

BILL 36

2003

ENVIRONMENTAL PROTECTION AND ENHANCEMENT AMENDMENT ACT, 2003

(Assented to _____, 2003)

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

Amends RSA 2000 cE-12

1 The *Environmental Protection and Enhancement Act* is amended by this Act.

2 Section 1 is amended

(a) by adding the following after clause (k):

(k.1) “code of practice” means a document governing an activity or activities or a portion of an activity or activities that is adopted or incorporated pursuant to section 38;

(b) by adding the following after clause (s):

(s.1) “electronic” includes created, recorded, transmitted or stored in digital form or in any other intangible form by electronic, magnetic or optical means or by any other means that have similar capabilities for creation, recording, transmission or storage;

(c) in clause (ww) by adding “or” at the end of subclause (i), by striking out “or” at the end of subclause (ii) and by repealing subclause (iii);

(d) by repealing clause (xx) and substituting the following:

- (xx) “pit” means any opening in, excavation in or working of the surface or subsurface made for the purpose of removing sand, gravel, clay or marl and includes any associated infrastructure, but does not include a mine or quarry;

3 Section 32(3) is repealed and the following is substituted:

(3) All security required to be deposited with the Government in respect of an approval, a code of practice, a registration, a certificate of qualification or a certificate of variance or under section 88.2, 97, 135, 174 or 189 or with respect to an approval or licence under the *Water Act* shall be paid into the Environmental Protection Security Fund.

4 Section 35(1)(a) is amended

- (a) in subclause (iv) by adding “or a registration holder or provided pursuant to a code of practice” after “approval holder”;
- (b) in subclause (v) by adding “or a code of practice” after “approval”.

5 The following is added after section 83:

Compliance with code of practice

83.1 No person shall commence or continue any activity that is

- (a) designated by the regulations as requiring a registration, and
- (b) governed by a code of practice except in accordance with that code of practice.

6 Section 85 is amended by adding the following after subsection (2):

(3) Where an activity or class of activities has been designated under subsection (1)(a) as requiring an approval and the designation is later amended so that a registration is required, the Minister may make regulations

- (a) deeming the approval to be a registration;
- (b) respecting the date on which the code of practice or portion of the code of practice governing that activity or class of activities is to take effect;
- (c) to continue any terms and conditions of the approval until the date referred to in clause (b);
- (d) providing that the expiry date of the approval no longer applies;
- (e) providing for any other matter that the Minister considers necessary to facilitate the transition from an approval to a registration and a code of practice.

7 The following is added after section 88:

Compliance with code of practice

88.1 No person shall commence or continue any activity that is

- (a) designated by the regulations as an activity in respect of which notice must be given to the Director, and
- (b) governed by a code of practice

except in accordance with that code of practice.

Security

88.2(1) If required by the regulations, a person who commences or continues an activity that is governed by a code of practice shall

- (a) provide financial or other security, and
- (b) carry insurance

in respect of the activity that is the subject of a code of practice.

(2) Subsection (1) does not apply to the Government or a Government agency.

8 Section 89 is amended by renumbering it as section 89(1) and adding the following after subsection (1):

(2) Where an activity or class of activities has been designated under section 85(1)(a) as requiring an approval or registration and the designation is later amended so that notice under sections 87 and 88 is required, the Minister may make regulations providing for any matter that the Minister considers necessary to facilitate that transition.

9 Section 91(1)(j) is amended by adding “or an inspector” after “Director”.

10 Section 108 is amended

- (a) in subsections (1) and (2) by adding “, a code of practice” after “an approval”;
- (b) in subsection (3) by adding “or a code of practice” after “an approval”.

11 Section 109(3) is amended by adding “, a code of practice” after “an approval”.

12 Section 111 is amended

- (a) in subsection (1) by striking out “or by telephone” and substituting “, by telephone or by electronic means”;
- (b) by adding the following after subsection (3):
 - (4) A person who reports under subsection (1) or (2) shall comply with any additional requirements set out in the regulations.

13 Section 113 is amended

(a) by repealing subsection (2) and substituting the following:

(2) Where the release of the substance into the environment is or was expressly authorized by and is or was in compliance with an approval, code of practice or registration or the regulations, the Director may not issue an environmental protection order under subsection (1) unless in the Director's opinion the adverse effect was not reasonably foreseeable at the time the approval or registration was issued, the code of practice was adopted or the regulations were made, as the case may be.

(b) by adding the following after subsection (3):

(4) An environmental protection order may be issued under this section notwithstanding that a reclamation certificate has been issued under section 138.

14 Section 115(2) is amended by adding “, a code of practice” after “an approval”.

15 Section 121(b) is amended by striking out “a written report under section 111(2) and its contents and providing for the waiver of a requirement to make a written report” and substituting “a report under section 111 and its contents and providing for the waiver of a requirement to make a report under section 111(2)”.

16 Section 137(2)(a) is amended by adding “or code of practice” after “approval”.

17 Section 138 is amended by adding the following after subsection (1):

(1.1) The Director may refuse to accept an application for a reclamation certificate if, in the Director's opinion, the application is not complete and accurate.

18 Section 139(1) is amended by adding "or" at the end of clause (b) and repealing clause (c).

19 The following is added after section 139:

Cancellation of reclamation certificate

139.1(1) The Director or an inspector may cancel a reclamation certificate where

- (a) no reclamation inquiry was conducted prior to the issuance of the reclamation certificate, and
- (b) the Director or inspector is of the opinion that further work may be necessary to conserve and reclaim the specified land to which the reclamation certificate relates.

(2) For the purposes of this Part, where a reclamation certificate is cancelled under this section, the certificate is considered never to have been issued.

20 Section 140 is amended by adding "or code of practice" after "approval".

21 Section 142 is amended

- (a) in subsection (2)(a) by striking out "subject to subsection (3),";
- (b) in subsection (3)(b) by adding "with respect to different classes of specified land set out in the regulations" after "section".

22 Section 146(o) is amended by striking out ", such dates not

to be more than 25 years after the date that the reclamation certificate is issued”.

23 Section 148(b) is amended by adding “or code of practice” after “approval”.

24 Section 150(1) is repealed and the following is substituted:

Environmental protection order

150(1) Notwithstanding that an approval or registration has been issued or that the approval holder is in compliance with the terms and conditions of the approval or the registration holder is in compliance with a code of practice, the Director may issue an environmental protection order to the person responsible for a waterworks system where the Director is of the opinion that the waterworks system is being operated or maintained in a manner that

- (a) may cause, is causing or has caused the potable water supplied by that system to be unfit for any of its intended uses, or
- (b) may cause, is causing or has caused the concentration of a substance in the potable water supplied by that system to vary from the specified concentration for the substance set out in any applicable approval or code of practice or the regulations.

25 Section 152 is amended by adding “inspector,” after “measures the”.

26 Section 181 is amended by striking out “approval or” and substituting “approval, a code of practice or a”.

27 Section 192 is amended by striking out “approval or” and substituting “approval, a code of practice or a”.

28 Section 198(1) is amended in clauses (d)(i) and (e) by adding “, code of practice” after “an approval”.

29 Section 227 is amended in clauses (d) and (e) by adding “, a code of practice” after “approval”.

30 Sections 2(b), 12 and 15 come into force on Proclamation.

Explanatory Notes

1 Amends chapter E-12 of the Revised Statutes of Alberta 2000.

2 Section 1(ww) and (xx) presently read:

1 In this Act,

(ww) “*pipeline*” means

(i) *a pipe for the transmission of any substance and installations in connection with that pipe,*

(ii) *a sewer or sewage system and installations in connection with that sewer or sewage system, or*

(iii) *an underground pipe that contains telecommunication lines;*

(xx) “*pit*” means *an excavation in the surface made for the purpose of removing, opening up or proving sand, gravel, clay, marl, peat or any other substance, and includes any associated infrastructure, but does not include a mine or quarry;*

3 Section 32(3) presently reads:

(3) All security required to be deposited with the Government in respect of an approval, a registration, a certificate of qualification or a certificate of variance or under section 97, 135, 174 or 189 or with respect to an approval or licence under the Water Act shall be paid into the Environmental Protection Security Fund.

4 Section 35(1)(a)(iv) and (v) presently read:

35(1) Subject to this section,

(a) the following documents and information in the possession of the Department that are provided to the Department in the administration of this Act must be disclosed to the public in the form and manner provided for in the regulations:

(iv) environmental and emission monitoring data, and the processing information that is necessary to interpret that data, that is provided by an approval holder;

(v) any reports or studies that are provided to the Department in accordance with a term or condition of an approval;

5 New section to deal with compliance with code of practice.

6 Section 85(1)(a) presently reads:

85(1) The Minister may make regulations

(a) designating activities or classes of activities in respect of which an approval or registration is required, respecting the circumstances under which an approval or

registration is required and the persons or classes of persons who are required to obtain an approval or registration and specifying the kind of approval or registration that is required;

7 New sections to deal with compliance with code of practice and security.

8 Section 89 presently reads:

89 The Minister may make regulations

- (a) designating activities or classes of activities in respect of which notice under sections 87 and 88 must be given and respecting the circumstances under which notice must be given and the persons or classes of persons who are required to give notice;*
- (b) respecting the form and contents of a notice under sections 87 and 88 and the time at which and manner in which it must be given.*

9 Section 91(1)(j) presently reads:

91(1) A notice of appeal may be submitted to the Board by the following persons in the following circumstances:

- (j) where the Director cancels a reclamation certificate, the operator may submit a notice of appeal;*

10 Section 108 presently reads:

108(1) No person shall knowingly release or permit the release of a substance into the environment in an amount, concentration or level or at a rate of release that is in excess of that expressly prescribed by an approval or the regulations.

(2) No person shall release or permit the release of a substance into the environment in an amount, concentration or level or at a rate of release that is in excess of that expressly prescribed by an approval or the regulations.

(3) For the purposes of this section, if there is a conflict between an approval and the regulations as to an amount, concentration, level or rate of release of a substance, the most stringent requirement prevails.

11 Section 109(3) presently reads:

(3) Subsections (1) and (2) apply only where the amount, concentration, level or rate of release of the substance is not authorized by an approval or the regulations.

12 Section 111 presently reads:

111(1) A person who is required to report to the Director pursuant to section 110 shall report in person or by telephone and shall include the following in the report, where the information is known or can be readily obtained by that person:

- (a) the location and time of the release;*
- (b) a description of the circumstances leading up to the release;*
- (c) the type and quantity of the substance released;*
- (d) the details of any action taken and proposed to be taken at the release site;*
- (e) a description of the location of the release and the immediately surrounding area.*

(2) In addition to a report under subsection (1), the person shall report in writing where required by the regulations.

(3) A person who reports under subsections (1) and (2) shall give to the Director any additional information in respect of the release that the Director requires.

13 Section 113 presently reads:

113(1) Subject to subsection (2), where the Director is of the opinion that

- (a) a release of a substance into the environment may occur, is occurring or has occurred, and*
- (b) the release may cause, is causing or has caused an adverse effect,*

the Director may issue an environmental protection order to the person responsible for the substance.

(2) Where the release of the substance into the environment is or was expressly authorized by and is or was in compliance with an approval or registration or the regulations, the Director may not issue an environmental protection order under subsection (1) unless in the Director's opinion the adverse effect was not reasonably foreseeable at the time the approval or registration was issued or the regulations were made, as the case may be.

(3) An environmental protection order may order the person to whom it is directed to take any measures that the Director considers necessary, including, but not limited to, any or all of the following:

- (a) investigate the situation;*
- (b) take any action specified by the Director to prevent the release;*
- (c) measure the rate of release or the ambient concentration, or both, of the substance;*
- (d) minimize or remedy the effects of the substance on the environment;*

- (e) *restore the area affected by the release to a condition satisfactory to the Director;*
- (f) *monitor, measure, contain, remove, store, destroy or otherwise dispose of the substance, or lessen or prevent further releases of or control the rate of release of the substance into the environment;*
- (g) *install, replace or alter any equipment or thing in order to control or eliminate on an immediate and temporary basis the release of the substance into the environment;*
- (h) *construct, improve, extend or enlarge the plant, structure or thing if that is necessary to control or eliminate on an immediate and temporary basis the release of the substance into the environment;*
- (i) *report on any matter ordered to be done in accordance with directions set out in the order.*

14 Section 115(2) presently reads:

(2) Subsection (1) applies whether or not the release of the substance into the environment is or was expressly authorized by and is or was in compliance with an approval, a registration or the regulations.

15 Section 121(b) presently reads:

121 The Minister may make regulations

- (b) *respecting the making of a written report under section 111(2) and its contents and providing for the waiver of a requirement to make a written report where in the opinion of the Director no adverse effect is likely to occur as a result of the release or the adverse effect caused by the release has been adequately controlled.*

16 Section 137(2) presently reads:

(2) Where this Act requires that specified land must be conserved and reclaimed, the conservation and reclamation must be carried out in accordance with

- (a) the terms and conditions in any applicable approval,*
- (b) the terms and conditions of any environmental protection order regarding conservation and reclamation that is issued under this Part,*
- (c) the directions of an inspector or the Director, and*
- (d) this Act.*

17 Section 138(1) presently reads:

138(1) An application for a reclamation certificate must be made by the operator to the Director in the form and manner and within the time provided for in the regulations.

18 Section 139(1) presently reads:

139(1) The Director may

- (a) amend a term or condition of, add a term or condition to or delete a term or condition from a reclamation certificate if the Director considers it appropriate to do so,*
- (b) cancel a reclamation certificate issued in error,*
- (c) cancel a reclamation certificate where no reclamation inquiry was conducted prior to the issuance of the certificate and the Director is of the opinion that further work*

may be necessary to conserve and reclaim the specified land to which the certificate relates, or

- (d) correct a clerical error in a reclamation certificate.*

19 New section to deal with cancellation of reclamation certificate.

20 Section 140 presently reads:

140 Subject to any applicable approval and the regulations, an inspector may

- (a) at any time before the issuance of a reclamation certificate in a case where the operator is required to obtain a reclamation certificate, or*
- (b) at any time, in a case where the operator is not required to obtain a reclamation certificate,*

issue an environmental protection order regarding conservation and reclamation to an operator directing the performance of any work or the suspension of any work if in the inspector's opinion the performance or suspension of the work is necessary in order to conserve and reclaim specified land.

21 Section 142(2)(a) and (3) presently read:

(2) If, following the reclamation inquiry, the Director is of the opinion that further work is necessary to conserve and reclaim the specified land and the work relates to matters that were not apparent to the inspector at the time the reclamation certificate was issued by the inspector, the Director may

- (a) *subject to subsection (3), issue an environmental protection order regarding conservation and reclamation to*
 - (i) *the person to whom the reclamation certificate was issued,*
 - (ii) *a successor, assignee, executor, administrator, receiver, receiver-manager or trustee of a person referred to in subclause (i), or*
 - (iii) *a person who acts as principal or agent of a person referred to in subclause (i) or (ii)*
directing the performance of any work that the Director considers is necessary to conserve and reclaim the specified land, or

(3) No environmental protection order regarding conservation and reclamation may be issued under this section

- (a) *in any case where the reclamation certificate in respect of the specified land was issued under the Land Surface Conservation and Reclamation Act, RSA 1980 cL-3, or*
- (b) *in any other case, after the date prescribed or determined in accordance with the regulations for the purposes of this section.*

22 Section 146(o) presently reads:

146 The Lieutenant Governor in Council may make regulations

- (o) *prescribing dates or the manner of determining dates for the purposes of section 142(3)(b), generally or in respect of different classes of specified land or activities, such dates not to be more than 25 years after the date that the reclamation certificate is issued;*

23 Section 148(b) presently reads:

148 No person shall release a substance or permit the release of a substance into any part of a waterworks system

- (b) that causes or may cause the concentration of the substance or of any other substance in the potable water supplied by the system to vary from the specified concentration for the substance set out in any applicable approval or the regulations.*

24 Section 150(1) presently reads:

150(1) Notwithstanding that an approval or registration has been issued or that the approval holder is in compliance with the terms

and conditions of the approval, the Director may issue an environmental protection order to the person responsible for a waterworks system where the Director is of the opinion that the waterworks system is being operated or maintained in a manner that

- (a) may cause, is causing or has caused the potable water supplied by that system to be unfit for any of its intended uses, or*
- (b) may cause, is causing or has caused the concentration of a substance in the potable water supplied by the system to vary from the specified concentration for the substance set out in any applicable approval or the regulations.*

25 Section 152 presently reads:

152 Where an inspector, an investigator or the Director is of the opinion that any potable water supplied by a waterworks system may cause, is causing or has caused an immediate and significant adverse effect on human life or health, the inspector, investigator or Director may take any emergency

measures the investigator or Director considers necessary to protect human life or health.

26 Section 181 presently reads:

181 No person shall dispose of waste on, into or under water or ice except in accordance with an approval or registration or as otherwise provided for under this Act.

27 Section 192 presently reads:

192 No person shall dispose of hazardous waste except in accordance with an approval or registration or as otherwise provided for under this Act.

28 Section 198(1)(d) and (e) presently read:

198(1) For the purpose of the administration of this Act, an investigator may, without a search warrant or order to enter and

inspect and subject to section 199, at any reasonable time do any or all of the following:

- (d) enter and inspect any place that the investigator reasonably believes is likely to contain documents related to*
- (i) an activity or thing that is, or is required to be, the subject of an approval, registration, certificate of variance, reclamation certificate, remediation certificate, environmental protection order or enforcement order, or*
- (ii) the release of a substance into the environment;*
- (e) enter and inspect any place that the investigator reasonably believes is, or is required to be, the subject of or referred to in an approval, registration, certificate of*

variance, reclamation certificate, remediation certificate, environmental protection order or enforcement order;

29 Section 227(d) and (e) presently read:

227 *A person who*

(d) knowingly contravenes a term or condition of an approval, a certificate of variance, a reclamation certificate, a remediation certificate or a certificate of qualification,

(e) contravenes a term or condition of an approval, a certificate of variance, a reclamation certificate, a remediation certificate or a certificate of qualification,

is guilty of an offence.

30 Coming into force.