into force, the power may be exercised before the enactment comes into force, but the regulation or the thing done has no effect until the enactment comes into force, except in so far as is necessary to make the enactment effective on its coming into force.

(2) If an enactment is to come into force or be repealed on proclamation or by regulation of the Lieutenant Governor in Council,

(a) the proclamation or regulation may apply to the coming into force or repeal of any provision of the enactment, and

(b) proclamations or regulations may be issued at different times for different provisions of the enactment.

Effect of private Acts

6 A provision in a private Act does not affect the rights of any person, except only as referred to or mentioned in that Act.

Enactment always speaking

7 (1) Every enactment must be construed as always speaking.

(2) If a provision in an enactment is expressed in the present tense, the provision applies to the circumstances as they arise.

Enactment remedial

8 Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

Title and preamble

9 The title and preamble of an enactment are part of it and are intended to assist in explaining its meaning and object.

Enacting clause

10 The enacting clause of an Act of the Legislature may be in the following form: "Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:".

Reference aids and clarifications

11 (1) In an enactment, a head note to a provision or a reference after the end of a section or other division

(a) is not part of the enactment, and

(b) must be considered to have been added editorially for convenience of reference only.

(2) In an enactment, if a reference to a provision of the enactment or any other enactment is followed by italicized text in square brackets that is or purports to be descriptive of the subject matter of the provision, subsection (1) (a) and (b) applies to the text in square brackets.

(3) The Lieutenant Governor in Council may make regulations amending an enactment for the purpose of changing a reference to a specific minister or ministry in a provision of the enactment to the minister or ministry, as applicable, currently assigned responsibility in relation to the matter.

Definitions and interpretation provisions

12 Definitions or interpretation provisions in an enactment, unless the contrary intention appears in the enactment, apply to the whole enactment including the section containing a definition or interpretation provision.

Application of expressions in enactments to regulations

13 An expression used in a regulation has the same meaning as in the enactment authorizing the regulation.

Government bound by enactments; exception

14 (1) Unless it specifically provides otherwise, an enactment is binding on the government.

(2) Despite subsection (1), an enactment that would bind or affect the government in the use or development of land, or in the planning, construction, alteration, servicing, maintenance or use of improvements, as defined in the *Assessment Act*, does not bind or affect the government.

Power of repeal and amendment

15 (1) Every Act must be construed as to reserve to the Legislature the power of repealing or amending it, and of revoking, restricting or modifying a power, privilege or advantage that it vests in or grants to any person.

(2) An Act may be amended or repealed by an Act passed in the same session of the Legislature.

Proclamation

16 (1) In a proclamation, it is not necessary to mention that it is issued under an order of the Lieutenant Governor in Council.

(2) If a proclamation is authorized, the proclamation may be dated the day its issue was authorized, and, despite the *Regulations Act*, the day on which it so purports

to have been issued is deemed to be the day on which the proclamation takes effect.

(3) If an enactment is expressed to come into force on proclamation, judicial notice must be taken of the issue of the proclamation without being specially pleaded.

Corporate rights and powers

17 (1) A corporation has perpetual succession and may do the following:

(a) sue and be sued in its corporate name;

(b) contract and be contracted with in its corporate name;

(c) have a common seal and may alter or change it;

(d) acquire and dispose of property other than land for its purposes;

(e) regulate its own procedure and business;

(f) in the case of a corporation with a name consisting of an English and a French form or a combined English and French form, use either the English or French form of its name or both forms and show on its seal both the English and French forms of its name or have 2 seals, one showing the English and the other showing the French form of its name.

(2) A majority of the members of the corporation may bind the others and the corporation by their acts.

(3) Individual members of a corporation established by an enactment who do not contravene the enactment are exempt from personal liability for the corporation's debts, obligations or acts.

Majority and quorum

18 (1) If in an enactment an act or thing is required or authorized to be done by more than 2 persons, a majority of them may do it.

(2) If an enactment establishes a board, commission or other body consisting of 3 or more members, in this subsection called the "association", the following rules apply:

(a) if the number of members of the association provided for by the enactment is a fixed number, at least 1/2 of that number of members constitutes a quorum at a meeting of the association;

(b) if the number of members of the association provided for by the enactment is not a fixed number, at least 1/2 of the number of members in office constitutes a quorum at a meeting of the association, as long as the number of members is within the maximum or minimum number, if any, authorized by the enactment;

(c) an act or thing done by a majority of the members of the association present at a meeting, if the members present constitute a quorum, is deemed to have been done by the association;

(d) a vacancy in the membership of the association does not invalidate the constitution of the association or impair the right of the members in office to act, if the number of members in office is not less than a quorum.

Powers to judges and court officers

19 (1) If by an enactment judicial or quasi judicial powers are given to a judge or officer of a court, the judge or officer in exercising the powers does so in his or her official capacity and representing the court.

(2) Without restricting subsection (1), if under an enactment an appeal is given from a person, board, commission or other body to a court or judge, an appeal lies from the decision of the court or judge as in the case of any other proceeding in that court or in the court of which the judge is a member.

Appointments of officers

20 (1) An authority under an enactment to appoint a public officer is authority to appoint during pleasure.

(2) If a person is appointed under an enactment to an office effective on a specified day, the appointment is effective immediately on the commencement of that day.

(3) If the appointment of the person is terminated effective on a specified day, the termination is effective immediately on the commencement of that day.

Demise of Crown

21 On a demise of the Crown, it is not necessary to renew a commission or appointment by which a person in British Columbia held or exercised their office or profession during the previous reign, but all persons who held or exercised an office or profession under the late Sovereign continue in the exercise of the duties and functions of their respective offices and professions as fully as if newly appointed by commission or appointment from the Sovereign for the time being from the date of his or her accession, and it is not necessary for those persons to take an oath of allegiance to the new Sovereign.

Included powers

22 Words in an enactment authorizing the appointment of a public officer include power to do the following:

(a) set his or her term of office;

(b) terminate his or her appointment or remove or suspend the public officer;

(c) reappoint or reinstate the public officer;

(d) set the public officer's remuneration and vary or terminate it;

(e) appoint another in his or her place or to act in his or her place;

(f) appoint a person as the public officer's deputy.

Powers to act for ministers, deputy ministers and public officers

23 (1) Words in an enactment directing or empowering a minister of the government to do something, or otherwise applying to the minister by his or her name of office, include a minister designated to act in the office and the deputy or associate deputy of the minister.

(2) If a deputy minister is absent or unable to act, an assistant deputy minister, or some other official authorized by the minister, has the powers and must perform the duties of the deputy minister.

(3) Words in an enactment directing or empowering a public officer to do something, or otherwise applying to the public officer by his or her name of office, include a person acting for the public officer or appointed to act in the office and the deputy of the public officer.

(4) This section applies whether or not the office of a minister or public officer is vacant.

(5) Subsection (1) does not authorize a deputy or an associate deputy of a minister to exercise an authority conferred on the minister to enact a regulation as defined in the *Regulations Act*.

Documentary evidence

24 If an enactment provides that a document is evidence or proof of a fact, unless the context indicates that the document is conclusive evidence, the document is admissible in evidence in any proceeding, and the fact is deemed to be established in the absence of any evidence to the contrary.

Calculation of time or age

25 (1) This section applies to an enactment and to a deed, conveyance or other legal instrument unless specifically provided otherwise in the deed, conveyance or other legal instrument.

(2) If the time for doing an act falls or expires on a holiday, the time is extended to the next day that is not a holiday.

(3) If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.

(4) In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.

(5) In the calculation of time not referred to in subsection (4), the first day must be excluded and the last day included.

(6) If, under this section, the calculation of time ends on a day in a month that has no date corresponding to the first day of the period of time, the time ends on the last day of that month.

(7) A specified time of day is a reference to Pacific Standard time, or 8 hours behind Greenwich mean time, unless Daylight Saving time is being used or observed on that day.

(8) A person reaches a particular age expressed in years at the start of the relevant anniversary of his or her date of birth.

Daylight Saving time

26 The Lieutenant Governor in Council may make regulations

(a) prescribing a period in each year, known as Daylight Saving time, in which the time, for general purposes in British Columbia, is 7 hours behind Greenwich mean time, and

(b) varying the reckoning of Pacific Standard time.

Ancillary powers

27 (1) If in an enactment anything is required or authorized to be done by or before a judge, justice, coroner or public officer, it must be done by or before one whose jurisdiction or powers extend to the place where the thing is to be done.

(2) If in an enactment power is given to a person to do or enforce the doing of an act or thing, all the powers that are necessary to enable the person to do or enforce the doing of the act or thing are also deemed to be given.

(3) If in an enactment a power is conferred or a duty imposed, the power may be exercised and the duty must be performed from time to time as occasion requires.

(4) If in an enactment a power is conferred to make regulations, the power includes a power exercisable in the same manner, and subject to the same consent and conditions, if any, to repeal or amend the regulations and make others.

(5) If in an enactment the doing of an authorized act is dependent on an act of the Lieutenant Governor in Council or of a public officer, the Lieutenant Governor in Council or public officer has the power to do that other act or thing.

(6) Power given to a person in an enactment to enter into an agreement includes the power for the person with whom the agreement is to be made to enter into the agreement and to carry out its terms, subject to conditions that apply to that person in the exercise of the power.

(7) If in an enactment power is given to a person to inspect or to require the production of records, the power includes the power to make copies or extracts of the records.

Use of forms and words

28 (1) If a form is prescribed under an enactment, deviations from it not affecting the substance or calculated to mislead, do not invalidate the form used.

(2) Gender specific terms include both genders and include corporations.

(3) In an enactment words in the singular include the plural, and words in the plural include the singular.

(4) If a word or expression is defined in an enactment, other parts of speech and grammatical forms of the same word or expression have corresponding meanings.

Expressions defined

29 In an enactment:

"acquire" means to obtain by any method and includes accept, receive, purchase, be vested with, lease, take possession, control or occupation of, and agree to do any of those things, but does not include expropriate;

"affidavit" or **"oath"** includes an affirmation, a statutory declaration, or a solemn declaration made under the *Evidence Act*, or under the *Canada Evidence Act*; and the word "swear" includes solemnly declare or affirm;

"bank" or **"chartered bank"** means a bank to which the *Bank Act* (Canada) applies;

"barrister" or **"solicitor"** or **"barrister and solicitor"** means a practising lawyer as defined in section 1 (1) of the *Legal Profession Act*;

"British Columbia land surveyor" means a person entitled to practise as a land surveyor under the *Land Surveyors Act*;

["calendar year", see *"year"]*

["Canada", see *"government of Canada"]*

"Cascade Mountains" means the line described in the Schedule to this Act;

["chartered bank", see *"bank"]*

["civil engineer", see *"professional engineer"]*

"commencement", with reference to an enactment, means the date on which the enactment comes into force;

"commercial paper" includes a bill of exchange, cheque, promissory note, negotiable instrument, conditional sale agreement, lien note, hire purchase agreement, chattel mortgage, bill of lading, bill of sale, warehouse receipt, guarantee, instrument of assignment, things in action and any document of title that passes ownership or possession and on which credit can be raised;

"consolidated revenue fund", **"consolidated revenue"** or **"consolidated revenue fund of the Province"** means the consolidated revenue fund of British Columbia;

"corporation" means an incorporated association, company, society, municipality or other incorporated body, where and however incorporated, and includes a corporation sole other than Her Majesty or the Lieutenant Governor;

"correctional centre" means a correctional centre under the *Correction Act*;

"county" means a county constituted and defined in the *County Boundary Act*;

"Court of Appeal" means the court continued by the *Court of Appeal Act*;

"credit union" means a credit union or extraprovincial credit union authorized to carry on business under the *Financial Institutions Act*;

"*Criminal Code*" means the *Criminal Code* (Canada);

["Crown, the", see "Her Majesty"]

"deliver", with reference to a notice or other document, includes mail to or leave with a person, or deposit in a person's mail box or receptacle at the person's residence or place of business;

"Deputy Provincial Secretary" includes the Deputy Provincial Secretary and Deputy Minister of Government Services;

"dispose" means to transfer by any method and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest, release and agree to do any of those things;

"electoral district" means an electoral district referred to in section 18 of the *Constitution Act*;

"Executive Council" means the Executive Council appointed under the *Constitution Act*;

"Gazette" means The British Columbia Gazette published by the Queen's Printer of British Columbia;

"government" or **"government of British Columbia"** means Her Majesty in right of British Columbia;

"government agent" means a person appointed under the *Public Service Act* as a government agent;

"government of Canada" or **"Canada"** means Her Majesty in right of Canada or Canada, as the context requires;

"Governor", **"Governor of Canada"** or **"Governor General"** means the Governor General of Canada and includes the Administrator of Canada;

"Governor in Council" or **"Governor General in Council"** means the Governor General acting by and with the advice of, or by and with the advice and consent of, or in conjunction with, the Queen's Privy Council for Canada;

"Great Seal" means the Great Seal of the Province;

"herein" used in a section or part of an enactment must be construed as referring to the whole enactment and not to that section or part only;

"**Her Majesty**", "**His Majesty**", "**the Queen**", "**the King**", "**the Crown**" or "**the Sovereign**" means the Sovereign of the United Kingdom, Canada, and Her other realms and territories, and Head of the Commonwealth;

"**holiday**" includes

(a) Sunday, Christmas Day, Good Friday and Easter Monday,

(b) Canada Day, Victoria Day, British Columbia Day, Labour Day, Remembrance Day and New Year's Day,

(c) December 26, and

(d) a day set by the Parliament of Canada or by the Legislature, or appointed by proclamation of the Governor General or the Lieutenant Governor, to be observed as a day of general prayer or mourning, a day of public rejoicing or thanksgiving, a day for celebrating the birthday of the reigning Sovereign, or as a public holiday;

"**insurance company**" means

(a) an insurance company, or

(b) an extraprovincial insurance corporation

authorized to carry on insurance business under the *Financial Institutions Act*;

"**judicial district**" means a judicial district defined in the *Supreme Court Act*;

"**justice**" means a justice of the peace and includes a judge of the Provincial Court;

["King, the", see *"Her Majesty"]*

"**land**" includes any interest in land, including any right, title or estate in it of any tenure, with all buildings and houses, unless there are words to exclude buildings and houses, or to restrict the meaning;

"**land title legislation**", prior to October 31, 1979 means the *Land Registry Act* and after October 30, 1979 means the *Land Title Act*;

"**lawyer**" means a practising lawyer as defined in section 1 (1) of the *Legal Profession Act*;

"**Legislative Assembly**" means the Legislative Assembly of British Columbia constituted under the *Constitution Act*;

"**Legislature**" means the Lieutenant Governor acting by and with the advice and consent of the Legislative Assembly;

"**Lieutenant Governor**" means the Lieutenant Governor of British Columbia and includes the Administrator of British Columbia;

"**Lieutenant Governor in Council**" means the Lieutenant Governor acting by and with the advice of, or by and with the advice and consent of, or in conjunction with, the Executive Council;

"**mail**" refers to the deposit of the matter to which the context applies in the Canada Post Office at any place in Canada, postage prepaid, for transmission by post, and includes deliver;

"may" is to be construed as permissive and empowering;

"medical practitioner" means a person entitled to practise under the *Medical Practitioners Act*;

"mentally disordered person", **"mentally incompetent person"**, **"mentally ill person"** or **"person with a mental disorder"** means a person with a mental disorder as defined in section 1 of the *Mental Health Act*;

["mining engineer", see *"professional engineer"]*

"minister" means that member of the Executive Council charged by order of the Lieutenant Governor in Council with the administration of the enactment;

"minor" means a person under the age of majority;

"month" means a period calculated from a day in one month to a day numerically corresponding to that day in the following month, less one day;

"municipality" means, as applicable,

(a) the corporation into which the residents of an area are incorporated as a municipality under the *Local Government Act*, the *Vancouver Charter* or any other Act, or

(b) the geographic area of the municipal corporation;

"must" is to be construed as imperative;

"newspaper", in a provision requiring publication in a newspaper, means a printed publication in sheet form, intended for general circulation, published regularly at intervals of not longer than a week, consisting in great part of news of current events of general interest;

"now" must be construed as referring to the time of commencement of the enactment containing the word;

["oath", see *"affidavit"]*

"obligation" includes a duty and a liability;

"peace officer" includes

(a) a mayor, sheriff and sheriff's officer,

(b) a warden, correctional officer, and any other officer or permanent employee of a penitentiary, prison, correctional centre or youth custody centre, and

(c) a police officer, police constable, constable or other person employed for the preservation and maintenance of the public peace;

"person" includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law;

"personal representative" includes an executor of a will and an administrator with or without will annexed of an estate, and, if a personal representative is also a trustee of part or all of the estate, includes the personal representative and trustee;

"prescribed" means prescribed by regulation;

"proclamation" means a proclamation of the Lieutenant Governor under the Great Seal issued under an order of the Lieutenant Governor in Council;

"professional engineer", **"civil engineer"** or **"mining engineer"** or words implying recognition of any person as a professional engineer or member of the engineering profession means a person registered or licensed under the *Engineers and Geoscientists Act*;

"property" includes any right, title, interest, estate or claim to or in property;

"Province" means the Province of British Columbia or Her Majesty in right of British Columbia as the context requires;

"province", when used as meaning a part of Canada, includes the Northwest Territories, the Yukon Territory and Nunavut;

"Provincial Court" means the Provincial Court of British Columbia;

"Provincial Treasurer" or **"Treasurer"** means the Minister of Finance and includes the Deputy Minister of Finance;

"Provincial Treasury" or **"Treasury"** means the Ministry of Finance constituted under the *Financial Administration Act*;

["Queen, the", see *"Her Majesty"]*

"Railway Belt" means the land on the mainland of British Columbia expressed to be granted to Canada by section 2 of chapter 14 of the Statutes of British Columbia, 1884;

"record" includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by any means whether graphic, electronic, mechanical or otherwise;

"regional district" means a regional district as defined in the *Local Government Act*;

"registered mail" includes certified mail;

"registrar" of a court includes the clerk of the court;

"Registrar of Companies" means the person appointed to that office under the *Business Corporations Act*;

"Registrar of Titles" or **"registrar"** means the registrar of a land title district appointed to that office under the *Land Title Act*;

"right" includes a power, authority, privilege and licence;

"Rules of Court", when used in relation to a court, means rules made under

(a) the *Court Rules Act*, or

(b) under any other enactment that empowers the making of rules governing practice and procedure in that court;

"rural area" means territory that is not in a municipality;

"savings institution" means

(a) a bank,

(b) a credit union,

(c) an extraprovincial trust corporation authorized to carry on deposit business under the *Financial Institutions Act*,

(d) a corporation that is a subsidiary of a bank and is a loan company to which the *Trust and Loan Companies Act* (Canada) applies, or

(e) the B.C. Community Financial Services Corporation established under the *Community Financial Services Act*;

"school district" means a school district as defined in the *School Act*;

"security" includes a security as defined in the *Securities Act;* [see also *"sureties"*]

"shall" is to be construed as imperative;

["solicitor", see *"barrister"]*

["Sovereign, the", see *"Her Majesty"]*

"Supreme Court" means the Supreme Court of British Columbia;

"sureties" means sufficient sureties, and **"security"** means sufficient security, and one person is sufficient for either unless otherwise expressly required;

"Surveyor General" or **"Surveyor General of British Columbia"** means the Surveyor General appointed under the *Land Title and Survey Authority Act*;

["swear", see *"affidavit"]*

["Treasurer", see *"Provincial Treasurer"]*

["Treasury", see *"Provincial Treasury"]*

"trust company" means

(a) a trust company authorized under the *Financial Institutions Act* to carry on trust business, or

(b) an extraprovincial trust corporation authorized under the *Financial Institutions Act* to carry on trust business, deposit business or both;

"will" means a will as defined in the *Wills Act*;

"words" includes figures, punctuation marks, and typographical, monetary and mathematical symbols;

"writing", **"written"**, or a term of similar import includes words printed, typewritten, painted, engraved, lithographed, photographed or represented or reproduced by any mode of representing or reproducing words in visible form;

"year" means any period of 12 consecutive months; but a reference to a **"calendar year"** means a period of 12 consecutive months beginning on January 1, and a reference by number to a dominical year means a period of 12 consecutive months beginning on January 1 of that dominical year;

"youth custody centre" means a youth custody centre as defined in the *Youth Justice Act*.

Metric expressions

30 In an enactment, metric expressions and symbols have the meaning given to them in the *Weights and Measures Act* (Canada) and if not mentioned there, have the meaning given to them in the International System of Units established by the General Conference of Weights and Measures.

Common names

31 In an enactment, the name commonly applied to a country, place, body, corporation, society, officer, functionary, person, party or thing means the country, place, body, corporation, society, officer, functionary, person, party or thing to which the name is commonly applied, although the name is not the formal or extended designation of it.

Citation includes amendments

32 In an enactment a reference to another enactment of the Province or of Canada is a reference to the other enactment as amended, whether amended before or after the commencement of the enactment in which the reference occurs.

References in enactments

33 (1) A reference in an enactment to a series of numbers or letters by the first and last numbers or letters of the series includes the number or letter first and last mentioned.

(2) A reference in an enactment to a Part, division, section, schedule, appendix, or form is a reference to a Part, division, section, schedule, appendix or form of the enactment in which the reference occurs.

(3) A reference in an enactment to a subsection, paragraph, subparagraph or clause is a reference to a subsection, paragraph, subparagraph or clause of the section, subsection, paragraph or subparagraph in which the reference occurs.

(4) A reference in an enactment to regulations is a reference to regulations made under the enactment in which the reference occurs.

(5) A reference in an enactment by number or letter to a section, subsection, paragraph, subparagraph, clause or other division or line of another enactment must be construed as a reference to the division or line of the other enactment as printed under the *Queen's Printer Act*.

(6) If an enactment refers to a matter "under" a named or unnamed Act, an Act in that reference includes regulations enacted under the authority of that Act.

Amending enactment part of enactment amended

34 An amending enactment must be construed as part of the enactment that it amends.

Repeal

35 (1) If all or part of an enactment is repealed, the repeal does not

(a) revive an enactment or thing not in force or existing immediately before the time when the repeal takes effect,

(b) affect the previous operation of the enactment so repealed or anything done or suffered under it,

(c) affect a right or obligation acquired, accrued, accruing or incurred under the enactment so repealed,

(d) subject to section 36 (1) (d), affect an offence committed against or a contravention of the repealed enactment, or a penalty, forfeiture or punishment incurred under it, or

(e) affect an investigation, proceeding or remedy for the right, obligation, penalty, forfeiture or punishment.

(2) Subject to section 36 (1), an investigation, proceeding or remedy described in subsection (1) (e) may be instituted, continued or enforced and the penalty, forfeiture or punishment imposed as if the enactment had not been repealed.

Repeal and replacement

36 (1) If an enactment (the "former enactment") is repealed and another enactment (the "new enactment") is substituted for it,

(a) every person acting under the former enactment must continue to act as if appointed or elected under the new enactment until another is appointed or elected in his or her place,

(b) every proceeding commenced under the former enactment must be continued under and in conformity with the new enactment so far as it may be done consistently with the new enactment,

(c) the procedure established by the new enactment must be followed as far as it can be adapted in the recovery or enforcement of penalties and forfeitures incurred under the former enactment, in the enforcement of rights existing or accruing under the former enactment, and in a proceeding relating to matters that happened before the repeal,

(d) when a penalty, forfeiture or punishment is reduced or mitigated by the new enactment, the penalty, forfeiture or punishment if imposed or adjusted after the repeal must be reduced or mitigated accordingly,

(e) all regulations made under the former enactment remain in force and are deemed to have been made under the new enactment, in so far as they are not inconsistent with the new enactment, until they are repealed or others are made in their place, and

(f) a reference in an unrepealed enactment to the former enactment must, for a subsequent transaction, matter or thing, be construed as a reference to the provision of the new enactment relating to the same subject matter, but if there is no provision in the new enactment relating to the same subject matter, the former enactment must be construed as being unrepealed so far as is necessary to give effect to the unrepealed enactment.

(2) If all or part of an enactment of any other province of Canada or of Canada is repealed and another provision is substituted by way of amendment, revision or

consolidation, a reference in an enactment of the Province to the repealed enactment must, for a subsequent transaction, matter or thing, be construed to be a reference to the provision of the substituted enactment relating to the same subject matter.

No implications from repeal, amendment, etc.

37 (1) The repeal of all or part of an enactment, or the repeal of an enactment and the substitution for it of another enactment, or the amendment of an enactment must not be construed to be or to involve either a declaration that the enactment was or was considered by the Legislature or other body or person who enacted it to have been previously in force, or a declaration about the previous state of the law.

(2) The amendment of an enactment must not be construed to be or to involve a declaration that the law under the enactment prior to the amendment was or was considered by the Legislature or other body or person who enacted it to have been different from the law under the enactment as amended.

(3) An amendment, consolidation, re-enactment or revision of an enactment must not be construed to be or to involve an adoption of the construction that has by judicial decision or otherwise been placed on the language used in the enactment or on similar language.

Notice by newspaper

38 If an enactment provides that notice must or may be given by publication in a newspaper published in a particular municipality, district, county, jurisdiction or other place, the provision must be construed to mean that the notice may be sufficiently given, if no newspaper is published at the time when the notice is to be given in the particular place, by publishing or advertising the notice in a newspaper published in British Columbia, nearest to the place mentioned.

Application of definitions in *Supreme Court Act* to other enactments

39 The definitions section of the *Supreme Court Act*, so far as the terms defined can be applied, extends to all enactments relating to legal proceedings.

Definitions in *Community Charter* and *Local Government Act* apply to other enactments

40 (1) So far as the terms defined can be applied, the definitions established by or applicable under

(a) the schedule to the *Community Charter,* and

(b) section 5 of the *Local Government Act*

extend to all enactments relating to municipal and regional district matters.

(2) As an exception, subsection (1) does not apply in relation to the definition of "municipality" in the *Community Charter.*

Powers to make regulations

41 (1) If an enactment provides that the Lieutenant Governor in Council or any other person may make regulations, the enactment must be construed as empowering the Lieutenant Governor in Council or that other person, for the purpose of carrying out the enactment according to its intent, to

(a) make regulations as are considered necessary and advisable, are ancillary to it, and are not inconsistent with it,

(b) provide for administrative and procedural matters for which no express, or only partial, provision has been made,

(c) limit the application of a regulation in time or place or both,

(d) prescribe the amount of a fee authorized by the enactment,

(e) provide, for a regulation made by or with the approval of the Lieutenant Governor in Council, that its contravention constitutes an offence, and

(f) provide that a person who is guilty of an offence created under paragraph (e) is liable to a penalty not greater than the penalties provided in the *Offence Act*.

(2) A regulation made under the authority of an enactment has the force of law.

Subdivisions of Act

42 (1) A section is divided into subdivisions known in descending order as subsections, paragraphs, subparagraphs and clauses.

(2) In an enactment enacted before July 1, 1974

(a) a reference to a clause is deemed to be a reference to a paragraph,

(b) a reference to a paragraph is deemed to be a reference to a subparagraph, and

(c) a reference to a subparagraph is deemed to be a reference to a clause.

Citation of Acts

43 An Act may be cited by reference to

(a) its chapter number in the Revised Statutes of British Columbia,

(b) its chapter number in the volume of Acts for the year or regnal year in which it was enacted, or

(c) its long or short title, with or without reference to its chapter number.

Mutatis mutandis

44 If an enactment provides that another enactment applies, it applies with the necessary changes and so far as it is applicable.

SCHEDULE

Commencing at Boundary Point No. 7 (formerly known as Point "D"), being a monument set by survey upon the ground on the International Boundary between Canada and Alaska; thence in a straight line to the nearest point on the westerly boundary of the watershed of Bear River; thence northerly along said westerly boundary to the point of junction thereof with the westerly boundary of the watershed of Nass River; thence northerly, easterly and southerly along the westerly boundary of the watershed of Nass River to the point thereon which lies due West of the northwest corner of Lot 1704, Cassiar Land District; thence East to said corner; thence easterly along the northerly boundary of said lot to the most westerly northwest corner of former Aiyansh (Kitladamas) Indian Reserve No. 1; thence southerly along the westerly boundary of former Aiyansh (Kitladamas) Indian Reserve No. 1 to the most southerly corner thereof, being a point on the right bank of Nass River; thence due South to intersect the left bank of said river; thence easterly along the left bank of Nass River to the northwest corner of Lot 4827, Cassiar Land District; thence southerly along the westerly boundary of Lot 4827 to the southwest corner thereof; thence due South to the westerly boundary of the watershed of Tseax River; thence in a general southerly direction along said westerly boundary and continuing in a general southerly and easterly direction along the westerly and southerly boundaries of the watershed of Kitsumkalum River to the southerly boundary of the watershed of Alice Creek, a tributary of said Kitsumkalum River; thence easterly along said southerly boundary to the point thereon which lies due West of the northwest corner of Lot 1410, Range 5, Coast Land District; thence East to said corner; thence southerly and easterly along the westerly and southerly boundaries of said lot to the southeast corner thereof; thence southerly along the westerly boundary of Lot 1409 to the southwest corner thereof; thence easterly along the southerly boundary of said lot to the point thereon which lies due North of the more northerly northeast corner of Lot 701; thence South to said corner; thence southerly along the easterly boundary of said lot to the re-entrant angle thereof; thence easterly along the northerly boundary of said lot produced to the westerly boundary of Kitsumkaylum Indian Reserve No. 1; thence southerly along said boundary of said Indian reserve produced to the middle line of Skeena River; thence southwesterly along said middle line to a point due West of the left bank of Hellsgate Slough; thence East to said left bank and continuing easterly along the left bank of Hellsgate Slough and that of Skeena River to the northwest corner of Lot 373; thence easterly and southerly along the northerly and easterly boundaries of said lot to the southeast corner thereof; thence easterly along the northerly boundaries of Lots 1429 and 1051 to the northeast corner of Lot 1051 – all the above-mentioned lots, beginning with Lot 1410, being in Range 5, Coast Land District; thence due East to the southwesterly boundary of the watershed of Zymoetz River; thence in a general southeasterly direction along said southwesterly boundary and the easterly boundaries of the watersheds of Kitimat, Kildala, Kemano, Tsaytis, Kitlope and Kimsquit Rivers to the northerly boundary of the watershed of Dean River; thence easterly along said northerly boundary to the easterly boundary of the watershed of Sakumtha River; thence southerly along said easterly boundary and that of the watershed of Bernhardt Creek to the southerly boundary of the watershed of the streams flowing into Sigutlat Lake; thence easterly along said southerly boundary to the point thereon which lies due North of the northerly extremity of the westerly boundary of the watershed of Takia River; thence South to said northerly extremity; thence southerly along said watershed boundary to the southerly boundary of the watershed of Dean River; thence in a general southeasterly direction along said southerly boundary and the northerly boundary of the watershed of Klinaklini River to the easterly boundary of this said watershed; thence southeasterly along said easterly boundary and the northerly boundary of the watershed of Homathko River to the point thereon which lies due North of the northeast corner of Lot 333, Range 2, Coast Land District; thence South to said corner; thence southerly along the easterly boundaries of said Lot 333 and Lot 334 of said Range 2 to the southeast corner of Lot 334; thence westerly along the southerly boundary of said lot to the southwest corner thereof; thence due South to the westerly boundary of the watershed of Chilko River; thence southerly and southeasterly along said boundary and the southwesterly boundary of the watershed of Bridge River to the northerly boundary of the watershed of Birkenhead River; thence easterly and southerly along the northerly and easterly boundaries of the watershed of Birkenhead River to a point due North of the northeast corner of Lot 742, Lillooet District; thence South to the said northeast corner; thence southerly along the easterly boundary of Lot 742 to the southeast corner thereof; thence due South to the northerly boundary of Lot 969, Lillooet District; thence southeasterly, southerly, and westerly along the northerly, easterly and southerly boundaries of said lot to the intersection of said southerly boundary with the easterly boundary of the watershed of the Birkenhead River; thence southwesterly along said boundary to its intersection with the northerly boundary of Lot 1251, Lillooet Land District; thence westerly, southerly and easterly along the northerly, westerly and southerly boundaries of said lot to the southwest corner of Lot 5146; thence due South to the easterly boundary of the watershed of Birkenhead River; thence southeasterly along said boundary and the easterly boundary of the watershed of Lillooet Lake, Lillooet River, and Harrison Lake to the easterly boundary of the watershed of Garnet Creek; thence southerly along said boundary and the westerly and southerly boundaries of the watershed of American Creek to its intersection with the westerly boundary of Township 5, Range 26, West of the sixth meridian; thence southerly along said boundary and the westerly boundaries of Townships 4 and 3, Range 26, West of the sixth meridian, to the southwest corner of Township 3; thence due South to the northerly boundary of the watershed of Chilliwack River; thence in a general southeasterly direction along the northerly and easterly boundaries of the watershed of Chilliwack River to the southerly boundary of the Province.