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 the motion

Petitioners

and

ERNST & YOUNG INC.

Monitor

and

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO AS REPRESENTED BY THE MINISTER OF THE ENVIRONMENT.

Respondent on the motion

OUTLINE OF ARGUMENT OF THE ATTORNEY GENERAL FOR ONTARIO

I OVERVIEW

1. The Attorney General for Ontario ("Ontario") opposes the Petitioners' ("Abitibi") Motion for an order authorizing the sale of certain non-core assets ("Vesting Order"), including three contaminated waste disposal sites located in the Province of Ontario. It is proposed that these contaminated properties be transferred to subsidiary numbered companies currently in receivership.

2. This motion comes in the wake of Abitibi's success in a previous motion involving properties in the Province of Newfoundland in which this Court held that certain environmental orders could be treated as "contingent claims." Abitibi clearly views the Newfoundland decision as the means to avoid potential continuing responsibility in relation to the contamination of the three Ontario sites. However, the situation regarding the Ontario sites compels a very different result because the material facts of this case bear no material resemblance to those of the earlier decision:

a) Ontario has not issued any environmental orders in respect of the three subject properties so as to require Abitibi to undertake work to protect the environment;

b) No steps have been taken by Ontario to undertake any environmental work in Abitibi's place;

c) The extent of and potential costs associated with environmental remediation on the properties cannot be reasonably identified and quantified at the present time;

d) Ontario has not expropriated the subject properties from Abitibi. Instead, Abitibi is itself purposefully taking steps to divest itself of the properties:

e) Ontario does not stand to benefit financially from the outcome of this motion. Unlike Newfoundland, Ontario does not own the properties;

f) Ontario has and continues to act in good faith toward Abitibi. There is no basis whatsoever in the evidence to, for example, conclude that Ontario has withheld making orders as a legal tactic.

3. It is not in the public interest for this Honourable Court to approve the proposed sales under section 36 of the *CCAA* given that:

a) the effect of such sale would immunize Abitibi from regulatory environmental responsibilities in respect of the waste disposal sites that it owns and has polluted. Such an avoidance of present and future regulatory responsibility increases the risk of harm to the natural environment and undermines the "polluter pays" philosophy that underlies environmental legislation across Canada;

b) there is no basis in the evidence to conclude that if the relief sought by Abitibi is not granted, the CCAA reorganization of Abitibi would fail.

4. The Attorney General for Ontario also brings a Cross-Motion for an order:

a) declaring that Abitibi's environmental responsibilities in respect of the three waste disposal sites in Ontario as well as any other property in Ontario in relation to which Abitibi has environmental responsibilities, do not constitute a "claim" for purposes of this proceeding unless either: (1) a debt is presently due by Abitibi and owed to a person, including Her Majesty the Queen in right of Ontario; or (2) the MOE has exercised its discretion to spend public funds to undertake such environmental remediation even though it may not as yet have incurred such costs.

b) declaring that the Claims Procedure Order, dated January 18, 2010, excludes the circumstances described above, and if necessary, amending the Claims Procedure Order to so provide.

5. Ontario relies on the evidence deposed in the affidavit of John Taylor, sworn August 30, 2010, filed in support of its Contestation.

II SUMMARY OF FACTS

6. Abitibi has owned and operated various pulp and paper facilities in Ontario for many years. It is required to operate these waste disposal sites in accordance with the terms and conditions of a Certificate of Approval (the "Approval") issued under the *Environmental Protection Act,* R.S.O. 1990, chap. E.19. ("EPA"). The Ontario Ministry of the Environment "(MOE") can amend the Approvals as required to address new circumstances. In addition, an order under the EPA and the *Ontario Water Resources Act*, R.S.O. 1990, O.40 ("OWRA") can be issued requiring Abitibi to undertake work required to prevent the waste disposal sites from having an adverse impact on water and the natural environment more generally.

Affidavit of John Taylor, sworn August 30, 2010 ("Taylor Affidavit"), para 14 and 15 [Ontario Motion Record, Tab 2].

7. Abitibi proposes to sell the three subject waste disposal sites to 4513541 Canada Inc. The purchaser is a subsidiary of Abitibi. It is in Receivership.

Taylor Affidavit, para 16 and 17 [Ontario Motion Record, Tab 2].

8. All three waste disposal sites in Ontario require remedial action to protect the natural environment, including water resources. Abitibi estimates that the total potential environmental exposure for these three waste disposal sites is $5.333 million. In particular:

a) Margach Landfill.

Until 2009, it received waste from Abitibi's pulp mill in Kenora, which closed in 2005. The site remains to be capped and closed. This work is required primarily to prevent groundwater and surfacewater contamination. Groundwater and surfacewater monitoring will be required for 25 to 30 years following the closure. Abitibi estimates that its potential environmental liability exposure for this landfill is $4 million.

b) Mud Lake Landfill.

This property also received waste from Abitibi's pulp mill in Kenora. The site was capped and closed in 2003. An impermeable cap was installed. The closure plan required the monitoring of groundwater and surfacewater. This monitoring will be required for another 20 years. In addition, leachate generated by the landfill is treated at the local municipal wastewater treatment plant. Abitibi estimates that its potential liability exposure concerning this property to be in the area of $1 million.

c) Dryden Mercury Landfill.

Several buried concrete cells containing mercury waste were disposed at this landfill between 1971 to 1981. The Approval issued for this landfill requires the surveillance of monitoring wells to assess subsurface soil and groundwater conditions to determine whether mercury or other contaminants are migrating from the landfill. Abitibi has estimated the costs of monitoring and maintaining the landfill at $250,000 for a further 20 years.

Taylor Affidavit, para 18 and 40 [Ontario Motion Record, Tab 2].

9. Abitibi's attempt to quantify its future potential environmental liability exposure at $5.333 million is entirely speculative and cannot fairly be accepted by Ontario as even a substantially accurate projection. The surfacewater and groundwater monitoring that will be undertaken for the next 20 or more years may well uncover environmental impacts emanating from Abitibi's properties that require environmental remediation. The nature and severity of those impacts, as well as the appropriate remedial measures, and their costs, is thus unknown.

Taylor Affidavit, para 42 [Ontario Motion Record, Tab 2].

10. The MOE holds a Letter of Credit for the Margach Landfill in the amount of $1,796,511and for the Mud Lake Landfill in the amount of $258,748. They are held as security to ensure that the required site closure and monitoring work is performed. They must be returned by the MOE to Abitibi if they are no longer required because Abitibi has done the required environmental work. The funds can also be drawn upon by the MOE if it chooses to do the required work. Clearly, and although the future costs associated with environmental remediation would at present be a matter of pure speculation, the Letters of Credit are insufficient.

Taylor Affidavit, para 20 [Ontario Motion Record, Tab 2].

11. Abitibi proposes to increase the limit that the Receiver is empowered to borrow to $1.7 million from $600,000. Abitibi attributes $85,000 of the $1.7 million for the care of these three waste disposal sites. Should the Receiver be unable to sell these three waste disposal sites, then they will likely be abandoned by the Receiver.

12. If abandoned, the Purchaser lacks the financial ability to undertake the required remedial work for these three waste disposal sites. Some of this work is provided for under the current Certificates of Approval. If the Purchaser fails to perform this work, or if other unforeseen environmental work is required, then the Certificate of Approval may be amended to require such work or an order may be issued under the EPA or OWRA to a responsible person.

Taylor Affidavit, para 17 [Ontario Motion Record, Tab 2].

13. The purpose of these sales is to use the CCAA to "shed" any environmental responsibilities that Abitibi has now, or may have in the future, in its capacity as a "former owner or occupier" of these waste disposal sites once it emerges from CCAA.

Amended Second Motion for the Issuance of Various Orders Authorizing the Sale of Non-Core Properties and for the Issuance of a Re-Amended Receivership Order in respect of 4513541 Canada inc., para. 32.

14. To achieve that result Abitibi has taken the position that:

a) the sale of these waste disposal sites will crystallize claims in respect of the former owner/occupier environmental liabilities, which will be compromised in the CCAA proceedings.

b) the compromising of these environmental responsibilities is an "important component of the Petitioners' attempt to successfully restructure their business".

Amended Second Motion for the Issuance of Various Orders Authorizing the Sale of Non-Core Properties and for the Issuance of a Re-Amended Receivership Order in respect of 4513541 Canada inc., para. 32.

III BASIS FOR CONTESTATION

A. THE PROPOSED SALE IS NOT IN THE PUBLIC INTEREST

15. Section 36 of the CCAA requires a debtor company to obtain the authorization of a Court prior to selling assets outside the ordinary course of business. One of the factors to be considered in deciding whether to grant authorization is "... the effect of the proposed sale or disposition on the creditors *and other interested parties*".

16. The effect of the proposed sale would relieve Abitibi from:

a) its statutory obligation to comply with existing Certificates of Approval for these sites which require Abitibi to cap and close the Margach Landfill and to monitor the groundwater and surfacewater of all three landfills;

b) any unforeseen environmental remediation requirements that may be imposed in the future through amendments to the Certificates of Approval for these waste disposal sites and/or by the issuance of administrative orders under Ontario's environmental legislation in respect of these waste disposal sites.

17. The EPA and OWRA authorize a Director to cause work to be done in the event that a person ordered to do the work fails to do so. However, the MOE is not obliged to cause work to be done in such instances nor does it cause work to be done in all cases given the limited availability of funds. The MOE's Environmental Clean Up Fund is a funding mechanism of last resort. It would not typically fund either the capping or monitoring of a landfill. It is typically only used to fund the resolution of serious or urgent environmental problems. Accordingly, it is

unlikely that the required environmental remedial work will be undertaken by MOE in Abitibi's absence. As a result, relieving Abitibi of its environmental regulatory obligations increases the risk of harm to the environment.

Taylor Affidavit, para 11 [Ontario Motion Record, Tab 2].

18. The use of the CCAA for this purpose and the granting of the order sought by Abitibi would also undermine the "polluter pays" principle inherent in Ontario's environmental legislation. MOE's Statement of Environmental Values states that it applies the polluter pays principle in that its development of Acts, regulations and policies "... endeavours to have the perpetrator of pollution pay for the cost of clean up and rehabilitation consistent with the polluter pays principle".

Ministry of the Environment, Statement of Environmental Values, [Exhibit B to the Taylor Affidavit].

19. The Supreme Court of Canada noted that the "polluter pays" principle is reflected in most provincial and federal legislation and has become entrenched in environmental law in Canada. The court explained the polluter pays principle as follows:

> To encourage sustainable development, that principle assigns polluters the responsibility for remedying contamination for which they are responsible and imposes on them the direct and immediate costs of pollution. At the same time, polluters are asked to pay more attention to the need to protect ecosystems in the course of their economic activities.

***Imperial Oil Ltd. v. Quebec (Minister of the Environment*), [2003] 2 S.C.R. 624. at para. 24 [Tab 1, Ontario's Book of Authorities].**

20. There is no basis for Abitibi's suggestion that "environmental stakeholders will be fully protected" as a result of the proposed sale. The opposite is more accurate. It has attributed to these three properties only $85,000 to address a potential environmental exposure which Abitibi itself speculates may exceed $5 million. Second, it submits that environmental claims would be secured claims under s. 11.8(8) of the CCAA. Even assuming *arguendo* that Ontario had a claim, (which it denies having), section 11.8 (8) has severe limitations given the factual context before the court, not the least of which is the comparatively low value of the properties in issue. Finally, Abitibi states that any "claim" filed by the MOE would be an unsecured claim to the extent that did not fall within the provisions of s. 11.8(8) of the CCAA. The proposed distribution

for such claims is in the vicinity of 0-30%. In summary, Abitibi walks away from landfills that it polluted while ongoing environmental responsibilities are grossly underfunded.

21. Finally, there is no evidence whatsoever that if Abitibi's motion is not granted the re-organization will fail.

Taylor Affidavit, para 46 and 47 [Ontario Motion Record, Tab 2].

22. Given the likely harm to the environment if Abitibi's motion were granted, and the lack of any evidence that the reorganization would likely fail if it were dismissed, it is respectfully submitted that Abitibi's motion should be dismissed.

B. CROSS – MOTION: THAT THIS HONOURABLE COURT DECLARE THAT ABITIBI'S CURRENT ENVIRONMENTAL RESPONSIBILITES AND ITS FUTURE UNKNOWN ENVIRONMENTAL RESPONSIBILITIES ARE NOT "CLAIMS"

23. For purposes of the CCAA, "claim" means any indebtedness, liability or obligation of any kind that, if unsecured, would be a *debt provable in bankruptcy* within the meaning of the *Bankruptcy and Insolvency Act.*

24. The BIA contemplates that contingent or unliquidated claims are provable claims.

***Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, s. 121 and 135(1.1).**

25. However, the Ontario Court of Appeal has confirmed that there may be claims so remote and speculative in nature that they cannot properly be considered contingent claims. The assertion that a contingent or unliquidated claim qualifies as a "provable claim" must be supported by sufficient evidence of real probative value. Abitibi cannot point to any evidence demonstrating the certainty of Ontario's "claim". In fact, the preponderance of evidence is to the contrary.

***Confederation Treasury Services Ltd. (Re),* [1997] O.J. No. 67 at para. 4 (C.A.) [Tab 2, Ontario's Book of Authorities].**

***MEI Computer Technology Group Inc. (Syndic de),* [2005] Q.J. No. 3693 at para 30 (Que. S.C.) [Tab 3, Ontario's Book of Authorities].**

26. The thread that unites the "contingent claim" caselaw involving administrative decision making, is that in those cases in which a contingent claim is considered as provable, the administrative decision making process has already been invoked. In the previous Abitibi decision involving the Newfoundland properties, the government had made the decision to cause the lands to be remediated. EPA orders had issued, the effect of which were deemed to be financial in nature. Abitibi no longer owned the land and since it no longer carried on business in Newfoundland, the Newfoundland government would likely have to carry out the remediation work itself. In fact, it had begun requesting proposals for some of the remediation work, and had done some emergency work to repair the integrity of a dam.

> ***AbitibiBowater Inc. (re),* 2010 QCCS 1261 at para. 219 and 221 (S.C.) affd. [2010] QCCA 965 (C.A.) [Tab 4, Ontario's Book of Authorities].**

27. The Court drew a parallel between the actions of the Newfoundland government and the regulator's behavior in the cases of *Re Shirley* and *Harbert Distressed Investment Fund, L.P. v. General Chemical Canada Ltd.* In *Re Shirley*, prior to the issuance of the receiving order, while the cost of the cleanup remained undetermined, the MOE had issued orders, entered onto the lands, commenced cleanup actions and made it clear that it intended to look to the debtor for reimbursement. This was conduct consistent with a debtor/creditor relationship.

> ***AbitibiBowater Inc. (re)* [2010] QCCS 1261 at para 224 [Tab 4, Ontario's Book of Authorities].**
>
> ***Re Shirley,* [1995] O.J. No. 3060 at para. 9 and 33 (Gen. Div.) [Tab 5, Ontario's Book of Authorities].**

28. In *General Chemical* the MOE had made the decision to cause the bankrupt's Soda Ash Settling Basin to be remediated in the event that no one else would undertake such work with the result, as counsel for MOE submitted, that the citizens of Ontario would be "saddled" with those costs. As a result, in refusing MOE's request to stop a distribution from the sale of the bankrupt's assets to be paid out of the estate to a secured creditor, the court viewed the MOE as a "creditor" rather than merely as a "regulator".

> ***Harbert Distressed Investment Fund, L.P. v. General Chemical Canada Ltd.* [2006] O.J. No. 3087 at para 34, 39, 40, 46 and 54; aff'd [2007] O.J. No. 3296 at para. 44, 46 and 47(C.A.); leave to appeal to the Supreme Court of Canada refused on November 5, 2007 [Tab 7, Ontario's Book of Authorities].**

29. Cases decided in other administrative contexts apply the same analysis to "contingent claims." For example, in *Re Air Canada*, the critical date to determine when the regulator's

"claim" arose was the date the regulator made the decision to impose the monetary penalty and not the date when Air Canada had breached noise abatement procedures and noise control requirements.

> ***Air Canada (Re),* [2006] O.J. No. 5070 at para 32 (Sup. Ct.) [Tab 8, Ontario's Book of Authorities].**

30. In *Re Thow*, after Thow's bankruptcy the British Columbia Securities Commission issued a decision prohibiting Thow from dealing and trading in securities, and ordered Thow to pay an administrative penalty of $6 million. The Commission had investigated Thow's conduct as a mutual fund dealer prior to his bankruptcy. The Court concluded that the penalty was not a contingent liability or an "obligation" at the date of his bankruptcy: Thow did not become liable until the Commission had exercised its discretion.

> ***Thow (Re),* [2009] B.C.J. No. 1729 at para. 45 (B.C.S.C.) [Tab 9, Ontario's Book of Authorities].**

31. It is clear from these decisions that not all environmental regulatory actions fall within the definition of "claim" and the intended scope of s.11.8(8) and (9) of the CCAA. The Court must first consider whether the environmental regulatory action is a certain and provable contingent claim within the meaning of s.121 of the BIA. This Court must ask the question: "Is a debt presently due by Abitibi or has the MOE exercised its discretion to spend public funds to undertake such environmental remediation even though it may not as yet have incurred such costs?" In other words, has the regulator exercised its statutory jurisdiction to impose financial consequences on the petitioner thereby crystallizing the regulator's claim as a creditor?

32. In determining whether the MOE has exercised its statutory jurisdiction in relation to the Abitibi properties in a manner that constitutes a provable CCAA claim, it is important to understand the spectrum of regulatory options that are open to it.

33. In its capacity as regulator, the MOE's involvement with a site having environmental concerns ranges along a continuum as follows:

a) receive and consider applications for and, where appropriate, issue Certificates of Approval in respect of regulated facilities such as waste disposal sites;

b) monitor site, but take no action/issue no orders to the regulated entity. This is sometimes done in conjunction with a plan of voluntary compliance agreed to by the regulated entity, but such a plan is not always necessary if the Ministry is of the view that the status quo of the site is not an environmental threat;

c) issue a provincial officer's order/Director's order under sections 18 and 157.1 respectively of the EPA, requiring a range of possible actions that could include retention of a consultant, ongoing monitoring and reporting or full remediation. These actions will almost always require some expenditure of money by the regulated entity. These orders deal with known environmental conditions or threats. Orders cannot be issued to deal with unforeseen environmental circumstances;

d) if the regulated entity fails to do work ordered by an order previously issued to it, the Ministry will look to other parties such as former owners or those formerly in management and control of former owners, and may issue clean up orders to these other parties;

e) if no other parties can be located to answer the environmental liability, the Ministry may issue a notice of intent to do the work itself; however, this is a discretionary decision of the Director exercised only upon a consideration of many factors;

f) Ministry does the work itself because there is no one else to do it and the environmental threat is serious;

g) Ministry issues an order to recover costs pursuant to s.150 of EPA;

h) Ministry takes steps to enforce its costs recovery order.

34. In the specific case of the Ontario Abitibi properties, the parties are only at stage “b” on the continuum. Significantly, in all of the other cases discussed above, the regulators had moved much further down the continuum. It is critical to note that Abitibi is not indebted to the Crown in respect of the three waste disposal sites in Ontario. Abitibi does not owe Ontario any money on account of work that the MOE has undertaken in Abitibi’s place. Moreover, it is not even certain that any administrative action leading to the imposition of financial consequences will ever be taken by the regulator. Compliance with future unknown environmental regulatory obligations in respect of the three waste disposal sites in Ontario is too speculative to constitute a “claim” within the meaning of the CCAA. In this sense, any potential claim that Ontario might have has far from crystallized for purposes of the CCAA and the relationship between MOE and Abitibi is simply not one of debtor/creditor.

35. Similarly, a claim for the purposes of the Claims Procedure Order should not be broader than the definition of "provable claim" in the BIA (which is incorporated by reference into the CCAA) as it has been interpreted by the caselaw. The definition of "claim" in the Claims Procedure Order should be amended to specifically exclude costs of compliance with ongoing and future environmental obligations, as described above respecting the three Ontario properties, or at a minimum, be interpreted in this fashion.

36. It is Ontario's position that the proposed sale ought not to be approved. Alternatively, should this Court approve the sale, any Vesting Order should specifically preserve Abitibi's environmental responsibilities in the form of the relief requested below.

37. Ontario also adopts the alternate request for relief sought by the Attorneys General for the Provinces of British Columbia and New Brunswick.

V RELIEF REQUESTED

38. Ontario respectfully requests that this Honourable Court:

a) Dismiss Abitibi's motion for approval of the proposed sale of the three waste disposal sites in Ontario;

b) Grant an order declaring that Abitibi's environmental responsibilities in respect of the three waste disposal sites in Ontario as well as any other property in Ontario in relation to which Abitibi has environmental responsibilities, do not constitute a "claim" for purposes of this proceeding unless either: (1) a debt is presently due by Abitibi and owed to a person, including Her Majesty the Queen in right of Ontario; or (2) the MOE has exercised its discretion to spend public funds to undertake such environmental remediation even though it may not as yet have incurred such costs.

c) Grant an order declaring that the Claims Procedure Order, dated January 18, 2010, excludes the circumstances described above in relation to the three Ontario properties, and if necessary, amending the Claims Procedure Order to so provide.

d) Alternatively, Ontario requests that any Vesting Order in respect of the three waste disposal sites in Ontario provide that:

1. There is no "claim" within the meaning of that term under the CCAA by reason of any environmental obligations of the Petitioners with respect to the Margach Landfill, the Mud Lake Landfill and the Dryden Mercury Landfill or the statutory provisions relating to them;

2. Neither the Vesting Order with respect to the Margach Landfill, the Mud Lake Landfill and the Dryden Mercury Landfill nor any other or further Order of this Court, separately or in combination, has determined or will, without further hearing and order, determine the questions of statutory or constitutional jurisdiction which may be raised or to be raised by the Attorney General for Ontario in these proceedings, as such questions apply to the Petitioners' obligations under any enactment of the Province of Ontario.

e) Ontario further requests that any Vesting Order in respect of the three waste disposal sites in Ontario include the following paragraph:

> ORDERS AND DECLARES that subject to any other or further order of this Court, nothing in this Order reduces or makes inapplicable (i) any obligation under any enactment of the Province of Ontario that the Vendors or the Purchasers or any other person may have by virtue of having been or becoming the owner or operator of the Purchased Assets or any of them, or (ii) any consent by, approval of, notice to or other similar requirement involving the provincial government or a regional or municipal government under any enactment of the Province of Ontario relating to the transfer of the Purchased Assets or any of them.

September 3, 2010

ALL OF WHICH IS RESPECTFULLY SUBMITTED BY:

Len Marsello & Mario Faieta
Counsel for the Attorney General for Ontario

SCHEDULE A

<u>Companies Creditors Arrangement Act</u>

Definitions

2. (1) In this Act,

"claim" means any indebtedness, liability or obligation of any kind that would be a claim provable within the meaning of section 2 of the *Bankruptcy and Insolvency Act*;

General power of court

11. Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,
(*a*) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
(*b*) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
(*c*) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,
(*a*) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(*a*);
(*b*) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
(*c*) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless
(*a*) the applicant satisfies the court that circumstances exist that make the order appropriate; and
(*b*) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

2005, c. 47, s. 128, 2007, c. 36, s. 62(F).

Meaning of "regulatory body"

11.1 (1) In this section, "regulatory body" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province and includes a person or body that is prescribed to be a regulatory body for the purpose of this Act.

Regulatory bodies — order under section 11.02

(2) Subject to subsection (3), no order made under section 11.02 affects a regulatory body's investigation in respect of the debtor company or an action, suit or proceeding that is taken in respect of the company by or before the regulatory body, other than the enforcement of a payment ordered by the regulatory body or the court.

Exception

(3) On application by the company and on notice to the regulatory body and to the persons who are likely to be affected by the order, the court may order that subsection (2) not apply in respect of one or more of the actions, suits or proceedings taken by or before the regulatory body if in the court's opinion
(*a*) a viable compromise or arrangement could not be made in respect of the company if that subsection were to apply; and
(*b*) it is not contrary to the public interest that the regulatory body be affected by the order made under section 11.02.

Declaration — enforcement of a payment

(4) If there is a dispute as to whether a regulatory body is seeking to enforce its rights as a creditor, the court may, on application by the company and on notice to the regulatory body, make an order declaring both that the regulatory body is seeking to enforce its rights as a creditor and that the enforcement of those rights is stayed.

No personal liability in respect of matters before appointment

11.8 (1) Despite anything in federal or provincial law, if a monitor, in that position, carries on the business of a debtor company or continues the employment of a debtor company's employees, the monitor is not by reason of that fact personally liable in respect of a liability, including one as a successor employer,
(*a*) that is in respect of the employees or former employees of the company or a predecessor of the company or in respect of a pension plan for the benefit of those employees; and
(*b*) that exists before the monitor is appointed or that is calculated by reference to a period before the appointment.

Status of liability

(2) A liability referred to in subsection (1) shall not rank as costs of administration.

Liability of other successor employers

(2.1) Subsection (1) does not affect the liability of a successor employer other than the monitor.

Liability in respect of environmental matters

(3) Notwithstanding anything in any federal or provincial law, a monitor is not personally liable in that position for any environmental condition that arose or environmental damage that occurred

(*a*) before the monitor's appointment; or
(*b*) after the monitor's appointment unless it is established that the condition arose or the damage occurred as a result of the monitor's gross negligence or wilful misconduct.

Reports, etc., still required

(4) Nothing in subsection (3) exempts a monitor from any duty to report or make disclosure imposed by a law referred to in that subsection.

Non-liability re certain orders

(5) Notwithstanding anything in any federal or provincial law but subject to subsection (3), where an order is made which has the effect of requiring a monitor to remedy any environmental condition or environmental damage affecting property involved in a proceeding under this Act, the monitor is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
(*a*) if, within such time as is specified in the order, within ten days after the order is made if no time is so specified, within ten days after the appointment of the monitor, if the order is in effect when the monitor is appointed or during the period of the stay referred to in paragraph (*b*), the monitor
(i) complies with the order, or
(ii) on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
(*b*) during the period of a stay of the order granted, on application made within the time specified in the order referred to in paragraph (*a*) or within ten days after the order is made or within ten days after the appointment of the monitor, if the order is in effect when the monitor is appointed, by
(i) the court or body having jurisdiction under the law pursuant to which the order was made to enable the monitor to contest the order, or
(ii) the court having jurisdiction under this Act for the purposes of assessing the economic viability of complying with the order; or
(*c*) if the monitor had, before the order was made, abandoned or renounced any interest in any real property affected by the condition or damage.

Stay may be granted

(6) The court may grant a stay of the order referred to in subsection (5) on such notice and for such period as the court deems necessary for the purpose of enabling the monitor to assess the economic viability of complying with the order.

Costs for remedying not costs of administration

(7) Where the monitor has abandoned or renounced any interest in real property affected by the environmental condition or environmental damage, claims for costs of remedying the condition or damage shall not rank as costs of administration.

Priority of claims

(8) Any claim by Her Majesty in right of Canada or a province against a debtor company in respect of which proceedings have been commenced under this Act for costs of remedying any environmental condition or environmental damage affecting real property of the company is secured by a charge on the real property and on any other real property of the company that is contiguous thereto and that is related to the activity that caused the environmental condition or environmental damage, and the charge
(*a*) is enforceable in accordance with the law of the jurisdiction in which the real property is located, in the same way as a mortgage, hypothec or other security on real property; and
(*b*) ranks above any other claim, right or charge against the property, notwithstanding any other provision of this Act or anything in any other federal or provincial law.

Claim for clean-up costs

(9) A claim against a debtor company for costs of remedying any environmental condition or environmental damage affecting real property of the company shall be a claim under this Act, whether the condition arose or the damage occurred before or after the date on which proceedings under this Act were commenced.

1997, c. 12, s. 124; 2007, c. 36, s. 67.

Claims that may be dealt with by a compromise or arrangement

19. (1) Subject to subsection (2), the only claims that may be dealt with by a compromise or arrangement in respect of a debtor company are

(*a*) claims that relate to debts or liabilities, present or future, to which the company is subject on the earlier of

(i) the day on which proceedings commenced under this Act, and

(ii) if the company filed a notice of intention under section 50.4 of the *Bankruptcy and Insolvency Act* or commenced proceedings under this Act with the consent of inspectors referred to in section 116 of the *Bankruptcy and Insolvency Act*, the date of the initial bankruptcy event within the meaning of section 2 of that Act; and

(*b*) claims that relate to debts or liabilities, present or future, to which the company may become subject before the compromise or arrangement is sanctioned by reason of any obligation incurred by the company before the earlier of the days referred to in subparagraphs (*a*)(i) and (ii).

Exception

(2) A compromise or arrangement in respect of a debtor company may not deal with any claim that relates to any of the following debts or liabilities unless the compromise or arrangement explicitly provides for the claim's compromise and the creditor in relation to that debt has voted for the acceptance of the compromise or arrangement:

(*a*) any fine, penalty, restitution order or other order similar in nature to a fine, penalty or restitution order, imposed by a court in respect of an offence;

(*b*) any award of damages by a court in civil proceedings in respect of

(i) bodily harm intentionally inflicted, or sexual assault, or

(ii) wrongful death resulting from an act referred to in subparagraph (i);

(*c*) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in Quebec, as a trustee or an administrator of the property of others;

(*d*) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability of the company that arises from an equity claim; or

(*e*) any debt for interest owed in relation to an amount referred to in any of paragraphs (*a*) to (*d*).

R.S., 1985, c. C-36, s. 19; 1996, c. 6, s. 167; 2005, c. 47, s. 131; 2007, c. 36, s. 69.

Restriction on disposition of business assets

36. (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,
(*a*) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
(*b*) whether the monitor approved the process leading to the proposed sale or disposition;
(*c*) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
(*d*) the extent to which the creditors were consulted;
(*e*) the effects of the proposed sale or disposition on the creditors and other interested parties; and
(*f*) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that
(*a*) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
(*b*) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes
(*a*) a director or officer of the company;
(*b*) a person who has or has had, directly or indirectly, control in fact of the company; and
(*c*) a person who is related to a person described in paragraph (*a*) or (*b*).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(4)(*a*) and (5)(*a*) if the court had sanctioned the compromise or arrangement.

2005, c. 47, s. 131; 2007, c. 36, s. 78.

Bankruptcy and Insolvency Act

Definitions

2. In this Act,

"claim provable in bankruptcy", "provable claim" or "claim provable" includes any claim or liability provable in proceedings under this Act by a creditor;

Claims provable

121. (1) All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.

Contingent and unliquidated claims

(2) The determination whether a contingent or unliquidated claim is a provable claim and the valuation of such a claim shall be made in accordance with section 135.

Debts payable at a future time

(3) A creditor may prove a debt not payable at the date of the bankruptcy and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of five per cent per annum computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

Family support claims

(4) A claim in respect of a debt or liability referred to in paragraph 178(1)(*b*) or (*c*) payable under an order or agreement made before the date of the initial bankruptcy event in respect of the bankrupt and at a time when the spouse, former spouse, former common-law partner or child was living apart from the bankrupt, whether the order or agreement provides for periodic amounts or lump sum amounts, is a claim provable under this Act.

R.S., 1985, c. B-3, s. 121; 1992, c. 27, s. 50; 1997, c. 12, s. 87; 2000, c. 12, s. 14.

Trustee shall examine proof

135. (1) The trustee shall examine every proof of claim or proof of security and the grounds therefor and may require further evidence in support of the claim or security.

Determination of provable claims

(1.1) The trustee shall determine whether any contingent claim or unliquidated claim is a provable claim, and, if a provable claim, the trustee shall value it, and the claim is thereafter, subject to this section, deemed a proved claim to the amount of its valuation.

Disallowance by trustee

(2) The trustee may disallow, in whole or in part,

(*a*) any claim;

(*b*) any right to a priority under the applicable order of priority set out in this Act; or

(*c*) any security.

Notice of determination or disallowance

(3) Where the trustee makes a determination under subsection (1.1) or, pursuant to subsection (2), disallows, in whole or in part, any claim, any right to a priority or any security, the trustee shall forthwith provide, in the prescribed manner, to the person whose claim was subject to a determination under subsection (1.1) or whose claim, right to a priority or security was disallowed under subsection (2), a notice in the prescribed form setting out the reasons for the determination or disallowance.

Determination or disallowance final and conclusive

(4) A determination under subsection (1.1) or a disallowance referred to in subsection (2) is final and conclusive unless, within a thirty day period after the service of the notice referred to in subsection (3) or such further time as the court may on application made within that period allow, the person to whom the notice was provided appeals from the trustee's decision to the court in accordance with the General Rules.

Expunge or reduce a proof

(5) The court may expunge or reduce a proof of claim or a proof of security on the application of a creditor or of the debtor if the trustee declines to interfere in the matter.

R.S., 1985, c. B-3, s. 135; 1992, c. 1, s. 20, c. 27, s. 53; 1997, c. 12, s. 89.

***Environmental Protection Act*, R.S.O. 1990 c. E-19, as amended**

Purpose of Act

3. (1) The purpose of this Act is to provide for the protection and conservation of the natural environment. R.S.O. 1990, c. E.19, s. 3.

Control orders

7. (1) When the report of a provincial officer contains a finding that a contaminant discharged into the natural environment is a contaminant the use of which is prohibited by the regulations or is being discharged in contravention of section 14 or the regulations, the Director may issue a control order directed to,

(a) an **owner or previous owner** of the source of contaminant;

(b) a person **who is or was in occupation** of the source of contaminant; or

(c) a person who **has or had the charge, management or control** of the source of contaminant.

Contravention of s. 14

(1.1) No order shall be issued under subsection (1) as a result of a finding that a contaminant is being discharged in contravention of section 14 unless the contravention causes or is likely to cause an adverse effect. 2005, c. 12, s. 1 (4).

Public notice

(2) The Director shall give notice of the control order to every municipality in which the contaminant is discharged and to the public in such manner as the Director considers appropriate. R.S.O. 1990, c. E.19, s. 7.

Stop orders

8. (1) When the Director, upon reasonable and probable grounds, is of the opinion that a source of contaminant is discharging into the natural environment any contaminant that constitutes, or the amount, concentration or level of which constitutes, an immediate danger to human life, the health of any persons, or to property, the Director may issue a stop order directed to,

(a) an **owner or previous owner** of the source of contaminant;

(b) a person who **is or was in occupation** of the source of contaminant; or

(c) a person who **has or had the charge, management or control** of the source of contaminant.

Public notice

(2) The Director shall give notice of the stop order to every municipality in which the contaminant is discharged and to the public in such manner as the Director considers appropriate. R.S.O. 1990, c. E.19, s. 8.

Prohibition, discharge of contaminant

14. (1) Subject to subsection (2) but despite any other provision of this Act or the regulations, a person shall not discharge a contaminant or cause or permit the discharge of a contaminant into the natural environment, if the discharge causes or may cause an adverse effect. 2005, c. 12, s. 1 (5).

Exceptions

(2) Subsection (1) does not apply to,

(a) a discharge that is authorized under this Act or the *Ontario Water Resources Act*, if the discharge does not cause and is not likely to cause an adverse effect; or

(b) a discharge of a contaminant that arises when animal wastes are disposed of in accordance with normal farming practices, if the only adverse effect that is caused or that may be caused by the discharge is an adverse effect referred to in clause (a) of the definition of "adverse effect" in subsection 1 (1). 2005, c. 12, s. 1 (5).

Remedial orders

17. Where any person **causes or permits** the discharge of a contaminant into the natural environment, so that land, water, property, animal life, plant life, or human health or safety is injured, damaged or endangered, or is likely to be injured, damaged or endangered, the Director may order the person to,

(a) repair the injury or damage;

(b) prevent the injury or damage; or

(c) where the discharge has damaged or endangered or is likely to damage or endanger existing water supplies, provide temporary or permanent alternate water supplies. R.S.O. 1990, c. E.19, s. 17; 2005, c. 12, s. 1 (7).

Order by Director re preventive measures

18. (1) The Director, in the circumstances mentioned in subsection (2), by a written order may require a person who **owns or owned or who has or had management or control** of an undertaking or property to do any one or more of the following:

1. To have available at all times, or during such periods of time as are specified in the order, the equipment, material and personnel specified in the order at the locations specified in the order.

2. To obtain, construct and install or modify the devices, equipment and facilities specified in the order at the locations and in the manner specified in the order.

3. To implement procedures specified in the order.

4. To take all steps necessary so that procedures specified in the order will be implemented in the event that a contaminant is discharged into the natural environment from the undertaking or property.

5. To monitor and record the presence or discharge of a contaminant specified in the order and to report thereon to the Director.

6. To study and to report to the Director on,

   i. the presence or discharge of a contaminant specified in the order,

   ii. the effects of the presence or discharge of a contaminant specified in the order,

   iii. measures to control the presence or discharge of a contaminant specified in the order,

   iv. the natural environment into which a contaminant specified in the order may be discharged.

7. To develop and implement plans to,

   i. reduce the amount of a contaminant that is discharged into the natural environment,

   ii. prevent or reduce the risk of a spill of a pollutant within the meaning of Part X, or

   iii. prevent, decrease or eliminate any adverse effects that result or may result from a spill of a pollutant within the meaning of Part X or from any other discharge of a contaminant into the natural environment, including,

      A. plans to notify the Ministry, other public authorities and members of the public who may be affected by a discharge, and

B. plans to ensure that appropriate equipment, material and personnel are available to respond to a discharge.

8. To amend a plan developed under paragraph 7 or section 91.1 in the manner specified in the order. R.S.O. 1990, c. E.19, s. 18 (1); 2005, c. 12, s. 1 (8, 9).

Grounds for order

(2) The Director may make an order under this section if the Director is of the opinion, on reasonable and probable grounds, that the requirements specified in the order are necessary or advisable so as,

(a) to prevent or reduce the risk of a discharge of a contaminant into the natural environment from the undertaking or property; or

(b) to prevent, decrease or eliminate an adverse effect that may result from,

(i) the discharge of a contaminant from the undertaking, or

(ii) the presence or discharge of a contaminant in, on or under the property. 2005, c. 12, s. 1 (10).

Certificates of approval

27. (1) No person shall use, operate, establish, alter, enlarge or extend,

(a) a waste management system; or

(b) a waste disposal site,

unless a certificate of approval or provisional certificate of approval therefor has been issued by the Director and except in accordance with any conditions set out in such certificate. R.S.O. 1990, c. E.19, s. 27.

Powers of Director, certificates of approval

39. (1) The Director, after considering an application for a certificate of approval, may issue a certificate of approval or provisional certificate of approval.

Idem

(2) The Director may,

(a) refuse to issue or renew;

(b) suspend or revoke; or

(c) impose, alter or revoke terms and conditions in,

a certificate of approval or provisional certificate of approval where,

(d) the waste management system or the waste disposal site does not comply with this Act or the regulations; or

(e) the Director considers, upon probable grounds, that the use, establishment, operation, alteration, enlargement or extension of the waste management system or the waste disposal site may create a nuisance, is not in the public interest or may result in a hazard to the health or safety of any person. R.S.O. 1990, c. E.19, s. 39.

Order by Director

44. Where a waste management system or a waste disposal site is not in conformity with this Part or the regulations, the Director may order an **owner or previous owner** to take such action as is required to bring the system or the site into conformity with this Part or the regulations within the time specified in the order. R.S.O. 1990, c. E.19, s. 44.

Financial assurance

Approval or order

132. (1) The Director may include in an approval or order in respect of a works a requirement that the person to whom the approval is issued or the order is directed provide financial assurance to the Crown in right of Ontario for any one or more of,

(a) the performance of any action specified in the approval or order;

(b) the provision of temporary or permanent alternate water supplies to replace those that the Director has reasonable and probable grounds to believe are or are likely to be contaminated or otherwise interfered with by the works to which the approval or order is related; and

(c) measures appropriate to prevent adverse effects upon and following the cessation or closing of the works. R.S.O. 1990, c. E.19, s. 132 (1); 2005, c. 12, s. 1 (22).

Certificate of property use

(1.1) The Director may include in a certificate of property use a requirement that the person to whom the certificate is issued provide financial assurance to the Crown in right of Ontario for any one or more of,

(a) the performance of any action specified in the certificate of property use;

(b) the provision of temporary or permanent alternate water supplies to replace those that the Director has reasonable and probable grounds to believe are or are likely to be contaminated or otherwise interfered with by a contaminant on, in or under the property to which the certificate of property use relates; and

(c) measures appropriate to prevent adverse effects in respect of the property to which the certificate of property use relates. 2001, c. 17, s. 2 (8); 2005, c. 12, s. 1 (23).

Changes in amount of financial assurance

(2) A requirement under subsection (1) or (1.1) may provide that the financial assurance may be provided, reduced or released in stages specified in the approval, order or certificate of property use. 2001, c. 17, s. 2 (9).

Amendment of approval, order or certificate of property use

(3) The Director may amend an approval, order or certificate of property use to change a requirement as to financial assurance contained in the approval, order or certificate of property use. 2001, c. 17, s. 2 (9).

Failure to provide financial assurance

133. (1) Failure to provide financial assurance specified in an approval or in accordance with a stage specified in an approval is grounds for revocation of the approval and for an order in writing by the Director prohibiting or restricting the carrying on, operation or use of the works in respect of which the financial assurance is required. R.S.O. 1990, c. E.19, s. 133 (1).

Idem, order

(2) Failure to provide financial assurance specified in an order or in accordance with a stage specified in an order is grounds for an order in writing by the Director prohibiting or restricting the carrying on, operation or use of the works in respect of which the financial assurance is required. R.S.O. 1990, c. E.19, s. 133 (2).

Same, certificate of property use

(3) Failure to provide financial assurance specified in a certificate of property use or in accordance with a stage specified in a certificate of property use is grounds for an order in writing by the Director prohibiting or restricting the use of the property to which the certificate of property use relates. 2001, c. 17, s. 2 (10).

Return or release of financial assurance

134. (1) Upon request, part or all of the financial assurance given in respect of a works or certificate of property use may be returned or released pursuant to an order in writing by the Director. R.S.O. 1990, c. E.19, s. 134 (1); 2001, c. 17, s. 2 (11).

Grounds for order

(2) The Director may make an order mentioned in subsection (1) if satisfied that the financial assurance returned or released is not required in respect of the works or certificate of property use. R.S.O. 1990, c. E.19, s. 134 (2); 2001, c. 17, s. 2 (12).

Continuation of financial assurance

135. The Director may convert a financial assurance to cash to be held by the Crown to the same purposes as the financial assurance or otherwise realize the financial assurance unless the financial assurance is renewed at least thirty days before it would otherwise expire. R.S.O. 1990, c. E.19, s. 135.

Order for use of financial assurance

136. (1) In the circumstances set out in subsection (2), the Director by order may require the performance of environmental measures for which the Crown holds financial assurance and may require the use of the financial assurance for the performance of the environmental measures. R.S.O. 1990, c. E.19, s. 136 (1).

Basis for order

(2) The Director may make an order mentioned in subsection (1) if the Director has reasonable and probable ground to believe that any environmental measure required by the approval, order or certificate of property use in respect of which the financial assurance was given has not been or will not be carried out in accordance with the requirement. R.S.O. 1990, c. E.19, s. 136 (2); 2001, c. 17, s. 2 (13).

Parties affected

(3) An order under this section shall be directed to,

(a) the person to whom the approval, order or certificate of property use was issued or any other person who is bound by the approval, order or certificate of property use; and

(b) any person that to the knowledge of the Director has provided the financial assurance for or on behalf of a person referred to in clause (a), or any successor or assignee of a person that to the knowledge of the Director has provided the financial assurance for or on behalf of a person referred to in clause (a). 2001, c. 17, s. 2 (14).

Performance

(4) Upon the issuance of an order by the Director under subsection (1), the Crown may,

(a) use any cash;

(b) realize any bond or other form of security, and use the money derived therefrom; and

(c) enforce any agreement,

provided or obtained as the financial assurance for the performance of the environmental measures and may carry out the environmental measures. R.S.O. 1990, c. E.19, s. 136 (4).

Minister may cause things to be done

146. Where an order or decision made under this Act is stayed, the Minister may cause to be done any thing required by the order or decision. R.S.O. 1990, c. E.19, s. 146.

Director may cause things to be done

147. (1) Where an order or decision made under this Act is not stayed, the Director may cause to be done any thing required by it if,

(a) a person required by the order or decision to do the thing,

(i) has refused to comply with or is not complying with the order or decision,

(ii) is not likely, in the Director's opinion, to comply with the order or decision promptly,

(iii) is not likely, in the Director's opinion, to carry out the order or decision competently, or

(iv) requests the assistance of the Director in complying with the order or decision;

(a.1) a receiver or trustee in bankruptcy is not required to do the thing because of subsection 19 (5) or 168.20 (7); or

(b) in the Director's opinion, it would be in the public interest to do so. R.S.O. 1990, c. E.19, s. 147 (1); 2001, c. 17, s. 2 (21).

Notice of intent to cause things to be done

(2) The Director shall give notice of an intention to cause a thing to be done under subsection (1),

(a) to each person required by an order or decision made under this Act to do the thing; and

(b) if a receiver or trustee in bankruptcy is not required to do the thing because of subsection 19 (5) or 168.20 (7), to the receiver or trustee in bankruptcy. 2001, c. 17, s. 2 (22).

Idem

(3) A person who receives a notice under subsection (2) shall not do the thing referred to in the notice without the permission of the Director. R.S.O. 1990, c. E.19, s. 147 (3).

Order to pay

150. (1) The Director may issue an order to pay the costs of doing any thing caused to be done by the Minister or Director under this Act to any person required by an order or decision made under this Act to do the thing. R.S.O. 1990, c. E.19, s. 150 (1).

Idem

(2) If, after the Minister or Director causes any thing to be done under this Act, the Director ascertains the identity of a person to whom a decision or order requiring the thing to be done could have been issued under this Act, the Director may issue an order to pay the costs of doing the thing to that person. R.S.O. 1990, c. E.19, s. 150 (2).

Same

(2.1) If the Minister or Director has caused any thing to be done under this Act in circumstances where, pursuant to subsection 19 (5) or 168.20 (7) or a stay granted under Part I of the *Bankruptcy and Insolvency Act* (Canada), a receiver or trustee in bankruptcy was not required to do the thing, the Director may issue an order to the receiver or trustee in bankruptcy to pay the costs of doing the thing. 2001, c. 17, s. 2 (26).

Same

(2.2) If an order to pay the costs of doing a thing is issued under subsection (1), (2) or (2.1) to a receiver or trustee in bankruptcy, the receiver or trustee in bankruptcy is not personally liable for those costs unless the order or decision that required the thing to be done arose from the gross negligence or wilful misconduct of the receiver or trustee in bankruptcy or of a receiver representative or trustee in bankruptcy representative. 2001, c. 17, s. 2 (26).

Order to pay: contents

(3) An order under subsection (1), (2) or (2.1) to pay costs shall include,

(a) a description of things that the Minister or Director caused to be done under this Act;

(b) a detailed account of the costs incurred in doing the things; and

(c) a direction that the person to whom the order is issued pay the costs to the Minister of Finance. R.S.O. 1990, c. E.19, s. 150 (3); 2001, c. 9, Sched. G, s. 5 (22); 2001, c. 17, s. 2 (27).

Idem

(4) An order under subsection (2) to pay costs shall also include a brief statement of the circumstances giving rise to the decision to cause the things to be done. R.S.O. 1990, c. E.19, s. 150 (4).

Joint and several liability

(5) Where two or more persons are liable to pay costs pursuant to an order under subsection (1), (2) or (2.1), they are jointly and severally liable to Her Majesty in right of Ontario. 2005, c. 12, s. 1 (29).

Contribution and indemnity

(6) Where the Director is entitled to issue an order to two or more persons under subsection (1), (2) or (2.1) in respect of costs, as between themselves, in the absence of an express or implied contract, each of those persons is liable to make contribution to and indemnify the other in accordance with the following principles:

1. Where the Director is entitled to issue an order to two or more persons under subsection (1), (2) or (2.1) in respect of costs and one or more of them caused or contributed to the costs by fault or negligence, such one or more of them shall make contribution to and indemnify,

   i. where one person is found at fault or negligent, any other person to whom the Director is entitled to issue an order under subsection (1), (2) or (2.1), and

   ii. where two or more persons are found at fault or negligent, each other and any other person to whom the Director is entitled to issue an order under subsection (1), (2) or (2.1) in the degree in which each of such two or more persons caused or contributed to the costs by fault or negligence.

2. For the purpose of subparagraph 1 ii, if it is not practicable to determine the respective degrees in which the fault or negligence of two or more persons to whom the Director is entitled to issue an order under subsection (1), (2) or (2.1) caused or contributed to the costs, such two or more persons shall be deemed to be equally at fault or negligent.

3. Where no person to whom the Director is entitled to issue an order under subsection (1), (2) or (2.1) caused or contributed to the costs by fault or negligence, each of the persons to whom the Director is entitled to issue an order under subsection (1), (2) or (2.1) is liable to make contribution to and indemnify each other in such degree as is determined to be just and equitable in the circumstances. 2005, c. 12, s. 1 (29).

Enforcement of contribution

(7) The right to contribution or indemnification under subsection (6) may be enforced by action in a court of competent jurisdiction. 2005, c. 12, s. 1 (29).

Adding parties

(8) Wherever it appears that a person not already a party to an action under subsection (7) may be a person to whom the Director is entitled to issue an order under subsection (1), (2) or (2.1) in respect of the costs, the person may be added as a party defendant to the action on such terms as are considered just or may be made a third party to the action in the manner prescribed by the rules of court for adding third parties. 2005, c. 12, s. 1 (29).

Minister may cause things to be done

146. Where an order or decision made under this Act is stayed, the Minister **may** cause to be done any thing required by the order or decision. R.S.O. 1990, c. E.19, s. 146.

Director may cause things to be done

147. (1) Where an order or decision made under this Act is not stayed, the Director **may** cause to be done any thing required by it if,

(a) a person required by the order or decision to do the thing,

(i) has refused to comply with or is not complying with the order or decision,

(ii) is not likely, in the Director's opinion, to comply with the order or decision promptly,

(iii) is not likely, in the Director's opinion, to carry out the order or decision competently, or

(iv) requests the assistance of the Director in complying with the order or decision;

(a.1) a receiver or trustee in bankruptcy is not required to do the thing because of subsection 19 (5) or 168.20 (7); or

(b) in the Director's opinion, it would be in the public interest to do so. R.S.O. 1990, c. E.19, s. 147 (1); 2001, c. 17, s. 2 (21).

***Ontario Water Resources Act* R.S.O. 1990 c. O-40, as amended**

Purpose

0.1 The purpose of this Act is to provide for the conservation, protection and management of Ontario's waters and for their efficient and sustainable use, in order to promote Ontario's long-term environmental, social and economic well-being. 2007, c. 12, s. 1 (1).

Order by provincial officer: contraventions

16. (1) A provincial officer may issue an order to **any person that the provincial officer reasonably believes is contravening or has contravened**,

(a) a provision of this Act or the regulations;

(b) a provision of an order, notice, direction, requirement or report made under this Act, other than an order under section 84 or 106.1 or an order of a court; or

(c) a term or condition of a licence, permit or approval made under this Act. 1998, c. 35, s. 49; 2005, c. 12, s. 2 (5); 2009, c. 33, Sched. 15, s. 8 (4).

Information to be included in order

(2) The order shall,

(a) specify the provision, term or condition that the provincial officer believes is being or has been contravened;

(b) briefly describe the nature and, where applicable, the location of the contravention;

(b.1) in the case of a contravention of subsection 30 (1) for which an order to pay an environmental penalty could be issued, describe how the contravention may impair the quality of the water of any waters; and

(c) state that a review of the order may be requested in accordance with section 16.4. 1998, c. 35, s. 49; 2005, c. 12, s. 2 (6).

What order may require

(3) The order may require the person to whom it is directed to comply with any directions set out in the order within the time specified relating to,

(a) achieving compliance with the provision, term or condition;

(b) preventing the continuation or repetition of the contravention;

(c) the securing, whether through locks, gates, fences, security guards or other means, of any land, place or thing;

(d) the repair, maintenance or operation of water works or sewage works in such manner and with such facilities as are specified in the order;

(e) the removal of sewage or any thing contaminated by sewage;

(f) sampling, analysis or reporting with respect to the quality or quantity of any waters;

(g) where the contravention has caused damage to or endangered or is likely to cause damage to or endanger existing water supplies, providing temporary or permanent alternate water supplies;

(h) submitting a plan for achieving compliance with the provision, term or condition, including the engagement of contractors or consultants satisfactory to a provincial officer;

(i) submitting an application for an approval, licence or permit;

(j) monitoring and recording in relation to the natural environment and waters and reporting on the monitoring and recording; and

(k) posting notice of the order. 1998, c. 35, s. 49; 2005, c. 12, s. 2 (7).

Order by provincial officer re preventive measures

16.1 (1) A provincial officer who reasonably believes that it is in the public interest to do so may issue an order to any person who **owns, manages or has control of a facility**, including a sewage works or water works, that may discharge material into any water or watercourse that may impair the quality of water. 1998, c. 35, s. 49; 2009, c. 33, Sched. 15, s. 8 (5).

Information to be included in order

(2) The order shall,

(a) briefly describe the reasons for the order and the circumstances on which the reasons are based; and

(b) state that a review of the order may be requested in accordance with section 16.4. 1998, c. 35, s. 49.

What the order may require

(3) The order may require the person to whom it is directed to comply with any directions specified under subsection (4), within the time specified in the order. 1998, c. 35, s. 49.

Same

(4) The following directions may be specified in the order:

1. Any direction listed in section 32.

2. A direction to secure, by means of locks, gates, fences, security guards or other means, any land, place or thing. 1998, c. 35, s. 49.

Where order requires report

(5) Where the order requires a person to make a report, the report shall be made to a provincial officer. 1998, c. 35, s. 49.