

1971 Bill 41

Fourth Session, 16th Legislature, 20 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 41

The Clean Air Act

THE HONORABLE MR. HENDERSON

First Reading

Second Reading

Third Reading

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BILL 41

1971

THE CLEAN AIR ACT

(Assented to _____, 1971)

H^{ER} MAJESTY, by and with the advice and consent of
H^{ER} the Legislative Assembly of Alberta, enacts as follows:

1. In this Act

- (a) "air contaminant" means any solid, liquid or gas or combination of any of them in the atmosphere resulting directly or indirectly from the activities of man;
- (b) "air pollution" means
 - (i) the presence in the atmosphere of any air contaminant in excess of the permissible level of density prescribed in the regulations for that air contaminant, or
 - (ii) the presence of any air contaminant having an offensive odour in the atmosphere, regardless of its concentration in the atmosphere;
- (c) "Authority" means the Environment Conservation Authority;
- (d) "Department" means the Department of the Environment;
- (e) "Director" means the Director of the Division of Pollution Control of the Department;
- (f) "emission control order" means an order of the Director under section 6;
- (g) "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;
- (h) "Minister" means the Minister of the Environment;

EXPLANATORY NOTES

1. Definitions.

- (i) "Provincial Board of Health regulations" means regulations made pursuant to section 7, subsection (1), clause 20 of The Public Health Act;
- (j) "Supreme Court" means the Supreme Court of Alberta.

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 levels of density of any air contaminant for all or any part of Alberta, and
- (b) prescribing methods for determining the density of any air contaminant for the purposes of regulations under clause (a).

(2) Any maximum permissible level of density of an air contaminant prescribed pursuant to regulations under this section shall not exceed the maximum permissible level of density prescribed under the Provincial Board of Health regulations for that contaminant for the same part of Alberta.

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

- (a) any plant for the manufacture of petroleum products, natural gas products, chemical and allied products, pulp and paper products, stone, clay or glass products, cement and lime products, fertilizers or animal by-products, or
- (b) any plant for primary metal production, metal processing, the processing of wood or wood products, the processing of coal, the processing of natural gas or its derivatives, the manufacture of asphalt or ready-mixed concrete, gravel crushing or meat packing, or
- (c) any incinerator other than an incinerator for a one-family dwelling, or
- (d) any sewage treatment and disposal plant, or
- (e) any hay and forage drier, seed cleaning plant or feed mill plant, or
- (f) any thermal electric power generating plant or any steam generating plant, or
- (g) any plant, structure or thing, where the Director has, prior to the commencement of construction,

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

3. Minister's regulations prescribing maximum permissible levels of density for air contaminants at levels more stringent than those prescribed by the Provincial Board of Health.

4. Requirement for approval of plans and specifications of plants, structures, etc., that emit air contaminants.

notified that person in writing that the proposed plant, structure or thing will, in the Director's opinion, be a source of air pollution and that it is subject to this section, or

- (h) any other type of plant, structure or thing specified in the regulations as being subject to this section, or
- (i) any alteration or addition to anything mentioned in clauses (a) to (h),

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 plant, structure or thing, 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 air 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 information that the Director considers necessary regarding the proposed plant, structure or thing.

(4) The Director may give or refuse to give his approval of the plans and specifications or may require a change in location of the plant, structure or thing 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, or
- (b) specify requirements as to the manner and frequency of recording levels of density of air contaminants emitted by the plant, structure or thing that is the subject of the approval, or
- (c) specify requirements as to the manner in which the plant, structure or thing 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 plant, structure or thing referred to in subsection (1)

(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.

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 "emission control orders" under section 6 in respect of the class of plant, structure or thing specified in the regulations.

6. (1) Where it appears to the Director that there exists in the atmosphere in any part of Alberta

- (a) an air contaminant in concentrations that exceed the maximum permissible level of density prescribed for that contaminant by the regulations, or
- (b) an air contaminant that in his opinion will exceed the maximum permissible level of density prescribed for that contaminant in the absence of an order or orders under this section, or
- (c) an air contaminant having an offensive odour, the Director may issue one or more orders, called "emission control orders", directed at persons owning or operating any plants, structures or things that the Director considers to be sources of the air contaminant.

(2) The Director may, in an emission control order, order the person to whom it is directed

- (a) to limit or control the rate of emission of the contaminant by the plant, structure or thing in accordance with the directions specified in the order;
- (b) to refrain from emitting the contaminant either permanently or for a specified period or during the times or in the circumstances specified in the order;
- (c) to comply with any directions specified in the order relating to the manner in which the contaminant may be emitted or the procedures to be followed in the control or elimination of the emission of the contaminant;
- (d) to instal, replace or alter any equipment or thing designed to control or eliminate the emission of the contaminant.

(3) A person to whom an emission 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 an emission control order to be served upon the person to whom it is directed either personally or by mail.

(5) The Director may issue an emission 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 pursuant to section 4, or

6. Emission control orders to control offensive odours or air pollution where the level of density of an air contaminant exceeds the maximum permissible levels.

(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 an emission control order and in each case shall cause a copy of the order to be served on the person to whom the emission control order was directed.

(7) Where an emission 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 an emission 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 air 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

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

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 the 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 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 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 further leave of the Court 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 in accordance with the regulations 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 accordingly notify 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 plant, structure or thing that he on reasonable grounds believes is or contains a source of air pollution, or

(b) examining, making copies of or taking extracts from, any records of a person owning or operating a plant, structure or thing that he on reasonable grounds believes is or contains a source of air pollution, if the records relate to the emission of air contaminants, 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 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 emission of air contaminants by that plant, structure or thing.

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

(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 \$5,000 and in default of payment to a term of imprisonment not exceeding three months.

10. The Lieutenant Governor in Council may make regulations

- (a) governing applications for and the issue of approvals under section 4;
- (b) exempting any class of plants, structures or things from the operation of section 4;
- (c) specifying types of plants, structures or things that are subject to section 4;
- (d) prescribing the procedures in respect of appeals under section 7 and of inquiries held under that section;
- (e) providing for any procedure relating to any proceedings under this Act or the regulations;
- (f) 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 the loss or damage for which the compensation is to 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;
- (g) 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;
- (h) 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 plant, structure or thing or any class thereof that is or may be the source of an air contaminant;

9. General penalty.

10. Regulations of the Lieutenant Governor in Council.

- (i) prescribing a tariff of fees payable to the Minister
 - (i) pertaining to applications for or the issue of approvals under section 4,
 - (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;
- (j) declaring any code pertaining to air quality, the prevention, control or elimination of air pollution, the measurement of levels of density of air contaminants or the design, construction, maintenance or operation of any type of plant, structure or thing that may be a source of air pollution 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;
- (k) 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 air pollution;
- (l) providing, with respect to any provision of the regulations, that its contravention constitutes an offence;
- (m) providing, in respect of an offence provided for pursuant to clause (l), for penalties by way of fine or imprisonment or both for which the offender is liable on summary conviction therefor;
- (n) generally, for the prevention, control or prohibition of air pollution and the regulation of sources of air pollution.

11. For the purposes of this Act, a certificate 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 the "Provincial Board of Health Regulations for the Control of Air Pollution", filed as Alberta Regulation 375/70, or its predecessors, shall be deemed to be an approval issued by the Director under section 4.

12. The Public Health Act is amended

(a) as to section 7, subsection (1) by striking out clause 20 and by substituting the following:

- 20. the prescribing of maximum permissible levels of density of air contaminants in the atmosphere in all or any part of Alberta and prescribing the methods for determining the density of such air contaminants;

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

12. Section 7(1) clauses 20 and 21 of The Public Health Act presently read:

7. (1) The Provincial Board may, - - - make and issue orders, rules and regulations in respect of the following matters:

20. the prevention of the pollution, defilement or fouling of the atmosphere and the regulation of plants, industries and pipe lines discharging chemical or other waste matter into the atmosphere;

21. the regulation and prohibition of the construction of any class or type of plant, industry or pipe line in any location where it is likely to create a problem through pollution of the atmosphere or water or both;

See section 3 of this Bill. The regulations under The Public Health Act will prescribe density levels as they relate to public health. Sections 24 and 25 of The Public Health Act deal with abatement of air pollution.

- (b) as to section 7, subsection (1) by striking out clause 21,*
- (c) by striking out sections 24 and 25,*
- (d) as to section 50, subsection (2) by striking out clause (c).*

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