

1985 BILL 229

Third Session, 20th Legislature, 34 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 229

ENVIRONMENTAL IMPACT ASSESSMENT ACT

MR. GURNETT

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 229
Mr. Gurnett

BILL 229

1985

ENVIRONMENTAL IMPACT ASSESSMENT ACT

(Assented to , 1985)

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

Definitions

1 In this Act:

(a) "assessment" means an environmental impact assessment required under section 8;

(b) "contaminant" means any substance, whether gaseous, liquid or solid, that:

(i) is foreign to or significantly in excess of the natural constituents of the environment; or

(ii) affects the natural, physical, chemical or biological quality of the environment;

and that is or may be injurious to the health or safety of persons or injurious or damaging to property or to plant or animal life;

(c) "development" means any project, operation or activity or any alteration or expansion of any project, operation or activity which is likely to:

(i) have an effect on any unique, rare or endangered species or feature of the environment;

- (ii) substantially utilize any natural resource and in so doing pre-empt the use, or potential use, of a significant part of that resource for any other purpose by another person;
 - (iii) cause the emission of any pollutants or create by-products, residual or waste products which require handling and disposal in a manner that is not regulated by any other Act or regulation;
 - (iv) raise public interest and concern that it may cause widespread environmental changes;
 - (v) involve new technology that is concerned with resource utilization and that may induce significant environmental change; or
 - (vi) have a significant impact on the environment or necessitate or be dependent on a further development which is likely to have a significant impact on the environment;
- (d) “environment” means
- (i) air, land and water;
 - (ii) plant and animal life, including man; and
 - (iii) the social, economic and cultural conditions that influence the life of man or a community insofar as they are related to the matters described in subclauses (i) and (ii);
- (e) “environment officer” means a person appointed pursuant to section 7(g) of the *Department of the Environment Act* and specifically charged with such duties as may arise out of the enforcement of this Act;
- (f) “Minister” means the Minister of the Environment;
- (g) “ministerial approval” means the written approval of the Minister given pursuant to section 15(1) or section 16(2);
- (h) “municipality” means a municipality as defined in the *Municipal Government Act*;
- (i) “person” includes a body corporate or other legal entity, an unincorporated association, partnership or other organization, a municipality, the Crown, a Crown corporation or an agency of the Crown;
- (j) “pollutant” means a substance, including a contaminant, which results, or is likely to result, in pollution;

(k) "pollution" means alteration of the physical, chemical, biological or aesthetic properties of the environment, including the addition or removal of any contaminant, that:

(i) will render the environment harmful to public health;

(ii) is unsafe for or harmful to domestic, municipal, industrial, agricultural, recreational or other lawful uses of the environment; or

(iii) is harmful to plant or animal life;

(l) "proponent" means a person who proposes or desires to undertake a development;

(m) "statement" means an environmental impact statement required under section 8.

Application of Act

2 This Act binds the Crown.

Exemptions

3(1) Where, in the opinion of the Lieutenant Governor in Council, there is an emergency, he may exempt any development, any class of developments or any proponent from the application of all, or any part, of this Act.

(2) An exemption shall be for a period no longer than 1 year and an exemption may be renewed only once and for a further period no longer than 1 year.

(3) When an exemption is granted, the Minister shall table in the Legislative Assembly a report outlining:

(a) the nature of the emergency requiring the granting of the exemption;

(b) the identity of the proponent receiving the exemption;

(c) the nature, location and identity of the development or class of developments exempted;

(d) the duration of the exemption;

(e) the reason or reasons for the exemption.

(4) A report made pursuant to subsection (3) shall be tabled not later than 15 days following the granting of the exemption if the Legislative Assembly is then sitting and if it is not then sitting, within 15 days of the commencement of the next sitting.

Powers of Minister

4(1) The Minister may investigate any project, operation or activity or any alteration or expansion of it and if he has grounds to believe that it is a development within the meaning of this Act, he shall order that it is a development and shall advise the proponent of the grounds.

(2) For the purpose of administering and enforcing this Act and the regulations, the Minister may:

- (a) conduct research with respect to the environment, assessments or statements;
- (b) conduct studies of the quality of the environment, or with respect to environmental planning, assessments or statements;
- (c) gather, publish and disseminate information with respect to the environment, assessments or statements;
- (d) appoint committees to perform any advisory functions that he considers necessary;
- (e) make any examinations, tests or other arrangements that he considers necessary for the operation of this Act;
- (f) with the approval of the Lieutenant Governor in Council, enter into agreements with any government or person with respect to the environment, assessments or statements.

Grants for
research

5(1) Subject to subsection (2), the Minister may make grants to any person for research and for the preparation and presentation of briefs related to assessments or statements.

(2) The Minister shall obtain the approval of the Lieutenant Governor in Council before making any grant under subsection (1) that is in excess of \$10 000.

(3) A grant may be made pursuant to this section only if money has been appropriated to that purpose by the Legislature.

Minister may
withhold
information

6 Where, in the opinion of the Minister, it is in the public interest or in the legitimate interest of any person, the Minister may, subject to the regulations, withhold or limit production, public inspection or discovery of any information or document that relates to a development, other than any information or document that relates to a pollutant or to public health or human safety.

Ministerial
approval required

7(1) Notwithstanding the requirements of any Act, regulation or by-law relating to any licence, permit, approval, permission or consent, a proponent shall obtain ministerial approval to proceed with a development, and no person shall proceed with a development until he has received ministerial approval.

(2) Where a conflict exists between any condition of any licence, permit, approval, permission or consent granted under any other act, regulation or by-law and a condition of the ministerial approval, the condition of the ministerial approval prevails.

(3) Notwithstanding subsection (1), a proponent may, subject to the regulations, conduct a feasibility study, including research and exploration, and may take any other necessary action to comply with this Act before obtaining ministerial approval to proceed.

Assessment and review procedure

8 The proponent of a development shall, in accordance with the regulations:

(a) conduct an environmental impact assessment of the development, and

(b) prepare and submit to the Minister an environmental impact statement relating to the development.

Notice of assessments

9 Where the Minister becomes aware that an assessment is about to be conducted, he shall immediately give notice of the assessment in any manner that may be prescribed in the regulations.

Review of statements

10(1) The Minister shall cause a review to be prepared of each statement that he receives.

(2) When the review mentioned in subsection (1) is completed, the Minister shall:

(a) make the statement and review available for public inspection, and

(b) give notice, in the manner prescribed in the regulation, of the locations at which the statement and the review may be inspected, and may prescribe any conditions relating to the inspection that he considers appropriate.

Public access to statements

11 Any person may:

(a) inspect a statement and review that is available for public inspection pursuant to section 10(2);

(b) make a written submission to the Minister within 60 days from the date when the Minister first gives notice pursuant to section 10(2) or, if the Minister considers an extension is in the public interest, within an additional period of 30 days.

Public meetings

12 At any time prior to making his decision whether to approve a development, the Minister may:

(a) cause a public information meeting to be conducted relating to the development, and

(b) direct the proponent to make experts available to attend the meeting.

Petition for meeting

13 Upon his own motion the Minister may, and when directly petitioned in a manner prescribed by the regulations to do so by at least 10 Canadian citizens, resident in the Province, the Minister shall cause a public information meeting to be conducted relating to a development, within 30 days of his receipt of the petition, and shall direct the proponent to attend the meeting and to make experts available to the meeting.

Board of inquiry

14(1) At any time prior to making his decision whether to approve a development, the Minister may appoint a board to conduct an inquiry or inquiries with respect to all, or any aspect of, the development, and shall set the terms of reference for the inquiry.

(2) The board has all the powers of commissioners under the *Public Inquiries Act* and may engage the services of such experts, assistants or employees that it considers necessary.

(3) The Minister may:

(a) pay to persons appointed to the board, such remuneration for their services and allowances for expenses incurred by them as the Minister may determine, and

(b) enter into agreements with them, and impose any conditions that he considers appropriate, to provide for the manner of payment, including payment by way of accountable advance

providing that money has been appropriated to that purpose by the Legislature.

Decision by Minister

15(1) Where the Minister is satisfied that a proponent has met all the requirements of this Act, he shall, within a reasonable time after making his decision:

(a) give the proponent written approval to proceed with the development subject to any terms and conditions that he considers necessary or advisable, or

(b) advise the proponent in writing that he refuses to approve the development.

(2) The Minister shall also give notice of his decision, together with written reasons for the decision, to:

(a) any person who has made a written submission to the Minister pursuant to section 11, and

(b) any other person that the Minister considers should receive notice.

Changes after
decision

16(1) Where a proponent:

- (a) has received ministerial approval to proceed, and
- (b) intends to make a change in the development that does not conform to the terms or conditions contained in the ministerial approval;

he shall inform the Minister of the proposed change before proceeding with it.

(2) Where the Minister has received notice of a proposed change, he shall either:

- (a) give the proponent written approval of the proposed change subject to any terms and conditions that he considers advisable,
- (b) advise the proponent in writing that he refuses to approve the change in the development, or
- (c) direct the proponent to seek approval for the proposed change in the manner prescribed in sections 7 to 13 as if it were a new or separate development.

(3) The Minister shall give notice of his decision, together with written reasons for the decision, to:

- (a) any person who made a written submission to the minister concerning the original development pursuant to section 11, and 6
- (b) any other person that the Minister considers should receive notice.

(4) No person shall proceed with a change in a development until he has been given ministerial approval of it.

Compliance
with conditions

17 No person shall proceed with a development for which he has received ministerial approval, except in accordance with the terms and conditions of the ministerial approval.

Court appeal
and order

18(1) Any decision or order of the Minister may be appealed by the proponent to the Court of Queen's Bench, within 90 days of notice of it to the proponent and the Court may affirm, vary or quash the decision or order.

(2) The Minister may apply to the Court of Queen's Bench for an order enjoining any person from proceeding with a development contrary to this Act or to the terms and conditions of any ministerial approval, and the Court may make an order on any terms and conditions that it considers appropriate.

Investigation **19** Where, in the opinion of the Minister, the terms and conditions of a ministerial approval are not being complied with, he may cause any investigation, inspection or inquiry to be conducted and require any information or document to be submitted to him that he considers necessary to determine whether the ministerial approval is being complied with.

Order to search and seize **20(1)** Where a judge of the Provincial Court is satisfied by information on oath that there are reasonable grounds for the issuance of an order to enable an environment officer to carry out the duties assigned to him, the judge may issue an order on any terms and conditions he considers appropriate, authorizing an environment officer to:

- (a) enter and search any land, building or chattel, and
- (b) seize any chattels, documents or samples;

described in the order.

(2) Every environment officer, while exercising his authority pursuant to an order issued under this section, shall produce a copy of the order upon the request of any person who has the custody, possession or control of any land, building, chattel or document described in the order.

(3) No person shall obstruct or impede an environment officer acting pursuant to an order issued under this section.

Confidentiality **21(1)** Every environment officer shall preserve the confidentiality of any matter that comes to his knowledge in the course of any investigation, inspection, test or inquiry under this Act and no environment officer shall communicate any such matter to any person except:

- (a) as may be required in connection with the administration of, or in any proceeding under this Act and the regulations,
- (b) to his counsel, or
- (c) with the consent of the person to whom the information refers.

(2) Except in a proceeding under this Act or the regulations, no environment officer is a compellable or competent witness to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of any investigation, inspection, test or inquiry under this Act or the regulations.

Offences **22** No person shall knowingly give false information to:

- (a) the Minister,

- (b) any environment officer,
- (c) any board of inquiry appointed under this Act, or
- (d) any appointee of, or person employed by or acting on behalf of, the Minister or a board of inquiry,

in respect of any matter to which this Act or the regulations relate.

Penalties **23** Any person who contravenes sections 7(1), 16(4), 17, 20(3) or 22 is guilty of an offence and liable on summary conviction to a fine of not more than \$50 000 and, in the case of a continuing offence, to a further fine of not more than \$50 000 for each day or part of a day during which the offence continues.

Limitation **24** No prosecution of an offence under this Act shall be commenced after 5 years from the day of the commission of the alleged offence.

Liability **25(1)** Where any person proceeds with a development for which ministerial approval is required without:

- (a) being given ministerial approval, or
- (b) being exempted pursuant to section 3,

he is liable to any other person who suffers loss, damage or injury as a result of the development, and that other person is not required to prove negligence or intent to inflict loss, damage or injury.

(2) When a person who claims under subsection (1) has shown that he has suffered loss, damage or injury and he shows reasonable grounds to believe that it was caused at least to a significant part by the development, the burden of proving that any loss, damage or injury was not caused by a development is on the person carrying out the development.

(3) Nothing in this section shall be construed as replacing or limiting any other remedy available at law.

Notices **26(1)** Any notice required to be given by this Act or the regulations is, unless otherwise provided for, to be served personally or mailed by registered mail to the last known address of the person being served.

(2) A notice served by registered mail is deemed to have been received on the 7th day following the date of its mailing, unless the person to whom it was mailed establishes that, through no fault of his own, he did not receive the notice or that he received it at a later date.

Regulations

27 The Lieutenant Governor in Council may make regulations:

- (a) respecting any requirement relating to an assessment or a statement;
- (b) respecting any guideline applicable to the approval of any development;
- (c) subject to section 26, respecting the manner and form of giving notice under this Act;
- (d) prohibiting or regulating, in all or any part of the Province, any feasibility study or any other action permitted under section 7(3);
- (e) specifying the grounds on which the Minister may withhold or limit disclosure of any information, matter or document relating to a development.

Consequential.
c. L-3, RSA
1980

28 Section 8 of the *Land Surface Conservation and Reclamation Act* is repealed.

Coming into
force

29 This Act comes into force on a date to be fixed by Proclamation which shall not be earlier than the date upon which money is appropriated to the purposes of this Act by the Legislature.