

Toxic Real Estate In British Columbia Draft Statute For Discussion



British Columbia Pollution Prevention and Clean-up Act

by

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and

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1990

[West Coast Environmental Law Research Foundation](#)

ACKNOWLEDGMENTS

Many individuals helped in the preparation of this study. We would like to thank the following people who were consulted in the course of the research: Rod Brown, Riddell, Williams, Bullitt & Walkinshaw; Roger Cotton, Mackenzie, Stitt & Baker; Ian Dennis, Montreal Trust; Dennis Doyle, B.C. Ministry of Attorney General; Mario D. Faieta, Ontario Environmental Compensation Corporation; T.W. Foote, Environment Canada; Cameron Gray, City of Vancouver; Daniel Green, Societe pour vaincre le pollution; Lynne B. Huestis, Swinton & Co.; Morris Ilyniak, Ontario Ministry of the Environment; Anthony P. Kafun, Ontario Real Estate Foundation; Peter Kenward, Norman Rankin, and Douglas Thompson, all of McCarthy & Tetrault; Victor Krueger, Public Works Canada; Ross A. MacFarlane and Konrad J. Liegel, both of Preston, Thorgrimson, Shidler, Gates & Ellis; Graham Rempe and John Swaigen, Municipality of Metropolitan Toronto; Terry Seibold, Owen Bird; Donna S.K. Shier, Willms & Shier; Howie Thomas, Thompson McConnell; Dr. John Wiens, B.C. Ministry of Environment; Patricia Wilson, Regional Municipality of Ottawa-Carleton.

The authors are indebted to the staff at the [West Coast Environmental Law Research Foundation](#), particularly: Ann Hillyer and Calvin Sandborn, for their cogent comments and editing; the law librarians at the Vancouver Courthouse Library and the UBC Law Library for their ongoing assistance; Julienne Hills and Morgan Ashbridge for copy editing and word processing; Christine Lundberg and Catherine Ludgate for administrative support; and Patrick Roy for desk-top publishing and computer programming. Volunteer lawyers Henry Waldock and Hugh Gwillim provided useful research. We would also like to give grateful acknowledgement to Waldemar Braul, who shared responsibility for this three-part Toxic Real Estate project.

The study was funded by the [Real Estate Foundation of British Columbia](#). Special thanks are owed to Tim Pringle, Executive Director of the Real Estate Foundation, for encouragement and direction. We are also

pleased to acknowledge that the Law Foundation of British Columbia provides core funding for the [West Coast Environmental Law Research Foundation](#).

The authors take full responsibility for any errors and omissions in the material.

PREFACE

The [West Coast Environmental Law Research Foundation](#) (WCELRF) is a non-profit, charitable society devoted to legal research and education aimed at protection of the environment and promotion of public participation in environmental decision-making. It operates in conjunction with the West Coast Environmental Law Association (WCELA), which provides legal services to concerned members of the public for the same two purposes.

Since the founding of WCELA in 1974, both organizations have dealt with toxic contamination issues on innumerable occasions. The problem is not new. What is new is the widespread concern about toxic contamination among the general public, in business and in government. This concern reflects society's rapidly expanding environmental awareness, as well as a growing recognition of the potentially enormous financial costs of failing to properly handle our toxic waste. The failure to properly handle toxic waste is vividly shown at the Expo '86 site: decades of polluting industries have left a legacy of contamination which will require millions of dollars to clean up. Many other sites have also been found to be contaminated from improper disposal of hazardous substances.

WCELRF has in recent months addressed the issues of toxic contamination of land and buildings. In September 1989, WCELRF published *Toxic Real Estate in British Columbia: Identification of Issues*, the first report in a series of three. This first report identified as a major concern the general question of "who pays?" It also noted the glaring absence of legislation to comprehensively deal with the problems of historically contaminated property. It was beyond the scope of that first report to assess these issues in any depth.

The second report of the series -- *Toxic Real Estate in British Columbia: Liability* -- focuses on liability for cleaning up the toxic contamination of land and buildings. It is an educational resource for persons interested in contaminated land or buildings, or for persons who are looking for solutions to contamination problems. The *Liability* report, it is hoped, will make readers more aware of the specific steps they might take to protect themselves against liability and will allow readers to identify the parties who may be responsible for cleaning up a contamination problem.

This report -- *Toxic Real Estate in British Columbia: Draft Statute for Discussion* -- is the third of the series of three. There are two main goals of the draft statute: to promote the **prevention** of pollution in B.C., and to establish a **mechanism** to identify, assign liability for, and clean up contaminated sites in the province.

As its name states, it is a draft statute for discussion -- not a "model" statute. There are two reasons for this. First, we think that it is important that each of the many sectors which will be affected by new legislation in this area -- businesses, landowners, former landowners, realtors, contamination clean-up companies, environmentalists, residents, government agencies and others -- participate in designing a new legislative scheme. While consensus may not be possible, each of the main parties must at least have an opportunity to know what is being proposed and to make constructive suggestions for improvements that will accommodate their respective goals and concerns.

Second, each of the provisions of the draft statute represents but one of the many ways in which a particular goal could be achieved. We want to encourage suggestions for **improving** the provisions of this draft statute, rather than seeing them as being the "final word".

The B.C. government recently announced that it intends to enact legislation dealing with contaminated land problems. Such legislation has not yet been tabled, and we offer this report as a contribution toward the drafting of the forthcoming legislation. Now that we know from experience how difficult it is to draft legislation in this area, we encourage the provincial government to ensure that the statute which it tables is subject to thorough review by a legislative committee, with input from the many parties who will be affected.

The views expressed in this report are those of the authors alone.

Finally, readers are reminded that this report is educational and does not constitute legal advice. Readers concerned about liability in a particular situation are urged to seek legal advice from a lawyer.

James Russell and

William J. Andrews, Vancouver, July 1990

OVERVIEW

This report is the third of a three part series on toxic contamination of land in British Columbia. Volume One identifies the key issues involved. Volume Two discusses the main principles governing liability for contaminated land in British Columbia today. Volume Three, this report, sets out a draft statute for the prevention and clean-up of pollution in British Columbia.

Among the various parties involved in the issue of toxic contamination of land in British Columbia there is now widespread acceptance of the need for statutory law reform at the provincial level. The purpose of this draft statute is to serve as a focal point for discussion. Readers are encouraged to provide comments -- positive, negative or constructive alternatives -- to the [West Coast Environmental Law Research Foundation](#) and/or directly to the B.C. Ministry of the Environment.

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Pollution Prevention

There are two reasons why it is critically important that new legislation governing contaminated lands in B.C. address **prevention** of additional pollution. The first is simply that this is a critically important need. The current B.C. legislation focuses on setting pollution limits per unit of production. It does not, however, actively promote **reduction** of the overall amount of pollution.

The second reason for the importance of including pollution prevention measures in new legislation regarding contaminated lands is to strengthen the basis for public acceptance of the new regulatory package. The single biggest practical impediment to cleaning up contaminated lands in B.C. is the absence of local facilities for the safe handling of contaminated material. And the single biggest impediment to establishing these facilities is the concern of residents where these facilities might be sited that the facility proposal is a technological 'quick fix' aimed at allowing pollution to continue to be produced, rather than being a minor part of an overall strategy to **prevent** pollution in the province.

There are seven key aspects to the pollution prevention section of the draft statute:

- The statute requires the B.C. Ministry of Environment (the Ministry) to adopt a B.C. **pollution prevention and clean-up strategy**, following active public participation.

- The draft statute requires Cabinet to review and revise the current **pollution control objectives** and to adopt new objectives for non-point sources, incinerators and other sources of pollution not currently addressed by pollution control objectives.
- The draft statute enshrines the principle of '**polluter pays**.' It requires statutes and regulations to be revised to ensure that polluters pay for both the cost of their pollution and the cost of the government apparatus for regulating pollution (including the cost of public participation).
- The draft statute requires the Ministry to establish a **technical assistance program** to assist B.C. businesses to reduce pollution.
- The draft statute requires polluters to prepare **waste reduction plans**. Although the items to be addressed in these plans would be mandatory, the specific pollution reduction goals would be within the discretion of the polluter, as long as they do not violate government standards. The intention is to allow polluters themselves to identify ways in which they can curtail their pollution -- which has often been shown to save them money.
- The draft statute includes a streamlined version of Ontario's '**Spills Bill**.' It makes the owner and the person having care or control of a spilled pollutant absolutely liable for the costs of clean-up. It also imposes strict liability, e.g., subject to a due diligence defence, for damages suffered by third parties due to a spill. To ensure quick payments to third parties in the event of a spill, the draft statute establishes a Spills Compensation Fund to be contributed to by polluters.
- The draft statute provides **whistleblower protection** for employees who report contraventions of environmental standards to government. It also protects employees who exercise their statutory obligation not to perform work which would violate environmental standards (the '**right to refuse**').

Responsibilities and Liability

One of the key features of the reform of provincial legislation governing contaminated lands must be to clarify exactly who is responsible for paying for clean-up of contaminated sites. Under the common law, there is the possibility -- but no certainty -- that a wide variety of parties will be liable for the cost of clean-up. The United States has set the statutory trend in this area through the 'Superfund' legislation which imposes liability for clean-up of contaminated sites on a wide range of parties, including the generator of the pollutant, the transporter, the disposer and the owner of the contaminated site. The draft statute imposes liability on a similarly broad range of "responsible persons." This is somewhat tempered by exceptions for an 'innocent' past owner and for a person whose responsibilities stem from the act of a third party despite the person having exercised due diligence. See Flowchart 1 for a schematic illustration of how liability is determined under the draft statute.

The draft statute imposes liability on a ... broad range of "responsible persons."

The following are the key details:

- Responsible persons must clean up a contaminated site and restore the environment.
- Responsible persons are encouraged to propose a "remedial action agreement" which allocates liability among them. It becomes a binding agreement when it is approved by a manager, likely at the same time as he or she approves a permit for a remedial action at the site.

Responsible persons are encouraged to propose a "remedial action agreement" which allocates liability among them.

- Responsible persons may be granted minor contributor status and ordered to contribute a limited amount toward the cost of a remedial action.
- Subject to a remedial action agreement, responsible persons except minor contributors are absolutely liable, jointly and severally, for the costs of remedial action at the site. And they are strictly liable for damages due to the contamination.

Identification of Contaminated Sites

Currently in B.C. there is no centralized information on contaminated sites in the province. The draft statute establishes a contaminated sites registry, a combination of computerized and 'hard copy' information on contaminated sites and remedial actions.

The draft statute addresses the lack of a systematic method for identifying contaminated sites in the province by instituting a province-wide reporting requirement. People with knowledge of contaminated sites are required to report specific information to the Ministry of Environment. The Ministry is then required -- subject to certain exceptions -- to conduct an inspection and assessment of the site to determine whether it is contaminated and, if so, what remedial action, if any, should be taken. See Flowcharts 2 and 3. Remedial action is defined to include the following:

- a site hazard report, to be done by a responsible person, to determine in detail the characteristics of the site and the advisability of particular follow-up steps;
- an emergency clean-up;
- a routine clean-up, where the type of clean-up required is straightforward and the Ministry has had experience with it;
- a minor clean-up, where the scale of the clean-up is minor but the methods to be used are not commonplace;
- a major clean-up, in which case an environmental assessment would be required;
- environmental restoration, meaning removal of the effect of pollution and, where that is not possible, provision of compensation in the form of restoration of another area or creation of a trust fund for pollution research; and
- monitoring.

The draft statute provides that one of the triggers for a Ministry site inspection and assessment is a simple request from any person. This would allow a municipality to require a person seeking municipal approval regarding land which may be contaminated to request a site inspection and assessment by the Ministry. Thus, the site would be properly assessed and remedial action, if necessary, would be undertaken prior to development or redevelopment of the land. In addition, changes to B.C. municipal legislation are necessary in order to clarify the powers and responsibilities of municipalities to deal with contaminated land. But these are beyond the scope of this draft statute.

Clean-up

The draft statute provides that a person is a responsible person where that person meets the criteria, and thus the responsibility to initiate or help pay for a clean-up exists without the need for an initiative by the government. However, the draft statute provides that before a person can be ordered to take a remedial action, the Ministry shall go through a fair procedure to identify and **designate** responsible persons in relation to the site. See Flowchart 4. An appeal to the Environmental Appeal Board would be available.

The draft statute provides that ... the responsibility to initiate or help pay for a clean-up exists without the need for an initiative by the government.

The draft statute establishes a Crown corporation to conduct remedial actions where there is no responsible person willing or able to do so. The Crown corporation will also conduct remedial actions where the Crown itself is a responsible person.

Where a remedial action is necessary, the draft statute provides that the Ministry will name a "lead party" to take charge of the clean-up. The Ministry will also name "supporting parties" -- volunteers or designated responsible persons who are required to contribute financially or otherwise to the remedial action. See Flowchart 5, regarding approval of remedial actions.

One key question is the extent to which new legislation for contaminated lands should regulate the **conduct** of clean-up actions. On the one hand, improperly conducted clean-ups can cover up or even exacerbate a contamination problem. On the other hand, overly stringent regulation could discourage persons from initiating clean-ups. The draft statute attempts to strike a balance. It provides that, in general, a person must have a permit from the Ministry or be ordered by the Ministry before conducting a remedial action. However, it also provides exceptions for emergency clean-ups and routine clean-ups.

The draft statute provides that a person conducting a remedial action must obtain a certificate of completion before the person's responsibilities are discharged. The decision regarding whether to grant the certificate will be based on the clean-up standards set by regulation. The certificate of completion would normally be conditional upon successful follow-up monitoring reports. Unsatisfactory monitoring reports would trigger a Ministry site assessment which could, if necessary, lead to further remedial action and revocation of the certificate of completion.

Public Participation

...it is essential that there be full opportunities for public participation in decision-making regarding solutions to the contaminated land problems in British Columbia.

As mentioned above, it is essential that there be full opportunities for public participation in decision-making regarding solutions to the contaminated land problems in British Columbia. The challenge is to provide enough certainty so that everyone knows the basic 'rules of the game', while at the time incorporating enough flexibility that remedial actions are not encumbered by procedures that are more elaborate than the degree of public concern warrants. The draft statute provides as follows:

- Key steps, such as proposed regulations, an application for a permit for a remedial action, or the intention of the Ministry to order a remedial action (other than an emergency clean-up or a routine clean-up), are subject to public notice and an opportunity for public comment.
- The lead party or any member of the public can propose a public participation plan regarding decision-making under the Act.
- In the event of a dispute, a public participation plan will be approved by a Public Participation Committee.
- The Committee will also have the authority to grant funding to members of the public to allow them to participate effectively in decision-making processes. Persons ordered or permitted to conduct remedial actions would pay levies or fees that would cover the costs of this funding as well as other aspects of the regulatory system.

Persons ordered or permitted to conduct remedial actions would pay levies or fees that would cover the costs of (public participation) funding as well as other aspects of the regulatory system.

- The Committee's decision will be final, but decisions of the Ministry will be appealable to the Environmental Appeal Board.

See Flowchart 6, regarding public participation plans and funding.

The draft statute also provides for the formation of a Remedial Action Advisory Council, a permanent body with balanced representation to provide advice to the Minister of Environment. One of the key issues on which this council would advise is the standards used to determine the point at which a clean-up is complete. The draft statute provides that these would be set by regulation. Public participation in the formulation of these clean-up standards is a critical element of their ultimate acceptance. The draft statute provides that the council would hold public hearings on draft clean-up standards and that there would be an opportunity for public comment on revised draft clean-up standards prior to their adoption as regulations.

The draft statute provides that the (Remedial Action Advisory Council) would hold public hearings on draft clean-up standards...

Enforcement

One of the weaknesses of the current legislation in B.C. is that the authority of the Ministry of Environment to order a person to conduct a clean-up or a contaminated site may or may not exist where the person's responsibility for the problem pre-dates 1977. The draft statute would resolve this uncertainty by providing managers within the Ministry the authority to order designated responsible persons to conduct remedial actions regardless of the time of the circumstances which gave rise to the persons' liability. The draft statute also includes more flexible authority for a manager to order the owner or occupier of a contaminated site or the owner or a person having care or control of a pollutant to conduct an emergency clean-up, without having first designated the person as a responsible person.

The draft statute widens the public role in enforcement of the Act by providing that any person -- not just the Minister, as in the *Waste Management Act* -- may seek an injunction in the Supreme Court against a person contravening the Act. The draft statute would also allow any person to bring an action in Supreme Court to compel the Ministry to comply with any mandatory provision of the Act. In addition, the draft statute strengthens the powers of officers to enter works or land, and provides that a manager may order -- subject to an appeal to the Environmental Appeal Board -- a landowner to provide access to a person authorized to carry out a remedial action.

Miscellaneous

In miscellaneous provisions, the Act requires the Minister to submit annual reports to the Legislature, it establishes a Crown corporation and it allows Cabinet to make regulations for, among other things, the following key purposes:

- establishing regional Citizens' Advisory Councils;
- setting requirements for public participation funding;
- establishing requirements for the conduct of remedial actions of particular types, such as site hazard assessments, which are not currently subject to standardized procedures;
- linking the information in the contaminated sites registry to the Land Title Office;
- requiring a person who moves material from a contaminated site to another location to provide the relevant details for the contaminated sites registry; and
- establishing systems for registering and for certifying experts regarding remedial actions.

...the Act...allows Cabinet to make regulations for...establishing systems for registering and for certifying experts regarding remedial actions.

Conclusion

There are three main themes that underlay this draft statute. The first is the need to take active steps to **prevent** on-going pollution at the same time as we are moving to identify and clean up existing contaminated land. The second is the importance of assigning liability and responsibility for cleaning up past and future pollution, to clarify the common law and to ensure that pollution of the environment is no longer treated as a 'free' method of waste 'disposal.' And the third is the need for fair, flexible procedures for incorporating public participation into decision-making regarding contaminated land. This draft statute is not intended to be the 'last word' on how to weave these themes into the law of British Columbia. Its purpose is to provide a detailed basis for discussion regarding legislative action in this critically important area.

SECTION 2 - FLOWCHARTS

Please consult the printed original of this document for the flowcharts

BRITISH COLUMBIA

POLLUTION PREVENTION AND CLEAN-UP ACT

DRAFT STATUTE FOR DISCUSSION

Contents

PART 1

Purpose and Interpretation

1. Purpose
2. Interpretation
3. Binding on Crown
4. No effect on other relief

PART 2

Prevention

5. Pollution strategy
6. Pollution control objectives
7. Non-point sources
8. Polluter pays
9. Technical assistance
10. Waste reduction plans
11. Spills
12. Spills compensation fund
13. Employee protection

PART 3

Responsibilities and Liability

14. Responsible persons
15. Responsibilities and liability
16. Proposed remedial action agreement
17. Remedial action agreement

PART 4

Identification

18. Contaminated sites registry
19. Reporting contaminated sites
20. Site reporting program
21. Ministry inspection
22. Ministry site assessment
23. Amalgamation or division

PART 5

Clean-up

24. Choices of remedial actions
25. Emergency clean-up
26. Routine clean-up
27. Reports of emergency or routine clean-up
28. Major clean-up
29. Site hazard report
30. Designating responsible persons
31. Lead party
32. Supporting parties
33. Minor contributor
34. Application for permit

35. Remedial action permit

36. Certificate of completion

37. Standards for clean-ups

PART 6

Public Participation

38. Public participation plan

39. Advisory council

40. Public participation committee

41. Appeals

PART 7

Enforcement

42. Remedial action order

43. Emergency clean-up order

44. Restraining order

45. Entry powers

46. Entry for remedial action

47. Search warrants

48. Assistance

49. Offences and penalties

50. Civil action to compel ministry to act

PART 8

Miscellaneous

51. Annual reports

52. Crown corporation

53. Regulations

54. Retrospectivity

55. Commencement

PART 1

Purpose and Interpretation

PURPOSE

1. The purpose of this Act is to

- (a) prevent pollution,
- (b) effect the identification and clean-up of contaminated sites in British Columbia, and
- (c) allow full opportunities for public participation in decision-making under this Act.

INTERPRETATION

2. (1) In this Act

- ``appeal board" means the Environmental Appeal Board established under the *Environment Management Act*;
- ``certificate of completion" means a certificate issued under section 36;
- ``clean up" means to perform a remedial action or actions in relation to a contaminated site and to obtain a certificate of completion regarding the action or actions;
- ``contaminated site" means any area or object where a polluting substance has been deposited, stored, disposed of, placed, or otherwise come to be located and a release has occurred or is threatened, including but not limited to land, water, structures, buildings, installations, equipment, impoundments, ditches, pits, landfills, storage containers, motor vehicles, rolling stock, vessels, aircraft, pipe or pipeline including any pipe into a sewer or publicly owned treatment works;
- ``contaminated sites registry" means the registry established by section 18 of this Act;
- ``Crown corporation" means the corporation formed by section 52 to conduct remedial actions;
- ``designated responsible person" means a person who has been designated under section 30;
- ``director" means director as defined in the *Waste Management Act*;
- ``effluent" means effluent as defined in the *Waste Management Act*;
- ``emergency clean-up" means a clean-up where immediate remedial action is warranted in order to reduce the risk of harm or possible harm to the environment or human health;
- ``environment" means environment as defined in the *Waste Management Act*;
- ``environmental restoration" with respect to an area means

(a) restoration of the environment of the area to remove the effect of pollution, and

(b) where the effect of pollution cannot be completely removed, provision of adequate compensation in the form of environmental restoration of another area or payment of monies into a trust for the purpose of research into the prevention, identification or clean-up of pollution;

- ``full hearing" means an oral, public hearing;
- ``lead party" means a person or persons determined under section 31 to be the lead party for conducting a remedial action;

- ``major clean-up" means a major clean-up described in section 24;
- ``major project review process" means the environmental impact assessment process by that name promulgated by the ministry;
- ``manager" means a manager as defined in the *Waste Management Act*;
- ``minister" means the minister of environment;
- ``ministry" means the ministry of environment;
- ``ministry site assessment" means an assessment under section 22;
- ``ministry site inspection" means an inspection under section 21;
- ``minor clean-up" means a minor clean-up described in section 24;
- ``minor contributor" means a responsible person named under section 33 to be a minor contributor in relation to a contaminated site;
- ``monitoring" means monitoring described in section 24;
- ``non-point source" means a source of pollution that is characterized by a large number of small sources of pollution of a particular type, including but not limited to vehicle emissions, urban stormwater runoff, leachate, dredging, woodstoves, fireplaces, logging, roadbuilding and contaminated sites;
- ``officer" means officer as defined in the *Waste Management Act*;
- ``opportunity for public comment" means an adequate opportunity for members of the public to comment within a reasonable period of time set by the ministry or prescribed by regulation;
- ``order" means an order made under sections 42 or 43 ;
- ``owner or operator" means any person who has or at any time had

(a) an ownership, leasehold or tenancy interest in a contaminated site,

(b) control of the operation or management of a contaminated site, or

(c) an ownership interest in, or control of the operation or management of, an activity that led to the creation of a contaminated site;

- ``permit" means a permit issued under section 35;
- ``person" includes a municipality, a regional district, an improvement district, an Indian band, the Crown corporation, the government of British Columbia, and the government of Canada;
- ``polluter" means a person who causes pollution;
- ``pollution" means pollution as defined in the *Waste Management Act*;
- ``pollution control objectives" means objectives adopted under the former *Pollution Control Act*, the *Waste Management Act* or sections 6 or 7 of this Act;
- ``polluting substance" means a substance capable of causing pollution;
- ``potentially affected vicinity" means the area surrounding the location of a remedial action within which any residents or owners of land are or reasonably consider themselves potentially affected by the remedial action;
- ``proposed remedial action agreement" means a proposed agreement described in section 16;
- ``public notice" means, at a minimum, reasonable notice of an action or a proposed action under this Act

(a) delivered to all responsible persons in relation to the contaminated site,

(b) delivered to owners and occupiers of all land which borders the contaminated site or the location of a remedial action,

(c) delivered to all persons who have made a request of the ministry to receive such notice,

(d) delivered to all news media which service the potentially affected vicinity,

(e) published in the newspaper which has the largest circulation within the potentially affected vicinity, and

(f) given according to regulations or the terms of a permit or order under this Act;

- "public participation funding" means funding provided by the public participation committee under section 40;
- "public participation committee" means the committee established under section 40;
- "public participation plan" means a plan described in section 38;
- "release" means any intentional or unintentional entry of any polluting substance or container of polluting substances into the environment;
- "remedial action" means any action or expenditure in relation to a contaminated site to identify, reduce or eliminate any hazard or potential hazard posed by a polluting substance to the environment or human health, including but not limited to an emergency clean-up, a routine clean-up, a minor clean-up, a major clean-up, a site hazard report, environmental restoration and monitoring;
- "remedial action advisory council" means the council established by section 39;
- "remedial action agreement" means an agreement described in section 17;
- "responsible person" means any person described in section 14 of this Act;
- "routine clean-up" means a clean-up of a type prescribed under section 26;
- "site hazard report" means a report described in section 29;
- "spill" means an unauthorized release;
- "spills compensation fund" means the fund established under section 12;
- "supporting party" means a person determined under section 32 to be a supporting party in relation to a remedial action;
- "threatened release" means a situation where, if no preventative action were taken, there is a significant possibility that a release would occur at some time in the future;
- "waste reduction plan" means a plan adopted under section 10.

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

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

BINDING ON CROWN

3. (1) This Act is binding on the Crown, its agents or assigns.

(2) "Crown" includes both the government of British Columbia and the government of Canada.

NO EFFECT ON OTHER RELIEF

4. (1) Nothing in this Act limits or modifies the right of any person, except a party to a remedial action agreement, to the extent of that agreement 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 a release or threatened release of a polluting substance.

(2) Nothing in the Act relieves a person from duties imposed by other legislation or the common law.

(3) Compliance with this Act and the regulations does not constitute a defence to a proceeding to enforce standards imposed under federal, municipal or other provincial legislation.

PART 2

Prevention

POLLUTION STRATEGY

5. (1) The minister shall adopt a British Columbia pollution prevention and clean-up strategy to

- (a) identify and clean up existing pollution in the Province, and
- (b) prevent future pollution.

(2) The British Columbia pollution prevention and clean-up strategy shall incorporate the following principles:

(a) polluting substances shall be dealt with in accordance with the following approaches, in order of priority:

- (i) elimination or reduction of the amount of polluting substances produced or used;
 - (ii) reuse of polluting substances;
 - (iii) recycling of polluting substances; and
 - (iv) recovery of energy or other useful properties from polluting substances, where that is done without causing significant pollution;
- (b) pollution shall be dealt with according to the precautionary principle that the goal shall be to eliminate the release of a substance into the environment unless it has been shown to be safe rather than to allow release of a substance until it is proven harmful;
- (c) public participation and open access to information shall be integral to all aspects of the strategy; and
- (d) a polluter shall pay for all the costs, including the environmental and social costs, of the pollution caused by the polluter.

(3) The strategy shall be adopted following public notice, an opportunity for public comment and a full hearing in one or more locations on a draft version of the strategy.

(4) The strategy shall bind the government of British Columbia in its development, implementation and evaluation of measures to prevent, identify and clean up pollution in the province.

POLLUTION CONTROL OBJECTIVES

6. (1) The ministry shall review and the Lieutenant Governor in Council shall make regulations revising the pollution control objectives and the minimum requirements adopted under the former *Pollution Control Act*.

(2) The Lieutenant Governor in Council shall make regulations adopting pollution control objectives for incinerators of various types and other sources of pollution.

(3) Pollution control objectives for a particular sector shall be adopted under this or the following section following public notice, an opportunity for public comment and a full hearing regarding draft pollution control objectives for the particular sector.

NON-POINT SOURCES

7. (1) The Lieutenant Governor in Council shall make regulations adopting pollution control objectives for non-point sources of pollution.

(2) The Lieutenant Governor in Council shall make regulations to control pollution from non-point sources.

(3) Without limiting subsection (2), the Lieutenant Governor in Council may make regulations imposing a fee on a person who contributes to or conducts an activity that contributes to non-point source pollution, which fee may vary depending on whether the person or the operation of the person meets criteria specified in the regulation.

POLLUTER PAYS

8. (1) The Lieutenant Governor in Council shall revise or adopt new regulations, and introduce legislation to revise or enact new statutes, to ensure that

(a) those whose activities are regulated to prevent or reduce damage to the environment pay fees which in total are equivalent to the cost of that regulatory system,

(b) the amount of fees described in paragraph (a) decline as the impact of the activity on the environment is reduced, and

(c) those whose activities have an impact on the environment pay to the relevant private or public persons amounts commensurate with all damages caused by those activities, including but not limited to the cost of environmental restoration.

(2) Subsection (1) applies to regulations under this Act.

(3) Without limiting subsection (1), the Lieutenant Governor in Council shall make regulations

(a) to require a proponent of an initiative to pay a fee commensurate with the cost of review including the cost of public participation in the review under the Major Project Review Process, the Energy Development Review Process, the Mine Development Review Process, the Linear Development Review Process, the Crown Land Disposition Review Process, or any other provincial or joint federal-provincial process for reviewing the impact of an initiative on, among other things, the environment,

(b) to amend existing fees or to impose new fees to reflect

(i) approximate costs of administration, including enforcement, appeals and public participation, and

(ii) damages to the environment with respect to

(A) waste discharge permits and approvals under the *Waste Management Act*,

(B) pesticide use permits under the *Pesticide Control Act*,

- (C) registration of generators of special waste under the Special Waste Regulation,
 - (D) shipment manifests under the *Transport of Dangerous Goods Act*,
 - (E) timber cutting and road building permits under the *Forest Act*,
 - (F) exploration, road building and mine development under the *Mines Act* and the *Mineral Tenure Act*, and
 - (G) other activities permitted or approved under British Columbia legislation where such activities have an adverse effect on the environment, and
- (c) to impose requirements on persons whose activities may cause a significant impact on the environment to provide a bond or other financial security to the minister and to set the terms and conditions under which such security will be forfeited to cover the cost of all damages, clean-up, remediation, or activities intended to prevent future pollution incidents.

TECHNICAL ASSISTANCE

- 9.** (1) The ministry shall establish a program to provide technical assistance to persons in British Columbia to minimize their production of polluting wastes.
- (2) The cost of the program established under subsection (1) shall be included in the cost of administration under section 8.

WASTE REDUCTION PLANS

- 10.** (1) This section applies to
- (a) anyone who holds a permit or approval or is authorized to conduct an activity that may cause pollution under this Act, the *Waste Management Act*, the *Pesticide Control Act*, the *Transport of Dangerous Goods Act*, the *Forest Act*, the *Mines Act*, the *Mineral Tenure Act* or any other current or future Act which authorizes pollution, and
 - (b) anyone who conducts an activity that meets criteria established by the ministry.
- (2) Persons to which this section applies shall submit a waste reduction plan and follow-up reports to the ministry, within time limits set by the ministry.
- (3) The ministry shall establish requirements for waste reduction plans and follow-up reports made under this section, including, where appropriate, different requirements for large and small operations.
- (4) Pollution reduction goals set out in a waste reduction plan shall be within the discretion of the person submitting the plan, except that all aspects of a plan must conform with the laws of British Columbia and Canada.
- (5) The ministry and a person submitting a waste reduction plan or follow-up report shall make a copy of such a plan or report available to anyone upon request.

SPILLS

11. (1) The owner and the person having care or control of a pollutant shall do everything practicable to prevent, eliminate, and ameliorate the adverse effects of a spill of a pollutant, and to restore the natural environment as quickly as possible.

(2) The owner and the person having care or control of a spilled pollutant are absolutely liable to persons who

(a) incur expenses to prevent, eliminate or ameliorate the adverse effects of the spill and to restore the natural environment, or

(b) suffer loss or damage due to the failure of the owner or controller to carry out a duty imposed under this section.

(3) The owner and the person having care or control of a spilled pollutant are strictly liable to persons who suffer loss or damage including loss of income, incurred as a result of a spill, other than expenses, loss or damage described in subsection (2).

SPILLS COMPENSATION FUND

12. (1) The minister shall establish a fund to be known as the spills compensation fund.

(2) The object of the spills compensation fund is to provide money for expeditious compensation payments to third parties who incur expenses or suffer loss or damages including loss of income, up to prescribed amounts, due to a spill or the failure of a person to carry out a duty imposed under the Act.

(3) The Lieutenant Governor in Council shall make regulations requiring classes of persons to pay a contribution to the spills compensation fund.

(4) Money collected or received for the purpose of the spills compensation fund shall be paid into the spills compensation fund.

(5) The Lieutenant Governor in Council shall make regulations prescribing the criteria under which a person may receive compensation from the spills compensation fund.

(6) Money shall be paid out of the spills compensation fund to applicants who meet the prescribed criteria.

(7) An amount paid out of the spills compensation fund is a debt due to the government recoverable by action in the Supreme Court from the owner or the person having care or control of the pollutant where

(a) the amount is compensation for expenses, loss or damage described in subsection 11(2), or

(b) the amount is compensation for loss or damage described in subsection 11(3) and the owner or person having care or control of the pollutant failed to take all reasonable care to prevent the loss or damage.

(8) Money recovered pursuant to subsection (7) shall be paid into the spills compensation fund and may be expended for the purposes of the spills compensation fund.

EMPLOYEE PROTECTION

13. (1) No employer shall dismiss, discipline, penalize, coerce or intimidate an employee who complies with, seeks enforcement of or provides information to the government of British Columbia or the government of Canada regarding compliance or non-compliance with laws or standards imposed under

laws of British Columbia or Canada for the protection of, among other things, the environment or human health.

(2) A person complaining of a contravention of subsection (1) may file the complaint in writing with the Director of Employment Standards appointed under the *Employment Standards Act*, or where the employment of the person is covered by a collective agreement the person may file a complaint in writing with the Industrial Relations Council established under the *Industrial Relations Act*.

(3) The Director of Employment Standards or the Industrial Relations Council shall inquire into a complaint filed under this section and may where satisfied that an employer has contravened subsection (1) order the employer to

(a) cease doing or to rectify the act or acts complained of,

(b) reinstate the complainant in employment, with payment of compensation and reasonable punitive damages,

(c) compensate the complainant in lieu of reinstatement for loss of earnings or other employment benefits, in an amount that may be assessed by the Director of Employment Standards or the Industrial Relations Council against the employer, or

(d) do or refrain from doing whatever the Director of Employment Standards or the Industrial Relations Council considers just and reasonable under the circumstances.

(4) An order under subsection (3) may be enforced in the manner set out in the *Employment Standards Act* for the enforcement of orders of the Director of Employment Standards or in the *Industrial Relations Act* for the enforcement of orders of the Industrial Relations Council as the case may be.

(5) An order under subsection (3) applies notwithstanding the terms of a collective agreement or contract of employment.

(6) Subsection 83(3) of the *Industrial Relations Act* is amended to add after the words, "An act or omission by a trade union or by the employees shall not constitute a strike where (a) it is required for the safety or health of these employees," the words, "or for the purpose of complying with laws or standards imposed under the laws of British Columbia and Canada for the protection of, among other things, the environment or human health."

PART 3

Responsibilities and Liability

RESPONSIBLE PERSONS

14. (1) Except as provided in this section, the following persons are responsible persons with respect to a contaminated site:

(a) any person who owned or operated the contaminated site during or after the occurrence of the contamination;

(b) any person who generated the polluting substance that came to be located at the contaminated site;

(c) any person who

- (i) owned or possessed a polluting substance that came to be located at the contaminated site, and
- (ii) arranged for disposal or treatment or for transport for disposal or treatment of the polluting substance;

(d) any person who accepted any polluting substance for transport to the site where

- (i) the site was selected by the person, or
- (ii) the person had reasonable grounds to suspect that the receipt of the substance at the site was unlawful; and

(e) any person who sold a polluting substance where

- (i) the substance was used or disposed of according to any applicable instructions, and
- (ii) the use or disposal of the substance contributed to the contamination of the site.

(2) A past owner or operator is not a responsible person with respect to a contaminated site where he or she can establish on a balance of probabilities that

(a) at the time the person became the owner or operator of the site

- (i) the site was contaminated,
- (ii) the person had no knowledge or reason to know or suspect that the site was contaminated, and

(iii) the person undertook all appropriate inquiries into the previous ownership and uses of the property, consistent with good commercial or customary practice in an effort to minimize potential liability,

(b) where the person discovered while he or she was an owner of the site that the site was contaminated, that the person did not transfer his or her interest in the site without first disclosing the fact of contamination to the transferee, and

(c) the person did not, by any act or omission, cause or contribute to the accumulation, release or threatened release of a polluting substance at the site.

(3) A person or a court interpreting subsection (2) shall take into account

- (a) any specialized knowledge or experience on the part of the person,
- (b) the relationship of the purchase price paid by the person to the value of the property if uncontaminated,
- (c) commonly known or reasonably ascertainable information about the property, and
- (d) the likelihood of detecting such contamination by appropriate inspection.

(4) A person is not a responsible person with respect to a contaminated site where he or she can establish on a balance of probabilities that

(a) the release or threatened release of the polluting substances for which the person would otherwise be responsible was caused solely by an act or omission of a third party including a trespasser, other than

(i) an employee or agent of the person asserting the defence, or

(ii) any person whose act or omission occurred in connection with a contractual relationship existing, directly or indirectly, with the person asserting this defence to liability, and

(b) he or she took all reasonable care with respect to the polluting substance, the foreseeable acts or omissions of the third party, and the foreseeable consequences of those acts or omissions.

RESPONSIBILITIES AND LIABILITY

15. (1) A responsible person in relation to a contaminated site has a duty to

(a) clean up the site, and

(b) restore all environmental damage caused directly or indirectly by the contamination of the site.

(2) Subject to a remedial action agreement, a responsible person with respect to a contaminated site, except for a minor contributor,

(a) is absolutely liable, jointly and severally, to any person who

(i) pursuant to this Act, incurs any of the costs of remedial action referred to in subsection (1), or

(ii) suffers loss or damage due to the failure of the responsible person to carry out a duty imposed under this section, and

(b) is strictly liable, jointly and severally, to any person who has suffered loss or damages including loss of income caused directly or indirectly by the contaminated site, other than expenses, loss or damage described in paragraph (a).

PROPOSED REMEDIAL ACTION AGREEMENT

16. (1) Responsible persons in relation to a contaminated site and others including those who have suffered injury or damages due to a contaminated site may form a proposed remedial action agreement among themselves.

(2) The purpose of a proposed remedial action agreement is to set out the proposed respective responsibilities and rights of the parties to the agreement, regarding current or future remedial action in relation to a contaminated site, including but not limited to the identity, rights and responsibilities of

(a) the lead party,

(b) supporting parties, and

(c) beneficiaries of the remedial action.

(3) Persons intending to form a proposed remedial action agreement shall incorporate public involvement in the development of the proposed agreement at the earliest possible opportunity.

(4) The parties to a proposed remedial action agreement may amend the proposed remedial action agreement following comments from members of the public or the ministry.

REMEDIAL ACTION AGREEMENT

17. (1) The parties to a proposed remedial action agreement may apply in writing to a manager for approval of the agreement.

(2) After receiving an application and following public notice and an opportunity for public comment, a manager may approve the proposed remedial action agreement, in which case it becomes a remedial action agreement.

(3) A remedial action agreement is binding on the parties to the agreement and may be enforced by a party to the agreement, a beneficiary of the agreement or any other person in an action in the Supreme Court.

(4) A remedial action agreement may include a provision which allows a court or an arbitrator on application by a party to the agreement, a beneficiary of the agreement or any other person to vary or interpret the agreement if factors not known at the time of the agreement are discovered which significantly affect the equities between the parties to and beneficiaries of the agreement.

(5) A court or an arbitrator under subsection (4) shall be guided by the purpose of the Act and the principles in section 5 and shall not vary or interpret a remedial action agreement so as to purport to authorize conduct that would be contrary to the Act or regulations under it.

PART 4

Identification

CONTAMINATED SITES REGISTRY

18. (1) The ministry shall establish a contaminated sites registry to record documents and information in relation to contaminated sites and suspected contaminated sites.

(2) The ministry shall enter in the contaminated sites registry

(a) any document or report made pursuant to this Act in relation to a contaminated site or suspected contaminated site,

(b) a copy of any public notices issued under this Act,

(c) a copy of any written comment submitted to the ministry with respect to a remedial action or a proposed remedial action,

(d) decisions, determinations, designations, or approvals made by the ministry or the appeal board under this Act, and

(e) decisions made by a court in relation to matters governed by this Act.

(3) The contaminated sites registry shall consist of a combination of physical and electronic records, and shall utilize geographic information systems technology.

(4) Where anyone is required to submit information to the ministry which is to be entered in the contaminated sites registry, the ministry may also require the person to submit the information in an electronic format suitable for storage in the electronic portion of the contaminated sites registry.

(5) Any person has a right to reasonable access to the contaminated sites registry, including on-line access to the electronic portion of the contaminated sites registry.

REPORTING CONTAMINATED SITES

19. (1) Subject to subsection (3), any person who knows or has reason to suspect that a site may be a contaminated site shall report the information described in subsection (2) to the ministry within 6 months of this Act coming into force, or where such information is discovered after the coming into force of this Act, within 30 days of discovery.

(2) The report required by subsection (1) shall include

(a) information in the possession of the person regarding

(i) the description and location of the site,

(ii) previous uses of the site,

(iii) the location, nature and amounts of any polluting substances located on the site,

(iv) the circumstances of any releases of polluting substances and their discovery,

(v) any remedial action planned, under way or completed in relation to the site, and

(vi) any other relevant information, and

(b) other information specified by regulation.

(3) The reporting requirement in this section does not apply to sites that are contaminated only by one or more of the following:

(a) the application of pesticides and fertilizers for their intended purposes and according to label instructions;

(b) the lawful and non-negligent use of a polluting substance for personal or domestic purposes;

(c) a release in accordance with a statute that authorizes the release;

(d) a release previously reported to the ministry; and

(e) a release to a facility lawfully permitted to accept the substance released.

(4) An exemption from reporting under subsection (3) does not imply a release from liability under this or any other Act, or the common law.

(5) Nothing in this section shall eliminate or alter any obligation to report under other provincial or federal statutes or the common law.

SITE REPORTING PROGRAM

20. The ministry shall establish a program to identify sites that are or may be contaminated and to encourage all persons to comply with the reporting requirements of this Act.

MINISTRY INSPECTION

21. (1) Subject to subsection (3) the ministry shall conduct an inspection of a site within 90 days or as soon as weather permits after receiving

- (a) a report under section 19 that a site may be a contaminated site,
- (b) a request that the ministry conduct an inspection of a site,
- (c) a report of an emergency clean-up or a routine clean-up under section 27, or
- (d) an application for a certificate of completion.

(2) The ministry shall conduct an assessment of a site on its own initiative where a manager has reason to suspect that the site may be a contaminated site.

(3) The ministry shall not conduct an inspection of a site where

(a) the ministry has conducted an inspection of the site subsequent to the occurrence of any relevant matters raised in the report and a manager believes on reasonable grounds that a further inspection is not warranted, or

(b) in the opinion of a manager the request or the report is frivolous or vexatious.

(4) The purpose of an inspection under this section is to ascertain adequate information

(a) to determine the most appropriate follow-up action, and

(b) if follow-up action is required, to identify responsible persons in relation to the site.

MINISTRY SITE ASSESSMENT

22. (1) The ministry shall conduct an assessment of a site upon

(a) completion of a site inspection,

(b) receipt of a site hazard report, or

(c) receipt of an unsatisfactory monitoring report under sections 24 or 36 indicating contamination not previously addressed in a site assessment.

(2) The ministry shall conduct an assessment of a site on its own initiative where a manager has reason to suspect that the site may be a contaminated site.

(3) During a site assessment, the ministry shall determine whether the site is a contaminated site.

(4) Where the ministry determines that an area is a contaminated site it shall determine whether

(a) remedial action is required, or

(b) no remedial action is warranted, based on the standards prescribed under section 37.

(5) Where the ministry determines that remedial action is required it shall determine which one or more of the following remedial actions are required:

(a) an emergency clean-up;

(b) a routine clean-up;

(c) a minor clean-up;

(d) a major clean-up;

(e) a site hazard report;

(f) environmental restoration; or

(g) site monitoring.

(6) Where the ministry conducts a site assessment following an unsatisfactory result obtained from a monitoring program required to be conducted as a condition of a certificate of completion, the ministry may revoke the certificate of completion.

(7) When the ministry completes a site assessment it shall send a copy of its report to

(a) any person whose report or request led to the assessment,

(b) any person whom the ministry believes is or may be a responsible person in relation to a contaminated site identified in the assessment, and

(c) any person who has requested a copy.

AMALGAMATION OR DIVISION

23. (1) At any time the ministry may amalgamate more than one site inspection or assessment into a single site inspection or assessment, or it may divide a single site inspection or assessment into more than one site inspection or assessment.

(2) At any time the ministry may divide a site into sub-sites, and any reference in this Act to "site" shall include a sub-site.

(3) At any time during a ministry site assessment the ministry may vary the boundaries of the site.

PART 5

Clean-up

CHOICES OF REMEDIAL ACTIONS

24. (1) The ministry shall require an emergency clean-up at a contaminated site where in its opinion an emergency clean-up is warranted.

(2) The ministry shall require a routine clean-up at a contaminated site where a routine clean-up is feasible and in the opinion of the ministry is the most suitable method of clean-up in the circumstances.

(3) The ministry shall require a minor clean-up at a contaminated site where neither an emergency clean-up nor a routine clean-up is required, and the clean-up meets criteria prescribed by regulation.

(4) The ministry shall require a major clean-up at a contaminated site where in the opinion of a manager no other remedial action will adequately clean up the site.

(5) The ministry shall require a site hazard report at a contaminated site where further work is necessary in order to determine the extent of the contamination and the appropriate remedial action.

(6) The ministry shall require environmental restoration at a contaminated site where contamination or remedial action has polluted or damaged the environment.

(7) The ministry shall require monitoring at a contaminated site where in its opinion there is a need for information regarding

(a) the extent of current and future contamination,

(b) the hazard posed by contamination at the site to the environment or human health, or

(c) the effectiveness of any remedial actions.

EMERGENCY CLEAN-UP

25. The Lieutenant Governor in Council may make regulations prescribing the circumstances under which an emergency clean-up is warranted.

ROUTINE CLEAN-UP

26. (1) The Lieutenant Governor in Council may make or renew regulations, which shall expire after two years unless they are renewed, prescribing a type of clean-up as a routine clean-up, the circumstances in which it may be utilized, and the standards with which it shall be conducted, where

(a) in the circumstances the clean-up involves an obvious and limited choice among clean-up methods,

(b) the clean-up method is reliable and has proven capable of accomplishing the clean-up standards established under this Act, and

(c) the ministry has experience with similar remedial actions.

(2) The ministry shall review regulations under subsection (1) within 2 years after the regulations come into force or are renewed.

REPORTS OF EMERGENCY OR ROUTINE CLEAN-UP

27. (1) A person who conducts an emergency clean-up or a routine clean-up shall submit a written report to the ministry within 30 days of beginning the clean-up setting out

(a) the information required to be reported under section 19 where that information has not already been submitted,

(b) the results of all site investigations,

(c) a description of clean-up actions,

(d) a description of clean-up still required,

(e) a schedule for completion of the work if the work is not yet completed,

(f) a description of all compliance monitoring planned or under way, and

(g) any additional reports requested by the ministry in regard to the site or any aspect of the contamination or remedial action.

(2) A person who completes an emergency clean-up or a routine clean-up shall apply forthwith for a certificate of completion with respect to the clean-up.

(3) An emergency clean-up or a routine clean-up is complete where no remedial action other than monitoring is necessary or has occurred at the site for 90 days.

MAJOR CLEAN-UP

28. A major clean-up shall be subject to the major project review process or to an environmental impact assessment conducted jointly with the federal government.

SITE HAZARD REPORT

29. A site hazard report in relation to a contaminated site shall

(a) describe the site, the nature and extent of the contamination and the risk to the environment or human health,

(b) recommend

(i) further remedial action or actions, or

(ii) that no further remedial action is warranted, based on prescribed standards, and

(c) identify any person or persons who are or may be responsible persons in relation to the site.

DESIGNATING RESPONSIBLE PERSONS

30. (1) Where the ministry requires a remedial action in relation to a contaminated site, a manager shall identify the person or persons who may be responsible persons in relation to the site.

(2) Where a manager has reasonable grounds to suspect that a person may be a responsible person in relation to a contaminated site, the manager shall notify the person and shall provide the person a reasonable opportunity to comment on whether the person should be designated as a responsible person in relation to the site.

(3) Where, after the requirements of subsection (2) have been met, a manager believes upon reasonable grounds that a person is a responsible person in relation to a contaminated site, the manager shall designate the person as a responsible person in relation to the site.

(4) Where a person consents in writing to being designated as a responsible person in relation to a contaminated site, a manager may designate the person as a responsible person in relation to the site without following the procedures in subsection (2).

LEAD PARTY

31. (1) Where the ministry requires a remedial action or actions in relation to a contaminated site, a manager shall name one or more of the following as the lead party for conducting the required remedial action or actions:

(a) a person or persons who consent in writing;

(b) a person or persons ordered by a manager under section 42 to conduct the remedial action;

(c) the Crown corporation where the ministry requests it to conduct the remedial action; or

(d) in the case of an emergency clean-up, a person described in paragraphs (a), (b) or (c), a person ordered under section 43 to conduct the emergency clean-up or the ministry.

(2) A lead party in relation to a remedial action at a contaminated site shall conduct the remedial action in accordance with

(a) the terms of any applicable remedial action agreement,

(b) the terms and conditions of any applicable permit under this Act,

(c) the terms and conditions of any applicable order made under this Act, and

(d) in the case of an emergency clean-up, any instructions provided by the ministry.

(3) Where a lead party in relation to a remedial action at a contaminated site fails to carry out the remedial action in an approved manner or at all, in addition to or instead of taking enforcement measures, a manager may rescind the determination of that person or persons as lead party and may make another determination under subsection (1).

SUPPORTING PARTIES

32. (1) A manager may name one or more of the following as a supporting party for conducting a remedial action in relation to a contaminated site:

(a) a person who consents in writing; or

(b) a person ordered under sections 33 or 42 to contribute financially or otherwise to the action.

(2) A supporting party in relation to a remedial action at a contaminated site shall contribute financially or otherwise to the remedial action in accordance with each of the following where applicable:

(a) the terms of a remedial action agreement;

(b) the terms and conditions of a permit issued under this Act;

(c) the terms and conditions of an order made under this Act; and

(d) in the case of an emergency clean-up, any instructions provided by the ministry.

(3) A remedial action agreement, permit, or order may require that a supporting party make its financial or other contribution to a remedial action in the form of services or payment to the lead party, a responsible person, a person who has suffered injury or damages due to the contaminated site, the Crown corporation or the ministry.

MINOR CONTRIBUTOR

33. (1) A responsible person is a minor contributor in relation to a contaminated site where in the opinion of a manager

(a) only a minor portion of the contamination present at the site can be attributed to the person,

(b) either

(i) no remedial action would be required solely as a result of the contribution of the person to the contamination at the site, or

(ii) the cost of remedial action attributable to the person would be only a minor portion of the total cost of the remedial action required at the site, and

(c) in all of the circumstances, the application of joint and several liability to the person would be unduly harsh.

(2) Upon application from a responsible person and after public notice and an opportunity for public comment, a manager may name the responsible person as a minor contributor in relation to a contaminated site, in which case the manager shall order the person to contribute financially or otherwise to a current or future remedial action in relation to the contaminated site or to the government in an amount or to an extent that is approximately equivalent to the contribution of the person to the overall anticipated cost of cleaning up the site.

APPLICATION FOR PERMIT

34. (1) An application for issuance or amendment of a remedial action permit shall include

(a) a description of the contaminated site, its location and boundaries, a summary of its relevant historical use or conditions and a list of the polluting substances likely to be found at or near the site,

- (b) the environmental problems to be addressed, including a description of any releases or threatened releases and the potential impact of those releases on human health or the environment,
 - (c) a description of the proposed remedial action, including a schedule for the work,
 - (d) a description of the anticipated results of the proposed clean-up,
 - (e) a description and evaluation of alternatives to the proposed method of remediation,
 - (f) information specified by the ministry either generally or in relation to this particular proposed remedial action,
 - (g) upon the request of any person or a manager, a proposed public participation plan for the remedial action, and
 - (h) the details of arrangements, if any, to share the cost of the remedial action between the applicant for the permit and others.
- (2) Where any person files a written request with a manager, an application for a permit shall not be considered by the ministry until a public participation plan for the application has been approved by the public participation committee.
- (3) An application for a remedial action permit may be accompanied by an application for approval of a proposed remedial action agreement.
- (4) Upon receipt of an application or at any other time the ministry may request that the Crown corporation conduct the required remedial action.
- (5) Where a manager receives two or more applications regarding the same contaminated site he or she may
- (a) encourage the applicants to amend their applications so as to eliminate any overlap, and
 - (b) consider the applications separately or together.
- (6) An application for a remedial action permit shall be accompanied by payment of the prescribed fee.

REMEDIAL ACTION PERMIT

- 35.** (1) No person shall undertake a remedial action with respect to a contaminated site other than an emergency clean-up or a routine clean-up unless the action is in accordance with a permit.
- (2) Following public notice and an opportunity for public comment regarding a written application, a manager may issue or amend a permit to authorize a person to conduct a remedial action subject to requirements for the protection of the environment that he or she considers advisable and, without limiting the generality of this, may in the permit require the person to
- (a) repair, alter, remove, improve or add to works or construct new works and submit plans and specifications for works specified in the permit,
 - (b) handle, treat, transport, discharge, or store waste according to specified procedures or requirements,

- (c) recycle certain wastes, and recover certain reusable resources, including energy potential from wastes,
 - (d) monitor and report in the manner specified by the manager the contamination, the method of handling, treating, transporting, discharging and storing of the contamination and the places and things that the manager considers will be affected by the contamination or the handling, treatment, transportation or storage of the contamination,
 - (e) conduct studies and report information specified by the manager in the manner specified by him or her,
 - (f) contribute financially or otherwise to a remedial action or actions at the site being conducted by another person,
 - (g) abide by the terms of a remedial action agreement, and
 - (h) give security in the amount and form and subject to conditions the manager specifies.
- (3) A permit shall describe the approved remedial action, including a schedule for the work.
- (4) Where any person files a written request with a manager, a manager shall make a condition of a permit issued that the permit is not valid unless the holder of the permit obtains approval under section 40 of a public participation plan in relation to the proposed remedial action, which plan shall be a term of the permit binding on the holder of the permit.
- (5) A permit shall require the holder of the permit to submit to the ministry a final report and to obtain a certificate of completion in relation to the remedial action.

CERTIFICATE OF COMPLETION

- 36.** (1) A remedial action shall not be considered complete until the lead party has obtained a certificate of completion in relation to the remedial action.
- (2) Following public notice and an opportunity for public comment, a manager may issue a certificate of completion of a remedial action.
- (3) A manager shall not issue a certificate of completion in relation to a remedial action unless no further remedial action is warranted, based on prescribed standards.
- (4) A certificate of completion may provide that it is conditional upon satisfactory results being obtained from a monitoring program required to be conducted by the lead party as a condition of the certificate.

STANDARDS FOR CLEAN-UPS

- 37.** (1) The Lieutenant Governor in Council may make regulations establishing standards for the determination of whether remedial action or further remedial action is warranted at a contaminated site.
- (2) The standards set out in regulations under subsection (1) must be at least as stringent as corresponding standards or guidelines established by the federal government.
- (3) Regulations under this section shall be adopted following the completion of the following procedures:
- (a) the ministry shall present draft regulations to the remedial action advisory council;

(b) the remedial action advisory council shall hold a full hearing in one or more locations; and

(c) at the completion of the hearing process, the ministry shall prepare revised draft regulations which shall be subject to public notice and an opportunity for public comment and comment by the remedial action advisory council prior to being adopted by the Lieutenant Governor in Council.

PART 6

Public Participation

PUBLIC PARTICIPATION PLAN

38. (1) A public participation plan may apply to

- (a) a remedial action,
- (b) the consideration of an application for a permit or a certificate of completion,
- (c) the development of the British Columbia pollution prevention and clean-up strategy,
- (d) the review of new or revised pollution control objectives,
- (e) the development of regulations under this Act,
- (f) a hearing held by the remedial action advisory council, and
- (g) an appeal under this Act to the appeal board.

(2) A public participation plan in relation to an application for a permit or a remedial action shall specify

- (a) the boundaries of the potentially affected vicinity,
- (b) the matters which will be subject to public notice, and the length of the comment periods accompanying each notice,
- (c) at least one location in addition to the contaminated sites registry where members of the public can review information about the remedial action,
- (d) the methods to be used to identify and address the concerns of the public, including but not limited to interviews, questionnaires, full hearings, meetings, contacts with community groups, establishment of a citizen remediation advisory group, mediation or obtaining advice from the advisory council,
- (e) the methods to be used to address the concerns of members of the public and to convey information to the public,
- (f) a process for amending the plan, provided that the process requires that such amendments receive the approval of the official or body that approved the plan, and
- (g) provisions for public participation in reviewing an application to amend the permit for the remedial action.

ADVISORY COUNCIL

39. (1) The minister shall establish a permanent advisory council to be called the remedial action advisory council.

(2) The purpose of the remedial action advisory council is to

(a) provide advice to the minister and others with respect to remedial actions and remediation standards, and

(b) administer funding for public participation pursuant to public participation plans.

(3) The remedial action advisory council shall conduct full hearings and public meetings, and shall make recommendations on its own initiative or as requested by the minister.

(4) The remedial action advisory council shall consist of scientific and lay members in sufficient numbers to

(a) properly address the range of the scientific aspects of its functions, and

(b) adequately represent the range of public opinion in the province.

PUBLIC PARTICIPATION COMMITTEE

40. (1) The remedial action advisory council shall appoint a public participation committee consisting of members of the remedial action advisory council or others.

(2) The public participation committee shall

(a) receive and evaluate applications from any person for approval of a public participation plan, and

(b) in its discretion, approve public participation plans.

(3) The public participation committee shall

(a) determine the amount of funding necessary to ensure that concerned members of the public are able to participate effectively in a remedial action or in the consideration of a proposed remedial action,

(b) solicit, receive and evaluate applications from persons or unincorporated organizations for public participation funding,

(c) make grants to those applicants and in such amounts as it considers appropriate, subject to terms and conditions as are prescribed or that it considers appropriate, and

(d) report to the legislature as soon as possible after the end of each fiscal year regarding its activities during the year.

(4) The members of the remedial action advisory council and the public participation committee shall be appointed to serve for a term of 2 years, except that initially half of the members of each body shall be appointed for a term of 3 years.

APPEALS

41. (1) In this section, "decision" means

- (a) a decision not to conduct a ministry site inspection or a ministry site assessment,
- (b) the making of a ministry site assessment,
- (c) the designation of a person as a responsible person under section 30,
- (d) the naming of a person as a lead party, as a supporting party or as a minor contributor,
- (e) the approval of a remedial action agreement,
- (f) the making of an order,
- (g) the exercise of a power,
- (h) the imposition of a requirement,
- (i) the issue, amendment, renewal, suspension, refusal or revocation of a permit or certificate of completion,
- (j) the inclusion in any order or permit of any requirement or condition, or
- (k) the alleged failure or refusal to make a decision.

(2) In this section, "decision" does not include a decision of the public participation committee.

(3) Subject to this section, a person who considers himself or herself aggrieved by a decision under this Act may appeal to the appeal board.

(4) An appeal shall be commenced by filing with the appeal board a notice of appeal within 30 days after the decision is filed in the contaminated sites registry or notice of the decision being appealed is given in the manner required by the regulations, whichever is later, or where the decision is not required to be filed in the contaminated sites registry, within 30 days of the decision.

(5) A notice of appeal shall include

- (a) a description of the decision being appealed,
- (b) the name and address of the person appealing,
- (c) the name of anyone acting on behalf of the appellant,
- (d) the grounds for the appeal, and
- (e) a statement of the decision requested to be made by the appeal board.

(6) The appeal board shall hold a full hearing regarding the appeal, and may, in addition, request written submissions from the parties to the appeal.

(7) The appeal board may

- (a) extend the time for commencing an appeal either before or after the time for doing so has elapsed, and
- (b) allow an amendment to the notice of appeal at any time.

(8) Upon review, the appeal board may confirm, reverse or vary the decision being appealed or may substitute any decision that the person whose decision is being appealed could have made.

(9) In a hearing, the appeal board shall hear information presented by the parties to the appeal and may hear information requested by the appeal board or offered by any person.

(10) The filing of a notice of appeal does not operate as a stay, but the appeal board may, upon application or on its own initiative, issue a stay of the decision being appealed from.

(11) The Environmental Appeal Board Regulations shall apply to appeals brought under this Act, except where a provision of the Regulation is inconsistent with the Act or regulations pursuant to this Act.

PART 7

Enforcement

REMEDIAL ACTION ORDER

42. (1) Following public notice and an opportunity for public comment regarding a draft order, a manager may order any one or more of the following to take a remedial action or to contribute financially or otherwise to a remedial action at a contaminated site:

- (a) a designated responsible person in relation to the contaminated site;
- (b) a lead party or a supporting party who has failed to comply with the terms of a remedial action agreement or the terms and conditions of a permit in relation to the contaminated site; and
- (c) a minor contributor in relation to the site.

(2) Where an order requires a person to take a remedial action the order

- (a) may include requirements described in subsection 35(2),
- (b) shall describe the remedial action, including a schedule for the work,
- (c) shall include a public participation plan, which shall be binding on the person ordered,
- (d) shall include the information set out in subsection 34(1), and
- (e) shall require the person ordered to submit to the ministry a final report and to obtain a certificate of completion in relation to the remedial action.

(3) An order under subsection (1) shall be served on the person to whom it applies.

(4) A manager may amend or cancel an order made under this section.

(5) The powers given by this section are exercisable notwithstanding the terms of a permit or approval under this Act or the *Waste Management Act*.

EMERGENCY CLEAN-UP ORDER

43. A manager may order the owner or occupier of a contaminated site or the owner or a person having care or control of a pollutant to conduct an emergency clean-up with respect to the contaminated site or the pollutant.

RESTRAINING ORDER

44. (1) Where a person by carrying on any activity or operation contravenes this Act or regulations or an order, permit or remedial action agreement pursuant to the Act, the activity or operation may be restrained in a proceeding brought by any person in the Supreme Court.

(2) The making of an order under subsection (1) does not prevent the imposition of a penalty in respect of an offence under this Act or regulations.

ENTRY POWERS

45. (1) An officer may at any reasonable time enter on works or land and investigate any process, works or activity that was, is or may be a contaminated site or a remedial action, but nothing in this subsection authorizes entry into any structure used solely as a private residence, or into any residential accommodation in any other structure.

(2) The powers of an officer on entry under subsection (1) include the power granted to an officer under subsections 21(2) and 21(6) of the *Waste Management Act*.

ENTRY FOR REMEDIAL ACTION

46. A manager may order an owner of a contaminated site or other property that may be affected by the contaminated site to permit entry to a person authorized to carry out remedial action pursuant to this Act.

SEARCH WARRANTS

47. On information in the prescribed form and on oath that there are reasonable grounds to believe that any thing or things that may provide evidence as to a violation of this Act or the regulations is concealed in or on a building or premises, a justice may by a warrant authorize and direct a conservation officer or constable to enter and search the building or premises, and to seize and remove the thing or things found.

ASSISTANCE

48. Any responsible person under this Act shall provide all reasonable assistance and information, including the production of documents and attendance at hearings, with respect to the administration of this Act and its regulations as an officer, manager or director carrying out his or her duties under the Act or regulations may require.

OFFENCES AND PENALTIES

49. (1) Any person who contravenes this Act or regulations or an order or permit pursuant to this Act or who obstructs or resists an officer or a peace officer who is exercising duties under this Act commits an offence and is liable to

(a) a penalty not exceeding \$1,000,000, and

(b) a penalty not exceeding three times the amount of

(i) any costs incurred by the ministry or other persons as a result of the person's failure to comply, and

(ii) any profit received by the person attributable to the contravention.

(2) Where an offence under this section continues for more than one day, separate fines, each not exceeding the maximum fine for that offence, may be imposed for each day the offence continues.

(3) A person who is liable to a monetary penalty specified in this section is also liable to imprisonment for not more than 6 months for each offence.

(4) An information for or in respect of an offence against this Act or the regulations shall be laid before the expiration of two years from the time that the ministry became aware of the act or omission constituting the offence.

(5) Where 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 notwithstanding that the corporation is convicted.

CIVIL ACTION TO COMPEL MINISTRY TO ACT

50. Where the Lieutenant Governor in Council, the ministry, a manager, the Crown corporation, the remedial action advisory council or the public participation committee fail to comply with a mandatory provision of this Act or the regulations, the Supreme Court may, upon a proceeding brought by any person, order the respondent to comply with the Act or regulations within such time and according to such conditions as the Court considers appropriate.

PART 8

Miscellaneous

ANNUAL REPORTS

51. The minister shall, as soon as possible after the end of each fiscal year, provide the legislature with a report of activities under this Act for that year including

(a) a list of known contaminated sites and the remedial actions taken and planned at each site, and

(b) a description of the revision and adoption of pollution control objectives under sections 6 and 7.

CROWN CORPORATION

52. (1) A Crown corporation is established, to be known as the British Columbia Clean-up Corporation.

(2) The purpose of the Crown corporation is to take remedial actions at contaminated sites in the province.

(3) The Crown corporation shall

(a) initiate and upon receiving a permit or being ordered shall carry out a remedial action where the corporation has been requested to do so by the ministry, and

(b) fulfill the responsibilities of the government of British Columbia where it is a responsible person in relation to a contaminated site in British Columbia or elsewhere.

(4) The Crown corporation shall recover its costs from responsible persons, except where

(a) there is no responsible person, or

(b) the cost of attempting to recover from a responsible person would be disproportionate to the amount likely to be recovered.

(5) The Crown corporation may indemnify a contractor engaged by the corporation to carry out a remedial action, but not for reckless or willful misconduct by the contractor.

REGULATIONS

53. (1) The Lieutenant Governor in Council may make regulations.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations

(a) establishing and governing a mechanism for providing technical assistance to persons in British Columbia to minimize their production of polluting wastes,

(b) specifying information to be reported and the manner in which information is to be reported under section 19,

(c) prescribing the information which must be included in an application for a permit for a remedial action of a particular type,

(d) prescribing fees for remedial action permits and applications for remedial action permits of various types,

(e) prescribing levies in lieu of fees against persons named in an order or a proposed order to perform remedial actions of various types,

(f) providing for the establishment of regional citizens' advisory councils corresponding to any or all of the regions of the ministry,

(g) prescribing requirements for public participation funding, including criteria for eligibility, permissible types of expenditures and reporting requirements,

(h) setting out the requirements for public notice and the opportunity for public comment that shall apply to particular initiatives under the Act,

(i) establishing substantive and procedural requirements for the planning, conduct and reporting of remedial actions of particular types,

(j) establishing a mechanism to link information filed in the contaminated sites registry to the land title office under the *Land Title Act* and requiring documents filed in the contaminated sites registry to include legal descriptions of property or other information necessary to maintain this link,

(k) requiring a person who moves material from a contaminated site to another location to provide to the ministry prescribed information in a format suitable for inclusion in the contaminated sites registry,

(l) establishing systems for registering and for certifying persons with prescribed qualifications within particular fields of expertise relevant to conducting remedial actions, and

(m) establishing transitional requirements for remedial actions that have commenced prior to the coming into force of this Act.

(3) The Lieutenant Governor in Council shall not make regulations under any section of the Act until after providing public notice and an opportunity for public comment.

RETROSPECTIVITY

54. For greater certainty, except with respect to a remedial action which was completed prior to the coming into force of this Act, the obligations, liabilities and benefits imposed or conferred by or under this Act apply to a person whether or not the circumstances giving rise to such obligation, liability or benefit occurred before or after this Act comes into force.

COMMENCEMENT

55. This Act comes into force by regulation of the Lieutenant Governor in Council.

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