

2007 Bill 3

Third Session, 26th Legislature, 56 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 3

CLIMATE CHANGE AND EMISSIONS MANAGEMENT AMENDMENT ACT, 2007

THE MINISTER OF ENVIRONMENT

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 3

2007

CLIMATE CHANGE AND EMISSIONS MANAGEMENT AMENDMENT ACT, 2007

(Assented to _____, 2007)

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

Amends SA 2003 cC-16.7

**1 The *Climate Change and Emissions Management Act* is
amended by this Act.**

2 Section 1 is amended

**(a) by renumbering clause (a) as clause (a.3) and by adding
the following before clause (a.3):**

(a) “analyst” means a person designated under section 2.2 as
an analyst;

(a.1) “compliance order” means a compliance order issued
under section 29;

(a.2) “director” means a person designated under section 2.2
as a director;

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

(b.1) “inspector” means a person designated under section 2.2
as an inspector;

Explanatory Notes

1 Amends chapter C-16.7 of the Statutes of Alberta, 2003.

2 Definitions.

(b.2) “investigator” means a person designated under section 2.2 as an investigator;

(b.3) “justice” means a justice of the peace or a provincial court judge, and includes 2 or more justices where 2 or more justices are, by law, required to act or, by law, act or have jurisdiction;

(c) by adding the following after clause (c):

(c.1) “order to enter and inspect” means an order issued under section 15;

(c.2) “peace officer” means a peace officer within the meaning of the *Police Act*;

(d) by adding the following after clause (d):

(d.1) “search warrant” means a search warrant issued by reason of the operation of section 3 of the *Provincial Offences Procedure Act*;

3 The following is added after section 2:

Advisory committees, experts

2.1(1) The Minister may

- (a) establish advisory committees and retain experts to report to the Minister with respect to
 - (i) the content and administration of this Act and the regulations, and
 - (ii) any of the policies, programs, services or other matters under the Minister’s administration,

and

- (b) specify the functions that the committees and experts are to perform, including, without limitation, the seeking of input from the public, and the manner in which and time period within which those functions are to be performed.

3 Advisory committees, experts/Designation of officials.

(2) The report of a committee established pursuant to subsection (1), including the recommendations and the reasons for them, shall be made public in the manner provided for in the regulations.

Designation of officials

2.2(1) The Minister may by order designate any person as a director for the purposes of all or part of this Act or the regulations.

(2) The Minister may, with respect to any director, and a director may, with respect to that director personally, designate any person as an acting director to act in the director's place in the event of the director's absence or inability to act.

(3) The Minister may by order designate any person as an investigator, inspector or analyst for the purposes of this Act or the regulations.

(4) A designation under this section may direct that the authority of the director, investigator, inspector or analyst be exercised subject to any terms and conditions that the Minister prescribes in the designation, including limitations on the scope of the designation.

4 Section 5 is repealed and the following is substituted:

Emission offsets

5 The Lieutenant Governor in Council may make regulations respecting emission offsets, credits and sink rights for the purpose of achieving reductions in specified gas emissions consistent with specified gas emission targets established under section 3 and any sectoral agreements entered into under section 4, and the regulations may include, without limitation, provisions

- (a) respecting the description and nature of emission offsets, credits and sink rights;
- (b) respecting the manner in which and the terms and conditions subject to which emission offsets, credits and sink rights may be created, obtained, distributed, exchanged, traded, sold, used, varied and cancelled;

4 Section 5 presently reads:

5 The Lieutenant Governor in Council may make regulations respecting emission offsets, credits and sink rights for the purpose of achieving reductions in specified gas emissions consistent with specified gas emission targets established under section 3 and any sectoral agreements entered into under section 4, and the regulations may include, without limitation, provisions respecting

- (a) the description and nature of emission offsets, credits and sink rights;*
- (b) the manner in which and the terms and conditions subject to which emission offsets, credits and sink rights may be created, distributed, exchanged, traded, sold, used, varied and cancelled;*

- (c) authorizing the Minister to establish requirements or limits in respect of any matter referred to in clause (b);
- (d) respecting the creation, operation and management of one or more public registries for the purposes of regulations under this section;
- (e) respecting maximum prices and penalty prices and compliance options at the maximum or penalty price;
- (f) respecting compatibility of regulations under this section with similar regulatory schemes in other jurisdictions;
- (g) respecting the payment into the Climate Change and Emissions Management Fund of any or all amounts payable to the Government through the operation of the regulations under this section.

5 Section 8 is repealed and the following is substituted:

Agreements re: interjurisdictional co-operation

8 The Minister may not enter into any agreement under the *Government Organization Act* providing for co-operative, complementary or compatible actions with other jurisdictions in respect of specified gas emissions unless the agreement is consistent with this Act and the specified gas emission target for Alberta established by section 3(1).

6 Sections 11 to 21 are repealed and the following is substituted:

Application for investigation

11(1) Any 2 persons ordinarily resident in Alberta who are not less than 18 years of age and who are of the opinion that an offence has been committed under this Act or the regulations may apply to the director to have an investigation of the alleged offence conducted.

- (c) *the creation, operation and management of one or more public registries for the purposes of regulations under this section;*
- (d) *maximum prices and penalty prices and compliance options at the maximum or penalty price;*
- (e) *compatibility of regulations under this section with similar regulatory schemes in other jurisdictions;*
- (f) *the payment into the Climate Change and Emissions Management Fund of any or all amounts payable to the Government through the operation of the regulations under this section.*

5 Section 8 presently reads:

8(1) The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements with the Government of Canada or the government of a province or territory, any agency of the Government of Canada or of the government of a province or territory or any other person for the purposes of undertaking co-operative, complementary or compatible actions to reduce specified gas emissions.

(2) The Minister may not enter into any agreement under subsection (1) unless the Minister is satisfied that the agreement will be consistent with this Act and with the specified gas emission target for Alberta established by section 3(1).

6 Sections 11 to 21 presently read:

11(1) Where the Minister is of the opinion that a person has contravened a provision of this Act or the regulations prescribed for the purposes of this section in the regulations, the Minister may, subject to the regulations, by notice in writing served on the person personally or by mail, require that person to pay to the Government by the date specified in the notice an administrative penalty in the amount set out in the notice for each contravention.

(2) The application shall be accompanied with a solemn declaration

- (a) stating the names and addresses of the applicants,
- (b) stating the nature of the alleged offence and the name of each person alleged to be involved in its commission, and
- (c) containing a concise statement of the evidence supporting the allegations of the applicants.

Investigation on receipt of application

12(1) On receipt of an application under section 11, the director shall acknowledge receipt of the application and shall investigate all matters that the director considers necessary for a determination of the facts relating to the alleged offence.

(2) Within 90 days after receiving the application, the director shall report to the applicants on the progress of the investigation and the action, if any, proposed to be taken in respect of the alleged offence.

(3) The director may discontinue an investigation if the director is of the opinion that the alleged offence does not require further investigation.

(4) Where an investigation is discontinued, the director shall

- (a) prepare a statement in writing stating the reasons for its discontinuance, and
- (b) send a copy of the statement to the applicants and to any person whose conduct was investigated.

Right of entry and inspection

13(1) For the purpose of the administration of this Act or the regulations, an investigator may, without a search warrant or order to enter and inspect and subject to section 14, at any reasonable time do any or all of the following:

- (a) enter and inspect any place in or from which the investigator reasonably believes a specified gas is being, has been or may be released into the environment;

(2) The notice of administrative penalty must state the grounds on which the penalty was assessed.

12 A person who pays an administrative penalty in respect of a contravention may not be charged under this Act with an offence in respect of that contravention.

13 A notice of administrative penalty may not be issued more than 2 years after the later of

- (a) the date on which the contravention to which the notice relates occurred, and*
- (b) the date on which evidence of the contravention first came to the notice of the Minister.*

14 Subject to the right to appeal a notice of administrative penalty, where a person fails to pay an administrative penalty in accordance with the notice of administrative penalty and the regulations, the Minister may file a copy of the notice of administrative penalty with the clerk of the Court of Queen's Bench and, on being filed, the notice has the same force and effect and may be enforced as if it were a judgment of the Court.

15 Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is guilty of the offence and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted for or convicted of the offence.

16 For the purposes of this Act, an act or thing done or omitted to be done by a director, officer, official, employee or agent of a corporation in the course of that person's employment or in the exercise of that person's powers or the performance of that person's duties is deemed also to be an act or thing done or omitted to be done by the corporation.

17(1) In this section, "prescribed information" means information that

- (a) is provided to the Government under this Act,*
- (b) is commercial, financial, scientific or technical information that would reveal proprietary business, competitive or trade secret information about a specific facility, technology or corporate initiative, and*
- (c) is of a class or type of information prescribed in the regulations under section 18(1)(h).*

(2) No person shall communicate or allow to be communicated any prescribed information to any person who is not legally entitled to it, or allow any such person to have access to such information.

- (b) enter and inspect any place that the investigator reasonably believes is likely to contain documents related to
 - (i) the release of a specified gas into the environment,
 - (ii) reporting requirements under this Act or the regulations, or
 - (iii) an activity or thing that is the subject of a compliance order;
- (c) enter and inspect any place that the investigator reasonably believes is the subject of or referred to in a compliance order or notice of administrative penalty;
- (d) require the production of any documents that are required to be kept under this Act or the regulations or any other documents that are related to the purposes for which the investigator is exercising any power under clauses (a) to (c).

(2) In the course of exercising powers under subsection (1), the investigator may do any or all of the following:

- (a) require that any thing be operated, used or set in motion under conditions specified by the investigator;
- (b) use any machine, structure, material or equipment in the place the investigator is inspecting in order to carry out the inspection;
- (c) take samples of any substance or thing;
- (d) conduct tests or take measurements;
- (e) make copies of or take extracts from any documents referred to in subsection (1)(d);
- (f) use any computer system at any place to examine any data contained in or available to the computer system;
- (g) record or copy any information by any method;

(3) Subsection (2) does not prohibit the publishing of prescribed information in summarized or statistical form in such a manner that it is not possible to relate the information to a particular facility, technology or corporate initiative.

(4) With respect to any record or information that would reveal prescribed information, subsection (2) prevails, despite the Freedom of Information and Protection of Privacy Act, for the period of time specified in the regulations under section 18(1)(h) in respect of that prescribed information.

18(1) The Lieutenant Governor in Council may make regulations

- (a) governing the manner in which Gross Domestic Product is determined for the purposes of this Act;*
- (b) establishing limits on the levels of specified gases that may be released into the environment from any source or type of source;*
- (c) establishing minimum energy efficiency levels for operations and undertakings in Alberta;*
- (d) governing the maximum levels of emissions of specified gases per unit of energy input or output or per unit of material input or product output for operations and undertakings in Alberta;*
- (e) establishing operating, technological and performance standards for operations and undertakings in Alberta for the purpose of reducing or limiting specified gas emissions or for the purpose of increasing energy efficiency or energy conservation;*
- (f) governing the reporting of releases and the disclosure of information for the purposes of section 6;*
- (g) governing reporting and record-keeping requirements generally for any purpose related to this Act;*
- (h) prescribing classes and types of information as prescribed information for the purposes of section 17 and prescribing periods of time for the purposes of section 17;*
- (i) governing the confidentiality of information provided to the Government in the course of the administration of this Act;*
- (j) governing methods and procedures for conducting sampling, analyses, tests, measurements, verification and monitoring for any purposes related to this Act;*
- (k) governing standards and other requirements respecting the construction, development, operation, measurement and validation of sinks and emission offsets to meet specified gas emission targets;*

- (h) reproduce any record from data in the form of a printout or other intelligible output;
- (i) take a printout or other output for examination or copying;
- (j) use any copying equipment to make copies;
- (k) take any photographs or audio-video records;
- (l) make reasonable inquiries of any person, orally or in writing.

(3) An investigator may remove documents that the investigator is entitled to examine or copy or otherwise reproduce but shall give a receipt to the person from whom they were taken and shall promptly return them on completion of the examination.

(4) An investigator who exercises the power set out in subsection (2)(l) may exclude from the questioning any person except counsel for the individual being questioned.

Private dwelling place

14 An investigator may not enter a private dwelling place or any part of a place that is designed to be used and is being used as a permanent or temporary private dwelling place except

- (a) with the consent of the occupant of the dwelling place, or
- (b) under the authority of an order to enter and inspect or a search warrant.

Order to enter and inspect

15(1) Where a justice is satisfied on evidence under oath by an investigator

- (a) that there are reasonable grounds for believing that it is appropriate for the administration of this Act or the regulations for the investigator to do anything set out in section 13, and

- (l) *governing the allocation of physical and legal risks associated with emission offsets, credits and sink rights;*
- (m) *for the purposes of enabling, implementing and carrying out sectoral agreements entered into under section 4, including regulations respecting the enforcement of rights, obligations and liabilities under a sectoral agreement;*
- (n) *making the terms of a sectoral agreement entered into under section 4 apply, with necessary modifications, to persons who are not parties to the agreement or otherwise bound by it, and deeming those persons to be bound by the agreement;*
- (o) *where there is no sectoral agreement in effect in respect of a sector, governing, in respect of the sector, any matter in respect of which a sectoral agreement may be entered into under section 4;*
- (p) *respecting the use of economic and financial instruments and market-based approaches directed to specified gas emission reduction and the sequestration of specified gas;*
- (q) *respecting the manner in which specified gas emission targets are established for the purposes of section 3;*
- (r) *establishing or providing for the establishment of sectors of the Alberta economy for the purposes of any provision of this Act or the regulations;*
- (s) *providing with respect to any provision of this Act or the regulations that its contravention constitutes an offence and prescribing penalties, including imprisonment, in respect of those offences;*
- (t) *governing the issuing of compliance orders in respect of contraventions of this Act, the regulations or a sectoral agreement entered into pursuant to section 4, including, without limitation, regulations governing*
 - (i) *who may issue a compliance order;*
 - (ii) *the things that a compliance order may order to be done for the purpose of addressing the contravention and the consequences of it and ensuring compliance with the provision that was contravened;*
 - (iii) *the consequences of non-compliance with a compliance order;*
 - (iv) *appeals of compliance orders;*
- (u) *defining terms for the purposes of this Act or a regulation that are not defined in this Act;*

- (b) that the investigator may not be able to effectively carry out duties under this Act or the regulations without an order under this section because
 - (i) no person is present to grant access to a place that is locked or is otherwise inaccessible,
 - (ii) a person has denied the investigator access to a place or there are reasonable grounds for believing that a person may deny the investigator access to a place,
 - (iii) a person has prevented the investigator from doing anything set out in section 13 or denied the investigator access to any thing as a result of which the investigator is unable to do anything set out in section 13,
 - (iv) there are reasonable grounds for believing that a person may prevent an investigator from doing anything set out in section 13, or may deny the investigator access to any thing as a result of which the investigator may be unable to do anything set out in section 13,
 - (v) it is impractical, because of the remoteness of the place to be inspected or because of any other reason, for the investigator to obtain an order under this section without delay if access is denied, or
 - (vi) there are reasonable grounds for believing that an attempt by the investigator to do anything set out in section 13 without the order might defeat the purpose of that section or endanger human life or health or the environment,

the justice may issue an order to enter and inspect authorizing the investigator to do anything set out in section 13 that is specified in the order for the period of time set out in the order.

(2) The period of time referred to in subsection (1) may not extend beyond 30 days after the date on which the order is made, but the order may be renewed for any reason set out in subsection (1) for one or more periods each of which is not more than 30 days.

- (v) *respecting the form and contents of a notice of administrative penalty issued under section 11;*
- (w) *prescribing contraventions of this Act and the regulations in respect of which an administrative penalty under section 11 may be imposed and prescribing the amounts, or the manner of determining the amounts, and prescribing maximum amounts of the administrative penalties that may be imposed;*
- (x) *respecting appeals from notices of administrative penalty issued under section 11, including, without limitation, regulations respecting*
 - (i) *the composition and manner of appointment of the appeal body;*
 - (ii) *the evidence to be considered by the appeal body and the factors that the appeal body is to consider in reaching its decision;*
 - (iii) *the powers of the appeal body to confirm or reverse a notice of administrative penalty and to vary the amount of an administrative penalty;*
 - (iv) *the procedure to be followed in an appeal and the procedure before the appeal body;*
- (y) *respecting any other matter necessary for the administration of the system of administrative penalties;*
- (z) *governing the charging of fees for the provision of any service, material or program, the performance of any function or the doing of anything under this Act;*
- (aa) *generally in furtherance of this Act.*

(2) A regulation under subsection (1)(n) may, with respect to persons to whom it applies, impose requirements and obligations that are more stringent than those provided for in the sectoral agreement.

(3) Where regulations are made in respect of a sector under subsection (1)(o), the regulations may provide that they constitute a sectoral agreement for the purposes of this Act.

19 In the event of a conflict between a term in a sectoral agreement referred to in section 4 and an enactment of Alberta, the enactment of Alberta is paramount.

20(1) A regulation under this Act may adopt or incorporate in whole or in part or with modifications documents that set out standards, codes, guidelines or other rules relating to any matter in respect of which a regulation may be made under this Act.

(3) An application under subsection (2) may be made before or after the expiry of the period.

Order without notice

16 An order under section 15 may be issued or renewed on application without notice.

Powers to be exercised at reasonable time

17 An investigator exercising powers under section 15 must do so at a reasonable time unless otherwise authorized in the order under that section.

Seizure without order or search warrant

18(1) An investigator may, without a court order or a search warrant, seize any thing that is produced to the investigator, or that is in plain view, during an inspection under section 13 or 15 if the investigator has reasonable grounds to believe that there has been an offence committed under this Act or the regulations and that the thing will afford evidence as to the commission of the offence.

(2) The investigator may remove the thing seized or may detain it in the place where it is seized.

(3) The investigator shall inform the person from whom the thing was seized as to the reason for the seizure and shall give the person a receipt for it.

Bringing seized thing before judge

19 An investigator who seizes any thing under the authority of section 18 shall deal with it in the same way as if it were seized under the authority of a search warrant.

Tele-warrant

20(1) Where an investigator has reasonable grounds to believe that

- (a) an offence has been committed under this Act or the regulations,
- (b) there is in a place any thing that will afford evidence as to the commission of the offence, and

(2) Where a standard, code, guideline or other rule is adopted or incorporated by regulation under this Act, the Minister shall ensure that a copy of the standard, code, guideline or other rule is made available to a person on request.

21 This Act comes into force on Proclamation.

- (c) it would be impracticable to appear personally before a justice to make an application for a search warrant,

the investigator may submit an information on oath to a justice by telephone or other means of telecommunication.

(2) An information submitted by telephone or other means of telecommunication shall be on oath and shall be recorded verbatim by the justice, who shall, as soon as practicable, cause to be filed with the clerk of The Provincial Court of Alberta nearest to the area in which the tele-warrant is intended for execution the record or a transcription of the record certified by the justice as to time, date and contents.

(3) For the purposes of subsection (2), an oath may be administered by telephone or other means of telecommunication.

(4) An information on oath submitted by telephone or other means of telecommunication shall include

- (a) a statement of the circumstances that make it impracticable for the investigator to appear personally before a justice,
- (b) a statement of the alleged offence, the place to be searched and the things alleged to be liable to seizure,
- (c) a statement of the investigator's grounds for believing that things liable to seizure in respect of the alleged offence will be found in the place to be searched, and
- (d) a statement as to any prior application for a tele-warrant under this section or any other search warrant in respect of the same matter of which the investigator has knowledge.

(5) A justice who is satisfied that an information on oath submitted by telephone or other means of telecommunication

- (a) is in respect of an offence committed under this Act or the regulations and conforms to the requirements of subsection (4),

- (b) discloses reasonable grounds for dispensing with an information presented personally and in writing, and
- (c) discloses reasonable grounds for the issuance of a search warrant in respect of the offence,

may issue a tele-warrant to an investigator conferring the same authority respecting search and seizure as may be conferred by a search warrant issued by a justice before whom the investigator appears personally, and may require that the tele-warrant be executed within any time period that the justice may order.

- (6)** Where a justice issues a tele-warrant under subsection (5),
- (a) the justice shall complete and sign the tele-warrant in the form prescribed in the regulations, noting on its face the time, date and place of issuance,
 - (b) the investigator, on the direction of the justice, shall complete, in duplicate, a facsimile of the tele-warrant in the form prescribed in the regulations, noting on its face the name of the issuing justice and the time, date and place of issuance, and
 - (c) the justice shall, as soon as practicable after the tele-warrant has been issued, cause the tele-warrant to be filed with the clerk of The Provincial Court of Alberta nearest to the area in which the tele-warrant is intended for execution.

(7) An investigator who executes a tele-warrant issued under subsection (5) shall, before entering the place to be searched or as soon as is practicable after entry, give a facsimile of the tele-warrant to any person present and ostensibly in control of the place.

(8) An investigator who, in any unoccupied place, executes a tele-warrant issued under subsection (5) shall on entering the place or as soon as is practicable after entry, cause a facsimile of the tele-warrant to be suitably affixed in a prominent location within the place.

(9) An investigator to whom a tele-warrant is issued under subsection (5) shall file a written report with the clerk of The

Provincial Court of Alberta nearest to the area in which the tele-warrant was intended for execution as soon as is practicable but within a period not exceeding 7 days after the tele-warrant is executed, which report shall include

- (a) a statement of the time and date the tele-warrant was executed, or if the tele-warrant was not executed, a statement of the reasons why it was not executed,
- (b) a statement of the things, if any, that were seized pursuant to the tele-warrant and the location where they are being held, and
- (c) a statement of the things, if any, that were seized in addition to the things mentioned in the tele-warrant and the location where they are being held, together with a statement of the investigator's grounds for believing that those additional things had been obtained by, or used in, the commission of an offence.

(10) The clerk of The Provincial Court of Alberta with whom a written report is filed pursuant to subsection (9) shall, as soon as is practicable, cause the report, together with the information on oath and the tele-warrant to which it pertains, to be brought before a justice to be dealt with in respect of any thing that was seized and is referred to in the report, in the same manner as if the things were seized pursuant to a search warrant issued by a justice on an information presented personally by an investigator.

(11) In any proceeding in which it is material for a court to be satisfied that a search or seizure was authorized by a tele-warrant issued under subsection (5), the absence of the information on oath, transcribed and certified by the justice as to time, date and contents, or of the original tele-warrant, signed by the justice and carrying on its face a notation of the time, date and place of issuance, is, in the absence of evidence to the contrary, proof that the search or seizure was not authorized by a tele-warrant issued under subsection (5).

Disposal of things seized

21(1) Where a person is convicted of an offence under this Act or the regulations and any thing relating to the conviction that was seized under this Act or the regulations is then being

detained, the thing shall, on the expiration of the time for taking an appeal from the conviction or on the final conclusion of the proceedings, as the case may be,

- (a) be forfeited to the Government, if the court so directs, or
- (b) be restored to the person from whom it was seized or to any other person who is entitled to possession of it, subject to any terms and conditions imposed by the court.

(2) Where a thing is forfeited under subsection (1)(a),

- (a) the Minister may dispose of or destroy the thing, and
- (b) the costs of the forfeiture and disposal or destruction are recoverable from the offender.

Assistance by peace officer

22 An investigator may be accompanied by a peace officer while exercising powers or carrying out duties under this Act or the regulations.

Assistance to inspectors and investigators

23 The owner of and every person found in any place in respect of which an inspector or investigator is exercising powers or carrying out duties under this Act or the regulations shall

- (a) give the inspector or investigator all reasonable assistance to enable the inspector or investigator to exercise those powers and carry out those duties, and
- (b) furnish all information relative to the exercising of those powers and the carrying out of those duties that the inspector or investigator may reasonably require.

Use of assistants

24 An inspector or investigator or the director, in exercising any powers or carrying out any duties under this Act or the regulations, may be accompanied by any persons who the inspector, investigator or director considers are necessary to enable the inspector, investigator or director to exercise those powers and carry out those duties.

Right of entry

25(1) The powers in this section are in addition to any power to enter under sections 13, 14 and 15.

(2) An inspector or investigator or the director may, without incurring liability for doing so, enter any place for the purpose of carrying out any work or doing any other thing that the inspector, investigator or director is authorized under this Act or the regulations to carry out or do.

(3) A person referred to in section 24 may enter any place without being accompanied by an inspector or investigator or the director without incurring liability for doing so when authorized to do so by the inspector, investigator or director.

(4) Where a compliance order orders the person to whom it is directed to carry out any work or do any thing in respect of a place, that person and any other person carrying out the work or doing the thing on that person's behalf may, without incurring liability for doing so, enter the place for the purpose of carrying out the work or doing the thing required by the order.

(5) Where a judge of the Provincial Court is satisfied on evidence under oath that a person has been prevented from entering a place or has been denied access to a place that person is authorized to enter under this section, the judge may issue an order authorizing that person to enter the place for the purpose of carrying out any work or doing any thing that the person is authorized to carry out or do.

(6) An application under subsection (5) must be made by

- (a) the inspector, investigator or director, as the case may be, in a case referred to in subsection (3), or
- (b) the director, in a case referred to in subsection (4).

(7) A person entering any place under the authority of this section

- (a) shall do so at a reasonable time unless authorized otherwise in an order, and
- (b) shall give reasonable prior notice of intention to enter the place to the occupant of the place or, if there is no

occupant, to the owner if it is practicable in the circumstances to do so.

Interference

26 No person shall interfere with

- (a) an inspector or investigator or the director who is exercising powers or carrying out duties, or attempting to do so, under this Act or the regulations,
- (b) a person accompanying an inspector or investigator or the director under the authority of section 24, or
- (c) a person referred to in section 25(4) who is carrying out any work or doing any thing pursuant to a compliance order.

Court order re interference

27 If a person interferes with another person contrary to section 26,

- (a) the inspector, investigator or director, as the case may be, in a case referred to in section 26(a) or (b), or
- (b) the director, in a case referred to in section 26(c),

may apply to the Court of Queen's Bench for an order prohibiting the person from so interfering, and the Court may make any order it considers appropriate.

Powers of inspector

28 For the purposes of acting under this Act or the regulations, an inspector has, subject to any terms and conditions of the inspector's designation, all the powers and is subject to all the duties of an investigator under sections 13(1)(a) to (c) and (2), 15, 16, 17 and 22.

Compliance orders by director

29(1) Where in the director's opinion a person has contravened this Act or the regulations, the director may, whether or not the person has been charged or convicted in respect of the contravention, issue a compliance order specifying the measures that must be taken in order to effect compliance with this Act or the regulations.

(2) A compliance order issued under subsection (1) shall contain the reasons for making it and must be served on the person to whom it is directed.

(3) Measures that are specified in a compliance order may impose requirements that are more stringent than applicable requirements in the regulations.

General requirements of compliance orders

30 In addition to any other requirements that may be included in a compliance order, such an order may contain provisions

- (a) requiring the person to whom it is directed
 - (i) to maintain records on any relevant matter,
 - (ii) to report periodically to the director,
 - (iii) to prepare audits on the release of specified gases for submission to the director,
 - (iv) to submit to the director any information, proposal or plan specified by the director setting out any action to be taken by the person with respect to the subject-matter of the order, and
 - (v) to take any other measure that the person issuing the order considers necessary to facilitate compliance with the order,
- (b) specifying the manner or method of, or the procedures to be used in, carrying out the measures required by the order, and
- (c) fixing the time within which any measure required by the order is to be commenced and the time within which the order or any portion of the order is to be complied with.

Amendment and cancellation of compliance orders

31(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 compliance order,

(b) cancel a compliance order, or

(c) correct a clerical error in a compliance order.

(2) The director may amend a compliance order by adding to the list of persons to whom the order is directed.

(3) A copy of a compliance order amended under subsection (1) must be served on the same person to whom the original order was directed.

(4) A copy of a compliance order amended under subsection (2) must be served on

(a) any person whose name was added to it, and

(b) the same person to whom the original order was directed.

Joint and several liability

32 Where a compliance order is issued to more than one person, all persons named in the order are jointly responsible for carrying out the terms of the order and are jointly and severally liable for payment of the costs of doing so, including any costs incurred by the director under section 34.

Court order for compliance

33(1) If the person to whom a compliance order is directed fails to comply with the compliance order, the Minister may apply to the Court of Queen's Bench for an order of the Court directing that person to comply with the compliance order.

(2) This section applies whether or not a conviction has been adjudged against the person to whom the compliance order is directed for an offence under this Act or the regulations in respect of the subject-matter that gave rise to the issuing of the compliance order.

Failure to comply with compliance order

34(1) If the person to whom a compliance order is directed fails to comply with the compliance order, the director may take whatever action the director considers necessary to carry out the terms of the compliance order.

(2) Costs incurred by the director under this section are recoverable by the Government

- (a) in an action in debt against the person to whom the compliance order was directed, or
- (b) by order of the Minister directing any person who purchases land to which the compliance order relates including, without limitation, a purchase on the sale of the land to realize a security interest, to pay to the Minister instead of to the vendor an amount not exceeding the amount owing in respect of the costs.

(3) If the identity of a purchaser to whom an order could be issued under subsection (2)(b) cannot be ascertained, the Minister may nevertheless issue the order, and may take steps to ensure compliance with the order if the identity of the person becomes known to the Minister after the order is issued.

(4) For the purposes of this section, the costs referred to in subsection (2) include, without limitation, any costs incurred in administering, investigating and responding to

- (a) any matter to which the compliance order relates, or
- (b) the failure to comply with the compliance order.

(5) A purchaser who pays an amount to the Minister under subsection (2)(b) is discharged from any obligation to pay that amount to the vendor.

Registration of compliance order

35(1) The director may submit a certified copy of a compliance order to

- (a) the Registrar of Land Titles under the *Land Titles Act*, or
- (b) the Registrar of the Metis Settlements Land Registry under the *Metis Settlements Act*.

(2) On receiving a certified copy of a compliance order under subsection (1), the Registrar shall

- (a) endorse a memorandum of the order on the certificate of title to the land to which the order relates, or

- (b) record the order against the Metis title register for the land to which the order relates,

as the case may be.

(3) Notwithstanding any other Act, an endorsement or record under this section does not lapse and shall not be cancelled except on the receipt by the Registrar of a notice in writing from the director requesting the cancellation.

(4) On making an endorsement or record under this section, the Registrar shall notify the director to that effect, and the director shall notify in writing

- (a) the registered owner of the land to which the compliance order relates and all other persons who have a registered interest against the land, or
- (b) the person against whose Metis title the compliance order is recorded and all other persons who have a recorded interest against the Metis title,

as the case may be.

Priority for costs

36 Costs incurred by the director under section 34 constitute a charge in favour of the Government on the land to which the compliance order relates and on any other land that

- (a) is contiguous to the land to which the compliance order relates,
- (b) is used for the same or a related purpose, and
- (c) is owned by the person who owns the land to which the compliance order relates or by the person to whom the compliance order is directed,

and the charge is enforceable in the same way as a mortgage or other security on land, and ranks above any other claim, right or charge against the land, notwithstanding any other law of Alberta.

Recovery of costs by the Government

37 The Government may recover in an action in debt against any person who is convicted of an offence under this Act or the regulations the costs incurred by the Government

- (a) in administering, investigating and responding to any matter related to the offence, and
- (b) in carrying out or causing to be carried out any preventive or remedial action made necessary by the act or omission that constituted the offence.

Administrative penalties

38(1) Where the director is of the opinion that a person has contravened a provision of this Act or the regulations prescribed for the purposes of this section in the regulations, the director may, subject to the regulations, by notice in writing given to that person, require that person to pay to the Government by the date specified in the notice an administrative penalty in the amount set out in the notice for such contravention.

(2) A notice of administrative penalty may require the person to whom it is directed to pay either or both of the following:

- (a) a daily amount for each day or part of a day on which the contravention occurs and continues;
- (b) a one-time amount to address economic benefit where the director is of the opinion that the person has derived an economic benefit directly or indirectly as a result of the contravention.

(3) The notice of administrative penalty must state the grounds on which the penalty was assessed.

Protection from prosecution

39 A person who pays an administrative penalty in respect of a contravention may not be charged under this Act or the regulations with an offence in respect of that contravention.

Limitation period

40 A notice of administrative penalty may not be issued more than 2 years after the later of

- (a) the date on which the contravention occurred, and
- (b) the date on which evidence of the contravention first came to the notice of the director.

Enforcement in Court of Queen’s Bench

41 Subject to the right to appeal a notice of administrative penalty to the Environmental Appeals Board, where a person fails to pay an administrative penalty in accordance with the notice of administrative penalty and the regulations, the director may file a copy of the notice of administrative penalty with the clerk of the Court of Queen’s Bench and, on being filed, the notice has the same force and effect and may be enforced as if it were a judgment of the Court.

Appeal to Environmental Appeals Board

42(1) A notice of appeal may be submitted to the Environmental Appeals Board by the following persons in the following circumstances:

- (a) where the director issues a compliance order under section 29, the person to whom the order is directed may submit a notice of appeal;
- (b) where the director requires a person to pay an administrative penalty under section 38, the person to whom the notice of administrative penalty is directed may submit a notice of appeal.

(2) A notice of appeal must be submitted to the Environmental Appeals Board

- (a) not later than 7 days after receipt of a copy of the compliance order, in a case referred to in subsection (1)(a), and
- (b) not later than 30 days after receipt of the notice of administrative penalty, in a case referred to in subsection (1)(b).

(3) The Environmental Appeals Board may, on application made before or after the expiry of the period referred to in subsection (2), extend that period, where the Board is of the opinion that there are sufficient grounds to do so.

(4) A notice of appeal must contain the information and be made in the manner provided for in the *Environmental Protection and Enhancement Act* and the regulations under that Act.

(5) Sections 99 and 100 of the *Environmental Protection and Enhancement Act* apply in a case where the Environmental Appeals Board conducts a hearing of an appeal in respect of a compliance order.

(6) Section 98 of the *Environmental Protection and Enhancement Act* applies in a case where the Environmental Appeals Board conducts a hearing of an appeal in respect of a notice of administrative penalty.

(7) Sections 92 to 97 and 101 to 104 of the *Environmental Protection and Enhancement Act* apply in respect of an appeal under this section.

Limitation period for offences

43 A prosecution for an offence under this Act or the regulations may not be commenced more than 2 years after the later of

- (a) the date on which the offence was committed, and
- (b) the date on which evidence of the offence first came to the attention of the director.

Offences

44 A person who

- (a) knowingly provides false or misleading information pursuant to a requirement under this Act or the regulations to provide information,
- (b) provides false or misleading information pursuant to a requirement under this Act or the regulations to provide information,
- (c) fails to provide information as required under this Act or the regulations,
- (d) knowingly contravenes a compliance order,

- (e) contravenes a compliance order, or
- (f) contravenes section 23 or 26

is guilty of an offence.

Penalties

45(1) A person who is guilty of an offence under section 44(a) or (d) is liable

- (a) in the case of an individual, to a fine of not more than \$100 000 or to imprisonment for a period of not more than 2 years or to both fine and imprisonment, or
- (b) in the case of a corporation, to a fine of not more than \$1 000 000.

(2) A person who is guilty of an offence under section 44(b), (c), (e) or (f) is liable

- (a) in the case of an individual, to a fine of not more than \$50 000, or
- (b) in the case of a corporation, to a fine of not more than \$500 000.

Due diligence defence

46 No person shall be convicted of an offence referred to in section 44(b), (c), (e) or (f) if that person establishes on a balance of probabilities that the person took all reasonable steps to prevent its commission.

Additional fine where monetary benefits acquired by offender

47 Where a person is convicted of an offence under this Act or the regulations and the court is satisfied that, as a result of the commission of the offence, monetary benefits accrued to the offender, the court may order the offender to pay, in addition to a fine under section 45, a fine in an amount equal to the court's estimation of the amount of those monetary benefits.

Continuing offences

48 Every person who is guilty of an offence under this Act or the regulations is liable on conviction for each day or part of a day on which the offence occurs or continues.

Liability of directors and officers

49 Where a corporation commits an offence under this Act or the regulations, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is guilty of the offence and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted for or convicted of the offence.

Liability of public officials

50(1) Where a person who is acting under the direction of

- (a) a Minister of the Government,
- (b) an official of the Government,
- (c) a member of a council of a local authority, or
- (d) the chief administrative officer or a designated officer of a local authority

commits an offence under this Act or the regulations, the Minister, official, member of council, chief administrative officer or designated officer is also guilty of the offence and liable for the punishment provided for the offence, if the Minister, official, member of council, chief administrative officer or designated officer knew or ought reasonably to have known of the circumstances that constituted the commission of the offence and had the influence or control to prevent its commission, whether or not the other person has been prosecuted for or convicted of the offence.

(2) No person shall be convicted of an offence by reason of the operation of subsection (1) if that person establishes on a balance of probabilities that the person took all reasonable steps to prevent the commission of the offence by the other person referred to in subsection (1).

Court orders relating to penalty

51(1) When a person is convicted of an offence under this Act or the regulations, in addition to any other penalty that may be imposed under this Act or the regulations, the court may, having regard to the nature of the offence and the circumstances

surrounding its commission, make an order having any or all of the following effects:

- (a) prohibiting the offender from doing anything that may result in the continuation or repetition of the offence;
- (b) directing the offender to take any action the court considers appropriate to remedy or prevent any harm that results or may result from the act or omission that constituted the offence;
- (c) directing the offender to publish, in the prescribed manner and at the offender's cost, the facts relating to the conviction;
- (d) directing the offender to notify any person aggrieved or affected by the offender's conduct of the facts relating to the conviction, in the prescribed manner and at the offender's cost;
- (e) directing the offender to post a bond or pay money into court in an amount that will ensure compliance with any order made pursuant to this section;
- (f) on application to the court by the Minister made within 3 years after the date of conviction, directing the offender to submit to the Minister any information with respect to the conduct of the offender that the court considers appropriate in the circumstances;
- (g) directing the offender to compensate the Minister, in whole or in part, for the cost of any remedial or preventive action that was carried out or caused to be carried out by the Government and was made necessary by the act or omission that constituted the offence;
- (h) directing the offender to perform community service;
- (i) requiring the offender to comply with any other conditions the court considers appropriate in the circumstances for securing the offender's good conduct and for preventing the offender from repeating the same offence or committing other offences.

(2) Where an offender contravenes an order made under subsection (1)(c), the Minister may publish the facts in compliance with the order.

(3) Where the court makes an order under subsection (1)(g) or the Minister incurs publication costs under subsection (2), the costs constitute a debt due to the Government.

(4) An order made under subsection (1) comes into force on the day on which it is made or on any other day specified in the order and continues in force for the period specified in the order, not to exceed 3 years.

Variation of court orders

52(1) Subject to subsection (2), where a court has made an order under section 51, the court may, on application by the offender or the Minister of Justice and Attorney General, require the offender to appear before it and, after hearing the offender and the Minister of Justice and Attorney General, may make any or all of the following orders if it considers that the circumstances of the offender have changed so as to warrant such an order:

- (a) an order changing the original order or the conditions specified in it;
- (b) an order relieving the offender absolutely or partially from compliance with any or all of the order;
- (c) an order reducing the period for which the original order is to remain in effect;
- (d) an order extending the period for which the original order is to remain in effect for an additional period not to exceed one year.

(2) Before making an order under subsection (1), the court may direct that notice be given to any persons the court considers to be interested, and the court may hear any of those persons.

(3) Where an application made under this section in respect of an offender has been heard by a court, no other application under this section may be made with respect to the offender except with leave of the court.

Vicarious responsibility

53 For the purposes of this Act and the regulations, an act or thing done or omitted to be done by a director, officer, official, employee or agent of a corporation in the course of that person's employment or in the exercise of that person's powers or the performance of that person's duties is deemed also to be an act or thing done or omitted to be done by the corporation.

Documentary evidence

54(1) In any proceeding under this Act or the regulations,

- (a) an analyst's certificate or an analyst's report of the results of an analysis purporting to be signed by an analyst,
- (b) a certificate setting out with reasonable particularity the conviction and sentence of a person for an offence under this Act or the regulations purporting to be signed by
 - (i) the person who entered the conviction, or
 - (ii) the clerk of the court in which the conviction was entered,

and

- (c) a statement purporting to be signed by the director setting out the day on which the director became aware of the subject-matter of any proceedings

shall be admitted in evidence as proof, in the absence of evidence to the contrary, of the contents of the certificate, report or statement, without proof of the signature or official character of the person signing the certificate, report or statement.

(2) A notice or compliance order signed by the person authorized to issue, make or give it is admissible in evidence without proof of the signature or official character of the person signing it.

Certificate of analyst

55(1) No certificate or report of an analyst may be received in evidence unless the party intending to produce it has given to the party against whom it is intended to be produced reasonable

notice of that intention together with a copy of the certificate or report.

(2) The party against whom a certificate or report of an analyst is produced may, with the leave of the court, require the attendance of the analyst for the purpose of cross-examination.

Publication of information

56 The director shall publish particulars of enforcement action taken under this Act or the regulations.

Protection from liability

57 No action for damages may be commenced against any person for anything done or not done by that person in good faith while carrying out that person's duties or exercising that person's powers under this Act or the regulations including, without limitation, any failure to do something when that person has discretionary authority to do something but does not do it.

Service

58 Where any notice, request, order, direction or other document is required to be given in writing or served under this Act or the regulations, it is deemed to be sufficiently given or served if it is

- (a) personally given to or served on the person to whom it is directed,
- (b) sent by mail addressed to the person to whom it is directed at the last known address for that person, or
- (c) in the case of a registered owner of land, sent by mail to the address for the registered owner shown on the assessment roll.

Confidentiality of information

59(1) In this section, "prescribed information" means information that

- (a) is provided to the Government under this Act or the regulations,

- (b) is commercial, financial, scientific or technical information that would reveal proprietary business, competitive or trade secret information about a specific facility, technology or corporate initiative, and
- (c) is of a class or type of information prescribed in regulations under section 60(1)(h).

(2) No person shall communicate or allow to be communicated any prescribed information to any person who is not legally entitled to it, or allow any such person to have access to such information.

(3) Subsection (2) does not prohibit the publishing of prescribed information in summarized or statistical form in such a manner that it is not possible to relate the information to a specific facility, technology or corporate initiative.

(4) With respect to any record or information that would reveal prescribed information, subsection (2) prevails despite the *Freedom of Information and Protection of Privacy Act* for the period of time specified in regulations under section 60(1)(h) in respect of that prescribed information.

Regulations

60(1) The Lieutenant Governor in Council may make regulations

- (a) governing the manner in which Gross Domestic Product is determined for the purposes of this Act or the regulations;
- (b) establishing limits on the levels of specified gases that may be released into the environment from any source or type of source;
- (c) establishing minimum energy efficiency levels for operations and undertakings in Alberta;
- (d) governing the maximum levels of emissions of specified gases per unit of energy input or output or per unit of material input or product output for operations and undertakings in Alberta;

- (e) establishing operating, technological and performance standards for operations and undertakings in Alberta for the purpose of reducing or limiting specified gas emissions or for the purpose of increasing energy efficiency or energy conservation;
- (f) governing the reporting of releases and the disclosure of information for the purposes of section 6;
- (g) governing reporting and record-keeping requirements generally for any purpose related to this Act or the regulations;
- (h) prescribing classes and types of information as prescribed information for the purposes of section 59 and prescribing periods of time for the purposes of section 59;
- (i) governing the confidentiality of information provided to the Government in the course of the administration of this Act or the regulations;
- (j) governing methods and procedures for conducting sampling, analyses, tests, measurements, verification and monitoring for any purposes related to this Act or the regulations;
- (k) establishing and respecting the use of auditing protocols, standards or processes to verify the accuracy of information required to be provided by this Act or the regulations;
- (l) governing standards and other requirements respecting the construction, development, operation, measurement and validation of sinks and emission offsets to meet specified gas emission targets;
- (m) governing the allocation of physical and legal risks associated with emission offsets, credits and sink rights;
- (n) for the purposes of enabling, implementing and carrying out sectoral agreements entered into under section 4, including regulations respecting the enforcement of rights, obligations and liabilities under a sectoral agreement;

- (o) making the terms of a sectoral agreement entered into under section 4 apply, with necessary modifications, to persons who are not parties to the agreement or otherwise bound by it, and deeming those persons to be bound by the agreement;
- (p) where there is no sectoral agreement in effect in respect of a sector, governing, in respect of the sector, any matter in respect of which a sectoral agreement may be entered into under section 4;
- (q) respecting the use of economic and financial instruments and market-based approaches directed to specified gas emission reduction and the sequestration of specified gas;
- (r) respecting the manner in which specified gas emission targets are established for the purposes of section 3;
- (s) providing for the establishment of a management board or other body, whether as a corporation or otherwise, for any purpose in connection with a regulation under this section;
- (t) authorizing a management board or other body established under regulations under clause (s) to make bylaws, and respecting the subject-matters on which those bylaws may be made;
- (u) respecting the establishment or designation of delegated authorities;
- (v) respecting the delegation to one or more delegated authorities of
 - (i) any of the rights, powers or duties of an inspector or director under this Act or the regulations, or
 - (ii) the performance of any of the Minister's duties or functions, or the exercise of any of the Minister's powers, under this Act or the regulations, other than a power to make regulations and a power to delegate;

- (w) authorizing a delegated authority to make bylaws and respecting the subject-matters on which those bylaws may be made;
- (x) authorizing the Minister or a delegated authority to disclose
 - (i) information acquired in the course of or as a result of the operations of the delegated authority,
 - (ii) information respecting the operations of the delegated authority, or
 - (iii) information respecting the officers or employees of the delegated authority;
- (y) respecting, in regard to the delegation of authority and with necessary modifications, any matter in respect of which the Lieutenant Governor in Council may make regulations under section 2 of Schedule 10 to the *Government Organization Act* in regard to a delegating under that Schedule;
- (z) making applicable in regard to the delegation any of the other provisions of Schedule 10 to the *Government Organization Act*, with necessary modifications;
- (aa) respecting the administration of the Climate Change and Emissions Management Fund;
- (bb) authorizing a director to exempt any person from the operation of all or part of a regulation made under this Act subject to any terms or conditions the director considers appropriate for a period not exceeding one year;
- (cc) establishing or providing for the establishment of sectors of the Alberta economy for the purposes of any provision of this Act or the regulations;
- (dd) providing with respect to any provision of this Act or the regulations that its contravention constitutes an offence and prescribing penalties, including imprisonment, in respect of those offences;

- (ee) defining terms for the purposes of this Act or a regulation that are not defined in this Act;
- (ff) respecting the form and contents of a notice of administrative penalty issued under section 38;
- (gg) prescribing contraventions of this Act and the regulations in respect of which an administrative penalty under section 38 may be imposed and prescribing the amounts, or the manner of determining the amounts, and prescribing maximum amounts of the administrative penalties that may be imposed;
- (hh) respecting any other matter necessary for the administration of the system of administrative penalties;
- (ii) governing the charging of fees for the provision of any service, material or program, the performance of any function or the doing of anything under this Act or the regulations;
- (jj) generally in furtherance of this Act.

(2) A regulation under subsection (1)(o) may, with respect to persons to whom it applies, impose requirements and obligations that are more stringent than those provided for in the sectoral agreement.

(3) Where regulations are made in respect of a sector under subsection (1)(p), the regulations may provide that they constitute a sectoral agreement for the purposes of this Act.

Adoption by reference

61(1) A regulation under this Act may adopt or incorporate in whole or in part or with modifications documents that set out standards, practices, codes, guidelines, objectives, methods or other rules of any government, organization or person, including, without limitation, any standards, practices, codes of practice, guidelines, objectives or methods developed by the Minister under section 62, as they read at a particular time or as amended or replaced from time to time relating to any matter in respect of which a regulation may be made under this Act.

(2) Subsection (1) applies to any standard, practice, code, guideline, objective, method or other rule that has been adopted

or incorporated into a regulation before or after this section comes into force.

(3) Where a standard, practice, code, guideline, objective, method or other rule is adopted or incorporated by regulation under this Act, the Minister shall ensure that a copy of the standard, practice, code, guideline, objective, method or other rule is made available to a person on request.

Codes of practice, guidelines

62 The Minister may develop standards, practices, codes of practice, guidelines, objectives or methods relating to any matter in respect of which a regulation may be made under this Act.

Paramountcy of enactments

63 In the event of a conflict between a term in a sectoral agreement referred to in section 4 and an enactment of Alberta, the enactment of Alberta is paramount.

Coming into force

64 Sections 1(f), 4, 9, 60(1)(n), (o) and (p), (2) and (3) and 63 come into force on Proclamation.

RECORD OF DEBATE

Stage	Date	Member	From	To
		Questions and Comments	From	To
		Questions and Comments	From	To
		Questions and Comments	From	To
		Questions and Comments	From	To