

1971 Bill 40

Fourth Session, 16th Legislature, 20 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 40

The Clean Water Act

THE HONORABLE MR. HENDERSON

First Reading

Second Reading

Third Reading

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BILL 40

1971

THE CLEAN WATER ACT

(Assented to _____, 1971)

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

1. In this Act

- (a) "Authority" means the Environment Conservation Authority;
- (b) "Department" means the Department of the Environment;
- (c) "Director" means the Director of the Division of Pollution Control of the Department;
- (d) "government agency" means
 - (i) a corporation that is an agent of the Crown in right of Alberta, or
 - (ii) any corporation, commission, board or other body empowered to exercise quasi-judicial or governmental functions and whose members are appointed by an Act of the Legislature, the Lieutenant Governor in Council, or a Minister of the Crown, or any combination thereof;
- (e) "Minister" means the Minister of the Environment;
- (f) "Provincial Board of Health regulations" means regulations made pursuant to section 7, subsection (1), clause 19 of The Public Health Act;
- (g) "sewer" includes a drain of any kind except a drain used for the drainage of a house, building or other premises and made merely for the purpose of connecting with a private sewage disposal system or similar receptacle or with a sewer in a public highway;
- (h) "sewerage project" means a sewer or system of sewers or any plants, structures, equipment, pipes, apparatus or other things for or incidental to the collection, treatment or disposal of sewage;
- (i) "Supreme Court" means the Supreme Court of Alberta;
- (j) "surface water" means water in a watercourse;

Explanatory Notes

1. Definitions.

- (k) "waste water treatment facility" means any system or method used to treat waste water biologically, chemically, electrically, mechanically or otherwise and includes the water collection system therefor;
- (l) "water contaminant" means any solid, liquid or gas or combination of any of them, or heat, in water as a direct or indirect result of activities of man;
- (m) "watercourse" means
 - (i) the bed and shore of a river, stream, lake, creek, lagoon, swamp, marsh or other natural body of water, or
 - (ii) a canal, ditch, reservoir or other man-made surface feature, whether it contains or conveys water continuously or intermittently;
- (n) "water facility" means anything required to be approved under section 4, subsection (1);
- (o) "water pollution" means
 - (i) the presence in water of any water contaminant in excess of the maximum permissible concentration prescribed by the regulations for that water contaminant, or
 - (ii) a change of the temperature of water resulting directly or indirectly from the activities of man to a temperature in contravention of the regulations;
- (p) "water quality control order" means an order of the Director under section 6;
- (q) "waterworks system" means any system of plants, structures, equipment, pipes, apparatus or other things for the obtaining, treating, purifying, disinfecting, distributing or supplying of water intended to be used for human consumption or in swimming pools and, without limitation, includes aqueducts, cisterns, culverts, cuts, flumes, mains, pumps, reservoirs, tanks, engines and machinery used in connection with the system.

2. The Minister is charged with the administration of this Act.

3. (1) Subject to subsection (2), the Minister may make regulations

- (a) prescribing maximum permissible concentration in water of any water contaminant either generally or with respect to any part of Alberta or any watercourse specified in the regulations, and

2. Minister of the Environment responsible for administration of the Act.

3. Minister's regulations prescribing maximum permissible concentrations in water for water contaminants or water temperatures at levels more stringent than those prescribed by the Provincial Board of Health.

- (b) prescribing methods for determining the concentration in water of any water contaminant for the purposes of regulations under clause (a),
- (c) prescribing maximum permissible changes in temperatures of surface water, either generally or with respect to any part of Alberta or any watercourse specified in the regulations.

(2) Regulations under this section shall not prescribe a maximum permissible concentration in water of any water contaminant in excess of the maximum permissible concentration prescribed by the Provincial Board of Health regulations for that water contaminant for the same part of Alberta or the same watercourse.

4. (1) Subject to the regulations, no person shall commence the construction of

- (a) a waterworks system, or
- (b) a waste water treatment facility, or
- (c) a sewer or sewerage project, or
- (d) a swimming pool other than one in or appurtenant to a one-family dwelling,
- (e) any plant, structure or thing designed for use in preventing or controlling water pollution or regulating water quality, or
- (f) any plant, structure or thing, where the Director has, prior to the commencement of construction, notified that person in writing that the proposed plant, structure or thing will, in the Director's opinion, be a source of water pollution and that it is subject to this section, or
- (g) any other type of plant, structure or thing specified in the regulations as being subject to this section, or
- (h) any alteration or addition to anything mentioned in clauses (a) to (g),

unless the plans and specifications therefor are approved by the Director.

(2) Plans and specifications submitted to the Director under this section shall

- (a) show the location of the water facility, its size and capacity, the nature of manufacturing, processing or other operation for which it is to be used and the method by which any water contaminant will be released therefrom, and
- (b) be in such detail as the Director may require.

(3) The Director may require the applicant for an approval under this section to submit to him any additional

4. Requirement for approval of plans and specifications of plants, structures, etc. that are potential sources of water pollution.

information that the Director considers necessary regarding the proposed water facility.

(4) The Director may give or refuse to give his approval of the plans or specifications or may require a change in location of the water facility or a change in the plans and specifications as a condition precedent to giving his approval under this section.

(5) The Director may

- (a) make his approval under this section subject to such conditions as he prescribes;
- (b) specify requirements as to the manner and frequency of recording concentrations of water contaminants discharged or caused by the water facility that is the subject of the approval;
- (c) specify requirements as to the manner in which the water facility is to be operated.

(6) The Crown is bound by subsections (1) to (5).

(7) Where any person has commenced the construction of anything in contravention of subsection (1) the Director may cause to be served on that person a notice directing him to cease the construction work forthwith until he has complied with subsection (1).

(8) Where any person is constructing anything referred to in subsection (1) either not in accordance with the approved plans and specifications or in contravention of the conditions of the approval prescribed by the Director, the Director may cause to be served on that person a notice directing him to cease the construction forthwith until he satisfies the Director that the thing to be constructed will be constructed in accordance with the approved plans and specifications and the conditions of the approval.

(9) Any person who fails to comply with a notice given to him under subsection (7) or (8) upon service of the notice or subsequently, is guilty of an offence and liable on summary conviction to a fine not exceeding \$1000 for each day during which any construction work was done in contravention of the notice.

(10) Where any person fails to comply with a notice given to him under subsection (7) or (8) upon service of the notice or subsequently, the Director may apply by way of originating notice of motion to the Supreme Court for an order directing that person to comply with the notice.

(11) A person who operates any water facility

- (a) where the plans and specifications therefor were not approved by the Director under subsection (1) and where construction was commenced after the coming into force of this section, or

(b) in contravention of the terms or conditions of an approval of the Director,
is guilty of an offence.

5. (1) The Lieutenant Governor in Council may by regulation designate any officer of the Crown or any government agency as a person who shall exercise the powers of the Director under section 4 with respect to

- (a) any specified class of plants, structures or things referred to in section 4, subsection (1), clauses (a) to (f) or in the regulations under section 10, clause (c), or
- (b) any alteration or addition to anything specified in the regulations pursuant to clause (a).

(2) Where a regulation is made under subsection (1) then unless the regulation provides otherwise,

- (a) a reference to the Director in section 4, 6, 7 or 8 shall be deemed to refer instead to the officer of the Crown or government agency so designated by the regulation, and
- (b) a reference to the Division of Pollution Control in section 8 shall be deemed to refer instead, as the case requires, to the department of the government of which the officer so designated by the regulation is an employee or to the government agency so designated by the regulation.

6. (1) Where it appears to the Director that any surface water or underground fresh water in any part of Alberta

- (a) contains a water contaminant in concentrations that exceed the maximum permissible concentrations in water prescribed for that water contaminant by the regulations, or
- (b) contains a water contaminant that in his opinion will exceed the maximum permissible level of concentration for that contaminant in the absence of an order or orders under this section, or
- (c) has undergone or is likely to undergo a change in temperature as a direct or indirect result of an activity of man, in contravention of the regulations under section 3, subsection (1), clause (c),

the Director may issue one or more orders, called "water quality control orders", directed at persons owning or operating any plants, structures or things that the Director considers to be sources of the water contaminant or the change in temperature.

(2) The Director may, in a water quality control order, order the person to whom it is directed,

5. Transfer of powers of approval or disapproval of plans and specifications pursuant to section 4 to another officer of the Government or to a government agency. Where the power is so transferred, the officer or government agency to whom the power is transferred will then exercise the powers of the Director of the Division of Pollution Control as to approvals under section 4 and "water quality control orders" under section 6 in respect of the class of plant, structure or thing specified in the regulations.

6. Water quality control orders issued by the Director to control water pollution.

- (a) to limit or control the rate of discharge of the water contaminant by the plant, structure or thing in accordance with the directions specified in the order;
- (b) to do any act to limit or control the source of the heat causing the temperature change referred to in subsection (1), clause (c);
- (c) to refrain from discharging the water contaminant or causing the source of heat either permanently or for a specified period or during the times or in the circumstances specified in the order;
- (d) to comply with any directions specified in the order relating to the manner in which the water contaminant or source of heat may be discharged or the procedures to be followed in the control or elimination of the discharge of the water contaminant or the source of the heat;
- (e) to instal, replace or alter any equipment or thing designed to control or eliminate the discharge of the water contaminant or the source of the heat.

(3) A person to whom a water quality control order is directed shall comply with the order forthwith upon service of a copy of it upon him unless the order specifies a future date by which the order is to be complied with.

(4) The Director shall cause a copy of a water quality control order to be served upon the person to whom it is directed either personally or by mail.

(5) The Director may issue a water quality control order notwithstanding that the plant, structure or thing owned or operated by the person to whom the order is directed

- (a) was approved as to its plans and specifications by the Director pursuant to section 4, or
- (b) is at the time the order is made being operated in accordance with the approval.

(6) The Director may, by a further order, amend, replace or revoke a water quality control order and in each case shall cause a copy of the order to be served on the person to whom the water quality control order was directed.

(7) Where a water quality control order is directed to a municipal corporation and it is necessary for the municipal corporation to borrow money to meet expenditures required to comply with the order, a by-law made by the council of the municipal corporation to authorize the borrowing does not require the assent of the proprietary electors.

(8) A person to whom a water quality control order is directed who does not comply with the order is guilty of an offence.

7. (1) Where the Minister is satisfied that any person

- (a) has contravened or is contravening a provision of this Act or a regulation or order under this Act, or
- (b) has failed to comply with an order or direction of the Director under this Act or under the regulations, or
- (c) owns or operates any plant, structure or thing that is a source of water pollution which the Minister considers to be an immediate danger to human life or property or both,

the Minister may issue an order (in this section called a "stop order") to that person in accordance with subsection (2).

(2) In a stop order, the Minister may require that the person to whom it is directed

- (a) cease the contravention specified in the order, and
- (b) stop any operations or shut down or stop the operation of any plant, equipment, structure or thing, either permanently or for a specified period,

and the stop order shall contain the reasons for making it.

(3) Not less than 48 hours after making a stop order, the Minister shall cause a copy of it to be served on the person to whom it is directed, and upon receipt of such copy, the person to whom the stop order is directed shall comply with the order forthwith.

(4) A person to whom a stop order is directed and who fails to comply with the order forthwith upon service of a copy of it upon him or subsequently, is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000 for each day that the offence continues or to a term of imprisonment of not more than 12 months or to both fine and imprisonment.

(5) Where the person to whom a stop order is directed fails to comply with the stop order forthwith upon service of a copy of it upon him or subsequently, the Minister may apply to the Supreme Court of Alberta by way of originating notice of motion for an order of the Court directing that person to comply with the stop order.

(6) Where the person to whom the stop order is directed fails to comply with the stop order forthwith upon service

7. "Stop orders" by the Minister to cease contraventions of the Act, regulations or water quality control orders or to shut down plants or operations in cases of actual or threatened water pollution.

of a copy of the order of the Supreme Court under subsection (5) upon him or subsequently,

- (a) the failure to comply with the stop order may be dealt with by the Court as in the case of a civil contempt of the Court,
- (b) an officer of the Department authorized by the Minister for the purpose and any other persons assisting that officer, may without notice and without incurring liability therefor, enter upon any land and do any acts that are necessary to carry out the stop order,
- (c) the sheriff, the sheriff's bailiff and any other persons under the written direction of the sheriff may assist the officer of the Department and his assistants in enforcing their powers and duties under clause (b), and
- (d) the Minister may recover by action any expenses incurred by the Government in carrying out the stop order pursuant to clause (b) from the person to whom the stop order was directed.

(7) A person to whom a stop order is directed may, within 15 days after service upon him of a copy of the order, appeal to the Minister for an inquiry into the stop order.

(8) Where an appeal is made under subsection (7), the Minister shall refer the appeal and the stop order to the Authority for an inquiry.

(9) The Authority shall

- (a) hold a hearing to inquire into all matters leading to the making of the stop order, and
- (b) determine whether, in its opinion, there were sufficient grounds for the making of the stop order,

and upon completion of the inquiry the Authority shall report its findings to the Minister together with any recommendations it wishes to make in regard to the confirmation, amendment or revocation of the stop order.

(10) Upon receipt of the report of the Authority the Minister shall either confirm, amend or revoke the stop order and shall notify accordingly the person to whom it is directed.

(11) The Minister may

- (a) amend a stop order if he considers it advisable in the circumstances to do so, or
- (b) revoke a stop order,

and shall notify accordingly the person to whom the stop order was directed.

(12) This section applies whether or not the contravention of the Act, regulation or order concerned constitutes an offence, and whether or not a conviction has been adjudged for the offence.

8. (1) The Director or any employee of the Division of Pollution Control authorized by the Director may, without incurring liability therefor, enter into any land or premises for the purpose of

- (a) investigating and inspecting and carrying out tests at any water facility or any plant, structure or thing that he on reasonable grounds believes is or contains a source of water pollution, or
- (b) examining, making copies of or taking extracts from, any records of a person owning or operating a water facility or a plant, structure or thing that he on reasonable grounds believes is or contains a source of water pollution, if the records relate to the concentration of water contaminants in water or the temperature of surface water, or
- (c) carrying out any powers or duties conferred or imposed on the Director by this Act or the regulations.

(2) Where the Director or employee wishes to enter any lands or premises pursuant to subsection (1) and is prevented from entering, the Director may apply to the Supreme Court by way of originating notice of motion for an order permitting the Director or any employee of the Division of Pollution Control authorized by the Director to enter the lands or premises for the purposes specified in the order, and an order so made may be enforced by the sheriff.

(3) The Director may direct the owner or operator of any water facility or plant, structure or thing to provide to the Director any records or other information specified in the direction within the time limited in the direction, if the data, records or other information relate to the discharge of water contaminants or the increase of the temperature of surface water by that water facility, plant, structure or thing.

(4) A person who fails to comply with a direction given to him pursuant to subsection (3) within the time limited in the direction is guilty of an offence and liable on summary conviction to a fine of not more than \$1000 for each day that the contravention continues.

9. A person who is guilty of an offence under this Act or the regulations for which no penalty is expressly provided, is liable on summary conviction to a fine not exceeding \$5000 and in default of payment to a term of imprisonment not exceeding three months.

8. Powers of Director to enter lands to inspect plants, etc. and records, and to require information.

9. General penalty.

10. The Lieutenant Governor in Council may make regulations

1. governing applications for and the issue of approvals under section 4;
2. exempting any class of water facility from the operation of section 4;
3. specifying types of plants, structures or things that are subject to section 4;
4. prescribing the procedures in respect of appeals under section 7 and of inquiries held under that section;
5. providing for any procedure relating to any proceedings under this Act or the regulations;
6. authorizing the payment of compensation by the Crown to any person for loss or damage to that person as a result of the application to him of any provision of this Act or the regulations or as a result of an order directed to him under this Act, prescribing the cases in which the compensation shall be paid, and conferring jurisdiction on the Supreme Court of Alberta, a district court or the Public Utilities Board in connection with settlement of the compensation to be paid;
7. authorizing the Minister to expropriate on behalf of the Crown any estate or interest in land if he considers it necessary to do so for the purpose of enforcing or carrying out the provisions of this Act or the regulations;
8. for the control, restriction or prohibition of any use of land or any action in respect of land whereby any substance is deposited or discharged on or under any land
 - (i) adjacent to or underlying any watercourse, or
 - (ii) adjacent to or overlying an aquifer;
9. for the control, restriction or prohibition of any activities in, on or over surface water for the purpose of preventing, alleviating, controlling or stopping water pollution;
10. governing the design, construction, maintenance or operation of
 - (i) any type of water facility or part thereof, or
 - (ii) any equipment, device or apparatus used in connection with any type of water facility;

10. Regulations of the Lieutenant Governor in Council.

11. regulating the cutting and storage of ice;
12. regulating the purity of water to be used for human consumption or in swimming pools;
13. controlling or regulating the quantity and purity of water to be applied to land for the purpose of irrigation or watering of any plant life, where the water so applied may be directly or indirectly harmful to human life, animal life, plant life or land;
14. regulating the manufacture, sale or use of any equipment, process, chemical, substance or thing to be used in the treatment or disinfection of water for human consumption or for use in swimming pools;
15. prohibiting any person from engaging in the operation of any waterworks for the collection, treatment, distribution or supply of water intended for human consumption or for use in swimming pools unless he is the holder of a licence issued by the Director;
16. prescribing the qualifications for persons applying for licences under regulations made under clause 15, the powers and duties of the Director in respect of the issue of licences under those regulations and the suspension or cancellation of such licences;
17. requiring the submission to the Director or some other person of any returns or reports by any person pertaining to the construction or operation of any waterworks, water supply, waste water treatment facility or sewerage project or pertaining to any source of water pollution or to the quantity or quality of water supplied for any purpose;
18. empowering the Director to order a municipal corporation or other person to construct, improve, repair, replace, extend, enlarge or modify any waterworks system, waste water treatment facility or sewerage project or any part thereof, and prescribing the powers and duties of the municipal corporations or other persons to whom such orders are directed;
19. prescribing a tariff of fees payable to the Minister
 - (i) pertaining to applications for the issue of approvals, licences or permits under this Act or the regulations,
 - (ii) for the filing of any returns, reports or other documents that are required or permitted to be filed under this Act or the regulations, and

- (iii) for any other service provided by the Department under this Act or the regulations;
 - 20. for controlling, restricting or prohibiting the drilling of test holes or the drilling or use of water wells, and prescribing the duties of drillers or owners of water wells;
 - 21. requiring the taking of samples of water from a municipal waterworks system or a supply of water used for a municipal waterworks system and regulating the frequency, methods and procedure in respect of such water sampling;
 - 22. declaring any code pertaining to water quality, water pollution, the design, construction, maintenance or operation of any type of water facility or any equipment, device or apparatus used in connection with any type of water facility, the measurement of water contaminants or any matter pertaining to water supplies and issued or published by any government or association to be in force, either in whole or in part or with such modifications as are specified in the regulations;
 - 23. for the control, restriction or prohibition of the manufacture, sale or use of any equipment, device or service designed or provided for any purpose related to the control or elimination of water pollution;
 - 24. providing, with respect to any provision of the regulations, that its contravention constitutes an offence;
 - 25. providing, in respect of an offence provided for pursuant to clause 24, for penalties by way of fine or imprisonment or both for which the offender is liable on summary conviction therefor;
 - 26. generally, for the prevention, control or prohibition of water pollution and the regulation of sources of water pollution.
- 11.** For the purposes of this Act, a certificate, permission or approval issued before the commencement of this section by or on behalf of the Provincial Board of Health in respect of any plans and specifications pursuant to
- (a) section 11 or 16 of The Public Health Act, or
 - (b) the "Provincial Board of Health Regulations Respecting the Disposal of Waste Water and the Control of Water Pollution" filed as Alberta Regulation 27/70, as amended, or its predecessors,
- shall be deemed to be an approval issued by the Director under section 4.

11. Transitional provision re certificates of the Provincial Board of Health under present legislation.

12. The Public Health Act is amended

- (a) *as to section 2 by striking out clauses 7, 21 and 25,*
- (b) *as to section 7, subsection (1) by striking out clause 19 and by substituting the following:*

19. the prescribing of maximum permissible concentrations of water contaminants (as defined in The Clean Water Act) in water in all or any part of Alberta or in any specified watercourse or water body and the prescribing of the methods for determining the concentrations of such water contaminants;

- (c) *as to section 7, subsection (1) by striking out clauses 24, 25 and 33,*
- (d) *as to section 7, subsection (1), clause 43 by striking out the words "sewerage, plumbing, water supply, drainage,"*
- (e) *by striking out sections 11 to 23,*
- (f) *as to section 50, subsection (2) by striking out clause (b).*

13. The Department of Labour Act is amended by adding the following section after section 7:

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

- (a) governing the installation, design, specifications, testing and inspection of equipment, fixtures, pipes, apparatus and other things used for or in connection with plumbing or drainage;
- (b) providing for the issue of certificates, licences, permits or approvals in connection with the administration of the regulation and prohibiting the doing of any act except under the authority of a certificate, licence, permit or approval;
- (c) prescribing the fees payable to the Minister pertaining to applications under, or certificates, licences, permits or approvals issued under the regulations;
- (d) prescribing the powers and duties of the Minister or any officer of the Department in connection with the administration of the regulations;
- (e) prescribing the powers and duties of any person who is required to obtain or who is the holder of a certificate, licence, permit or approval issued under the regulations;
- (f) providing for any other matter or procedure in connection with the administration of the regulations.

12. Amends chapter 294 of the Revised Statutes of Alberta 1970. Section 7(1) clauses 19, 24, 25, 33 and 43 of The Public Health Act presently read:

7. (1) The Provincial Board may, subject to the approval of the Lieutenant Governor in Council, make and issue orders, rules and regulations for the prevention, mitigation and suppression of disease, and may alter or repeal them, and in particular, but without limiting the generality of the foregoing, it may make and issue orders, rules and regulations in respect of the following matters:

19. the prevention of the pollution, defilement, discolouration or fouling of all lakes, streams, pools, springs or waters, the ensuring of their sanitary condition, and the regulation of the cutting and storing of ice therefrom;
24. the purification of water for domestic use or other uses by persons;
25. the purification and treatment of public water supplies and the addition of a chemical thereto;
33. the prevention of the pollution of soil or water by human excreta or otherwise;
43. the situation, equipment, maintenance, operation, inspection, conduct, lighting, heating, ventilation, sewerage, plumbing, water supply, drainage, cleanliness and disinfection of and the disposal of excreta from all public places and public health utilities;

See section 3 of this Bill. The regulations under The Public Health Act will prescribe water contaminant concentration levels and temperature levels as they relate to public health. Sections 11 to 23 of The Public Health Act deal generally with water pollution, water supplies, approval of municipal waterworks and sewerage projects and related matters. The amendments to section 2 remove certain definitions of expressions that are used only in the provisions being repealed.

13. Amends chapter 100 of the Revised Statutes of Alberta 1970. The proposed section 8 will enable regulations to be made regarding plumbing, as plumbing inspection services presently under the Department of Health will come under the Department of Labour.

(2) A person who contravenes a provision of the regulations under subsection (1) or any order made thereunder is guilty of an offence and liable on summary conviction to a fine of not more than \$500 and in default of payment to imprisonment for a term of not more than three months.

14. This Act comes into force on a date to be fixed by Proclamation.

