

CHAPTER 149

An Act Respecting Environmental Assessment

Short title

1 This Act may be cited as the *Environmental Assessment Act*. 1988, c. 11, s. 1.

Purpose

2 The purpose of this Act is to

(a) protect the environment and quality of life of the people of the Province;

(b) provide for the environmental assessment of undertakings to identify and correct or prevent, early in the planning process, potentially damaging environmental impact and thus avoid considerable costs for the adjustments or remedies which might otherwise be necessary after an undertaking has been completed;

(c) provide for public consultation respecting the potential environmental impact of an undertaking,

through the institution of environmental assessment procedures in respect of an undertaking that may be potentially damaging to the environment. 1988, c. 11, s. 2.

Interpretation

3 In this Act,

(a) "air" means open air not enclosed in a building, structure, machine, chimney, stack, flue, tank or pipe;

(b) "Council" means the Environmental Control Council established pursuant to the *Environmental Protection Act*;

(c) "Department" means the Department of the Environment;

(d) "environment" includes

(i) air, land and water,

(ii) plant and animal life including human life,

(iii) the social, economic, recreational, cultural and aesthetic conditions and factors that influence the life of humans or a community,

(iv) a building, structure, machine or other device or thing made by humans,

(v) a solid, liquid, gas, odor, heat, sound, vibration or radiation resulting directly or indirectly from the activities of humans, or

(vi) any part or combination of the foregoing and the inter-relationships between two or more of them;

(e) "environmental assessment" means a process by which the environmental impact of an undertaking is predicted and evaluated;

(f) "environmental assessment report" means a report that presents the results of a complete environmental assessment;

(g) "environmental impact" means a change in the environment resulting from an undertaking;

(h) "land" means surface land, land covered by water, all subsoil, all matter beneath the subsoil or any combination or part thereof but does not include surface land enclosed in a building;

(i) "Minister" means the Minister of the Environment;

(j) "preliminary report" means a report that presents the results of a preliminary environmental assessment based only on readily available information and in which certain essential subjects may be incompletely treated due to lack of data;

(k) "prescribed" means prescribed by the regulations;

(l) "proponent" means a person who

(i) carries out or proposes to carry out an undertaking, or

(ii) is the owner or person having charge, management or control of an undertaking;

(m) "undertaking" means an enterprise, activity, project, structure, work, policy, proposal, plan or program that may, in the opinion of the Minister, have a significant environmental impact and includes a modification, an extension, an abandonment, a demolition and a rehabilitation thereof;

(n) "watercourse" means a watercourse as defined in the *Water Act*, 1988, c. 11, s. 3.

Application

4 (1) This Act applies in respect of an undertaking carried out by a person, unless it is an undertaking or of a class of undertakings exempted by this Act or the regulations.

Non-application of Act

(2) This Act does not apply to accepted ordinary activities of individuals, households and farms except to the extent prescribed by the Governor in Council.

Acts binds Crown

(3) This Act binds Her Majesty in right of the Province.

Exempt undertaking

(4) An undertaking that has commenced before the fourteenth day of July, 1989, is exempt from this Act. 1988, c. 11, s. 4.

Supervision of Act

5 (1) The Minister has the general supervision and management of this Act and the regulations.

Environmental Assessment Administrator

(2) The Minister may designate a Department employee as Environmental Assessment Administrator.

Duties of Administrator

(3) The Environmental Assessment Administrator shall perform the duties assigned by this Act, the regulations or the Minister. 1988, c. 11, s. 5.

Duties respecting undertaking

6 Every proponent of an undertaking shall

(a) register the undertaking with the Minister in the prescribed time and the prescribed manner; and

(b) publish a notice of the undertaking containing such information as prescribed. 1988, c. 11, s. 6.

Examination by Minister

7 (1) The Minister shall examine or cause to be examined the information which is provided respecting an undertaking and shall determine that

(a) a preliminary report is necessary;

(b) an environmental assessment report is required; or

(c) an environmental assessment report is not required.

Communication of decision

(2) The Minister or a person designated by the Minister shall advise the proponent of the decision within the prescribed time.

No work without decision

(3) Until the proponent is advised of the decision, the proponent shall not proceed with work on the undertaking. 1988, c. 11, s. 7.

Preliminary report

8 (1) Where the Minister decides that a preliminary report is necessary, the Minister shall provide the proponent with guidelines for the preparation of the preliminary report.

Report to Minister

(2) The proponent shall undertake the necessary study for the preparation of the preliminary report and submit the report to the Minister.

Examination of report

(3) Upon receiving the preliminary report, the Minister shall examine the report or cause it to be examined to determine whether an environmental assessment report is required and, within the prescribed time, shall advise the proponent whether an environmental assessment report is required. 1988, c. 11, s. 8.

Duties of Minister

9 (1) Where the Minister decides that an environmental assessment report is required the Minister shall

(a) prepare proposed guidelines for the environmental assessment;

(b) give the public in the area affected by the undertaking an opportunity to comment on the proposed guidelines in the prescribed manner;

(c) modify the guidelines as the Minister considers appropriate; and

- (d) provide the proponent with the guidelines.

Terms of reference

(2) The proponent shall submit to the Minister proposed terms of reference for the environmental assessment.

Consistency with guidelines

(3) The proposed terms of reference shall be consistent with the guidelines for an environmental assessment.

Contents of terms of reference

(4) The terms of reference may include

- (a) a description of the undertaking;
- (b) a description of the present environment that might reasonably be expected to be affected by the undertaking;
- (c) a description of alternatives considered;
- (d) the effect the undertaking may have on the environment;
- (e) a description of the measures to be taken to prevent, mitigate or remedy the effects of the undertaking upon the environment;
- (f) procedures for monitoring the undertaking during construction and operating stages;
- (g) a description of control measures or remedial procedures in respect of the undertaking;
- (h) a plan of public consultation during the preparation of the environmental assessment report. 1988, c. 11, s. 9.

Approval without report

10 Where the Minister decides that an environmental assessment report is not required, the Minister shall approve the undertaking, upon such conditions as the Minister may determine, and the proponent may proceed with the undertaking, subject to any enactment. 1988, c. 11, s. 10.

Examination of terms of reference

11 (1) The Minister shall examine the proposed terms of reference for the environmental assessment or cause them to be examined to determine whether they are satisfactory.

Direction to modify

(2) Where the proposed terms of reference are unsatisfactory, the Minister shall direct the proponent to modify them.

Duties of proponent

(3) Where the terms of reference for the environmental assessment have been agreed upon, and approved in writing by the Minister, the proponent shall conduct the environmental assessment and submit the report to the Minister when it is completed. 1988, c. 11, s. 11.

Examination of report

12 (1) Upon receiving the environmental assessment report, the Minister shall examine it or cause it to be examined to determine whether it adheres to the terms of reference.

Additional requirements

(2) Where the environmental assessment report is deficient in any respect, the Minister may require the proponent to conduct such further work or provide such further information as may be necessary to complete the report.

Communication to proponent

(3) If the report is acceptable, the Minister shall so advise the proponent in writing. 1988, c. 11, s. 12.

No work without approval

13 (1) Where an environmental assessment has been required, the proponent shall not proceed with the undertaking unless the Minister gives approval in writing.

Conditions

(2) The Minister may impose conditions upon the approval of an undertaking and the proponent shall comply with the conditions if the undertaking proceeds. 1988, c. 11, s. 13.

Prerequisites for approval

14 Before approving an undertaking, the Minister

(a) shall release the environmental assessment report to interested persons or the public generally;

(b) may appoint a committee to review the environmental assessment report, and any other aspect of the undertaking, for the purpose of advising the Minister on matters relating to the undertaking and regarding any conditions which may be desirable if the undertaking proceeds;

(c) may refer the environmental assessment report to the Council. 1988, c. 11, s. 14.

Duties of Council

15 (1) The Council shall

(a) review an environmental assessment in respect of an undertaking referred to the Council by the Minister;

(b) consult with the public in accordance with subsection (1) of Section 16;

(c) recommend to the Minister the approval or disapproval of an undertaking, or conditions which ought to be imposed upon an undertaking if it proceeds;

(d) perform functions and exercise powers conferred upon the Council in respect of the *Environmental Protection Act*;

(e) perform such functions and exercise such powers as may be assigned to or conferred upon the Council by the Governor in Council or the Minister.

Committee of Council

(2) The Council may appoint a committee of not less than two members of the Council, or authorize the Chairman of the Council to appoint such a committee, to perform any of the functions or exercise any of the powers of the Council.

Quorum of committee

(3) The quorum of a committee of the Council appointed pursuant to this Section is a majority of the committee. 1988, c. 11, s. 15.

Consultation with public

16 (1) In reviewing an environmental assessment pursuant to clause (a) of subsection (1) of Section 15, the Council shall consult with the public by inviting written submissions from the public, by conducting a public hearing or in such other manner as determined by the Council.

Conduct of hearing

(2) A hearing conducted pursuant to subsection (1) shall, except as otherwise prescribed, be conducted in the same manner as a review held pursuant to the *Environmental Protection Act* and the Council and each member has the authority set forth in the *Environmental Protection Act* with respect to a review. 1988, c. 11, s. 16.

Requirements after approval

17 Where approval for an undertaking has been given to a proponent pursuant to this Act, the Minister may require the proponent to

(a) carry out environmental monitoring and rehabilitation studies and programs in order to determine the effect of mitigation measures; and

(b) rehabilitate the affected environment to a level acceptable to the Minister. 1988, c. 11, s. 17.

Other enactments apply

18 This Act does not exempt any proponent of an undertaking, whether or not the proponent has submitted an environmental assessment report, from the requirements imposed upon an undertaking by another enactment. 1988, c. 11, s. 18.

Offence and penalties

19 Every person who contravenes a provision of this Act or the regulations, or a condition upon an approval of an undertaking, is guilty of an offence and liable on summary conviction

(a) for a first offence, to a fine not exceeding fifty thousand dollars, and, in default of payment, to imprisonment for a term not exceeding twelve months, or both;

(b) for a second or subsequent offence, to a fine not exceeding seventy-five thousand dollars and, in default of payment, to imprisonment for a term not exceeding two years, or to both,

and each and every continuance of the contravention for a day or part of a day constitutes a separate offence. 1988, c. 11, s. 19.

Regulations

20 (1) The Governor in Council may make regulations

(a) prescribing information to be provided when an undertaking is registered;

(b) prescribing information to be contained in a notice respecting an undertaking;

(c) prescribing guidelines for the preparation of a preliminary report or an environmental assessment report;

(d) respecting public consultation during the review process;

(e) prescribing forms for the purpose of this Act and providing for their use;

(f) establishing criteria for the examination of proposed undertakings in order to determine whether an environmental assessment report is required;

(g) prescribing periods of time within which the Minister or other persons must perform certain duties pursuant to this Act;

(h) prescribing procedures to be followed by the Council;

(i) respecting public hearings by the Council;

(j) exempting any person, class of persons, undertaking or class of undertakings from the provisions of this Act;

(k) respecting a time period during which a proponent can act upon the approval of an undertaking;

(l) respecting the requirements, design and implementation of environmental monitoring and rehabilitation programs;

(m) respecting any matter necessary or advisable to effectively carry out the intent and purpose of this Act.

Regulations Act

(2) The exercise by the Governor in Council of the authority contained in subsection (1) shall be regulations within the meaning of the *Regulations Act*. 1988, c. 11, s. 20.
