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## **ENVIRONMENTAL ASSESSMENT ACT**

### **[SBC 2002] CHAPTER 43**

*Assented to May 30, 2002*

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## **Part 1 – Definitions**

### **Definitions**

#### **1 In this Act:**

**"approval under another enactment"** means an approval, licence, permit or other authorization under another enactment and **"approvals under other enactments"** has a corresponding meaning;

**"assessment"** means an assessment under this Act of a reviewable project's potential effects that is conducted in relation to an application for

- (a) an environmental assessment certificate, or
- (b) an amendment of an environmental assessment certificate;

**"assessment report"** means a written report submitted to ministers under section 17 (2), summarizing the procedures followed during, and the findings of, an assessment;

**"class assessment"** means an assessment conducted under section 20 of some or all of the potential effects of a specified category of projects, and includes a set of measures or conditions for managing some or all of the potential adverse effects of the specified category of projects to the satisfaction of the executive director;

**"environmental assessment certificate"** means an environmental assessment certificate issued by the ministers under section 17 (3);

**"executive director"** means the individual appointed under section 3 as the Executive Director of the Environmental Assessment Office;

**"ministers"** means the minister and the responsible minister;

**"project"** means any

- (a) activity that has or may have adverse effects, or
- (b) construction, operation, modification, dismantling or abandonment of a physical work;

**"proponent"** means a person or an organization that proposes to undertake a reviewable project, and includes the government of Canada, British Columbia, a municipality or regional district, another province, another jurisdiction and a first nation;

**"responsible minister"** means the member of the Executive Council that the Lieutenant Governor in Council designates by order as the minister responsible for a specified reviewable project or specified category of reviewable projects;

**"reviewable project"** means a project that is within a category of projects prescribed under section 5 or that is designated by the minister under section 6 or the executive director under section 7, and includes

- (a) the facilities at the main site of the project,
- (b) any off-site facilities related to the project that the executive director or the minister may designate, and

(c) any activities related to the project that the executive director or the minister may designate.

## **Part 2 — Administration and Application of the Environmental Assessment Process**

### **Environmental Assessment Office**

- 2 (1) The Environmental Assessment Office is continued as an office of the government.
- (2) The purpose of the Environmental Assessment Office is to carry out the responsibilities given to it under this Act.

### **Appointment of executive director**

- 3 (1) The Lieutenant Governor in Council must appoint an individual to be the Executive Director of the Environmental Assessment Office.
- (2) The Lieutenant Governor in Council may establish the remuneration and other terms of the appointment of the executive director.
- (3) The executive director is an employee as defined in the *Public Service Act*.

### **Delegation by executive director**

- 4 (1) The executive director, by conditional or unconditional written authority, may delegate any of the powers and duties of the executive director under this Act to any person
  - (a) employed in the Environmental Assessment Office, or
  - (b) assigned to the Environmental Assessment Office although not employed in that office.
- (2) A person to whom the executive director delegates powers and duties under subsection (1) may exercise the powers and must perform the duties in accordance with the written authority.

### **Reviewable projects established by regulation**

- 5 (1) The Lieutenant Governor in Council may make regulations prescribing what constitutes a reviewable project for the purposes of this Act.
- (2) For the purpose of a regulation under subsection (1), the Lieutenant Governor in Council by regulation may
  - (a) categorize projects according to size, production or storage capacity, timing, geographical location, potential for

adverse effects, type of industry to which the projects are related, type of proponent or on any other basis that the Lieutenant Governor in Council considers appropriate, and

(b) provide differently for the different categories of projects.

(3) [Repealed B.C. Reg. 342/06.]

(4) [Repealed 2003-55-72.]

### **Minister's power to designate a project as reviewable**

6 (1) Even though a project does not constitute a reviewable project under the regulations, the minister by order may designate the project as a reviewable project if

(a) the minister is satisfied that the project may have a significant adverse environmental, economic, social, heritage or health effect, and that the designation is in the public interest, and

(b) the minister believes on reasonable grounds that the project is not substantially started at the time of the designation.

(2) A project designated as a reviewable project under subsection (1) is one for which an environmental assessment certificate is required.

### **Application to executive director for reviewable project designation**

7 (1) A person who proposes a project that is not a reviewable project under section 6 of this Act or under the regulations may apply to the executive director for the project to be designated as a reviewable project.

(2) An application under subsection (1) must

(a) be in writing, and

(b) state why the applicant wishes the project to be designated as a reviewable project.

(3) After considering an application under subsection (1), and the accompanying reasons, the executive director by order may

(a) grant the application by designating the project as a reviewable project, or

(b) refuse to grant the application.

### **Requirement for environmental assessment certificate**

8 (1) Despite any other enactment, a person must not

(a) undertake or carry on any activity that is a reviewable project, or

(b) construct, operate, modify, dismantle or abandon all or part of the facilities of a reviewable project,

unless

(c) the person first obtains an environmental assessment certificate for the project, or

(d) the executive director, under section 10 (1) (b), has determined that an environmental assessment certificate is not required for the project.

(2) Despite any other enactment, if an environmental assessment certificate has been issued for a reviewable project, a person must not

(a) undertake or carry on an activity that is authorized by the certificate, or

(b) construct, operate, modify, dismantle or abandon all or part of the project facilities that are authorized by the certificate,

except in accordance with the certificate.

### **Reviewable projects on treaty lands**

**8.1** Despite any other enactment and whether or not an environmental assessment certificate is required, a reviewable project may not proceed on treaty lands without the consent of the treaty first nation if the final agreement requires this consent.

### **Effect on approvals under other enactments**

**9** (1) Despite any other enactment, a minister who administers another enactment, or an employee or agent of the government or of a municipality or regional district, must not issue an approval under another enactment for a person to

(a) undertake or carry on an activity that is a reviewable project, or

(b) construct, operate, modify, dismantle or abandon all or part of the facilities of a reviewable project,

unless satisfied that

(c) the person has a valid environmental assessment certificate for the reviewable project, or

- (d) there is in effect a determination under section 10 (1)
- (b) that an environmental assessment certificate is not required for the project.

(2) Despite any other enactment, an approval under another enactment is without effect if it is issued contrary to subsection (1).

### **Part 3 – Environmental Assessment Process**

#### **Determining the need for assessment**

**10** (1) The executive director by order

- (a) may refer a reviewable project to the minister for a determination under section 14,
- (b) if the executive director considers that a reviewable project will not have a significant adverse environmental, economic, social, heritage or health effect, taking into account practical means of preventing or reducing to an acceptable level any potential adverse effects of the project, may determine that
  - (i) an environmental assessment certificate is not required for the project, and
  - (ii) the proponent may proceed with the project without an assessment, or
- (c) if the executive director considers that a reviewable project may have a significant adverse environmental, economic, social, heritage or health effect, taking into account practical means of preventing or reducing to an acceptable level any potential adverse effects of the project, may determine that
  - (i) an environmental assessment certificate is required for the project, and
  - (ii) the proponent may not proceed with the project without an assessment.

(2) The executive director may attach conditions he or she considers necessary to an order under subsection (1) (b).

(3) A determination under subsection (1) (b) does not relieve the proponent from compliance with the applicable requirements pertaining to the reviewable project under other enactments.

#### **Executive director determines assessment scope, procedures and methods**

**11** (1) If the executive director makes a determination set out in section 10 (1) (c) for a reviewable project, the executive director must also determine by order

(a) the scope of the required assessment of the reviewable project, and

(b) the procedures and methods for conducting the assessment, including for conducting a review of the proponent's application under section 16, as part of the assessment.

(2) The executive director's discretion under subsection (1) includes but is not limited to the discretion to specify by order one or more of the following:

(a) the facilities at the main site of the reviewable project, any of its off-site facilities and any activities related to the reviewable project, which facilities and activities comprise the reviewable project for the purposes of the assessment;

(b) the potential effects to be considered in the assessment, including potential cumulative environmental effects;

(c) the information required from the proponent

(i) in relation to or to supplement the proponent's application, and

(ii) at specified times during the assessment, in relation to potential effects specified under paragraph (b);

(d) the role of any class assessment in fulfilling the information requirements for the assessment of the reviewable project;

(e) any information to be obtained from persons other than the proponent with respect to the potential effects specified under paragraph (b);

(f) the persons and organizations, including but not limited to the public, first nations, government agencies and, if warranted in the executive director's opinion, neighbouring jurisdictions, to be consulted by the proponent or the Environmental Assessment Office during the assessment, and the means by which the persons and organizations are to be provided with notice of the assessment, access to information during the assessment and opportunities to be consulted;



(g) the opportunities for the persons and organizations specified under paragraph (f), and for the proponent, to provide comments during the assessment of the reviewable project;

(h) the time limits for steps in the assessment procedure that are additional to the time limits prescribed for section 24 or under section 50 (2) (a).

(3) The assessment of the potential effects of a reviewable project must take into account and reflect government policy identified for the executive director, during the course of the assessment, by a government agency or organization responsible for the identified policy area.

#### **Limits on discretion of executive director**

**12** The executive director's discretion to make a determination under section 11 (1) for a reviewable project does not include the discretion to consign the assessment of the reviewable project to

- (a) a commission,
- (b) a hearing panel, or
- (c) a person not employed in or assigned to the environmental assessment office.

#### **Variation of scope, procedures and methods by executive director**

**13** The executive director may vary the scope, procedures and methods determined under section 11

- (a) to take into account modifications proposed for the reviewable project by the proponent, including modifications proposed in relation to an application submitted under section 16, or
- (b) if necessary in his or her opinion to complete an effective and timely assessment of the reviewable project.

#### **Minister determines assessment scope, procedures and methods for referred project**

**14** (1) If the executive director under section 10 (1) (a) refers a reviewable project to the minister, the minister by order

- (a) may determine the scope of the required assessment of the reviewable project, and
- (b) may determine procedures and methods for conducting the assessment, including for conducting as part of the

assessment a review, under section 16 (6), of the proponent's application.

(2) The minister's discretion under this section to determine scope, procedures and methods includes but is not limited to the discretion by order to exercise any of the powers in section 11 (2).

(3) An order of the minister making a determination under this section may

(a) require that the assessment be conducted

(i) by a commission that the minister may constitute for the purpose of the assessment, consisting of one or more persons that the minister may appoint to the commission,

(ii) by a hearing panel, with a public hearing to be held by one or more persons that the minister may appoint to the hearing panel, or

(iii) by any other method or procedure that the minister considers appropriate and specifies in the order, and by the executive director or other person that the minister may appoint, and

(b) delegate any of the minister's powers under this section to make orders determining scope, procedures and methods to

(i) the executive director, or

(ii) a commission member, hearing panel member or another person, depending on which of them is responsible for conducting the assessment.

(4) For the purposes of an assessment conducted under this section by a commission or hearing panel, the minister, by order, may confer on the commission or hearing panel, as the case may be, the powers, privileges and protection of a commission under sections 16, 17, 22 (1), 23 (a), (b) and (d) to (f) and 32 of the *Public Inquiry Act*.

### **Variation of scope, procedures and methods by minister**

**15** (1) In relation to an assessment of a reviewable project, the minister by order may

(a) vary the scope, procedures and methods determined under section 14, or

(b) provide for the executive director, a commission member, hearing panel member or another person to vary the scope, procedures and methods, depending on whether

the commission, hearing panel or other person is responsible for conducting the assessment

for either of the following reasons:

(c) to take into account modifications proposed for the reviewable project by the proponent, including any modification proposed in relation to an application submitted under section 16;

(d) if necessary in the minister's opinion to complete an effective and timely assessment of the reviewable project.

(2) The minister may delegate the discretion under subsection (1) to a commission, member, hearing panel member, the executive director or another person, depending on which of them is responsible for conducting the assessment.

### **Applying for environmental assessment certificate**

**16** (1) The proponent of a reviewable project for which an environmental assessment certificate is required under section 10 (1) (c) may apply for an environmental assessment certificate by applying in writing to the executive director and paying the prescribed fee, if any, in the prescribed manner.

(2) An application for an environmental assessment certificate must contain the information that the executive director requires.

(3) The executive director must not accept the application for review unless he or she has determined that it contains the required information.

(4) On accepting the application for review, the executive director

(a) must notify the proponent of the acceptance for review, and

(b) may require the proponent, for the purpose of the review, to supply a specified number of paper or electronic copies of the application, in the format specified by the executive director.

(5) On receipt of the copies of the application required under subsection (4), the executive director must proceed with and administer the review of the application in accordance with the assessment procedure determined under section 11 (1) or as varied under section 13.

(6) The proponent of a reviewable project for which the minister has made a determination under section 14 may apply for an

environmental assessment certificate in the manner determined by the minister, and must pay any prescribed fee in the prescribed manner.

### **Decision on application for environmental assessment certificate**

- 17** (1) On completion of an assessment of a reviewable project in accordance with the procedures and methods determined or varied
- (a) under section 11 or 13 by the executive director,
  - (b) under section 14 or 15 by the minister, or
  - (c) under section 14 or 15 by the executive director, a commission member, hearing panel member or another person
- the executive director, commission, hearing panel or other person, as the case may be, must refer the proponent's application for an environmental assessment certificate to the ministers for a decision under subsection (3).
- (2) A referral under subsection (1) must be accompanied by
- (a) an assessment report prepared by the executive director, commission, hearing panel or other person, as the case may be,
  - (b) the recommendations, if any, of the executive director, commission, hearing panel or other person, and
  - (c) reasons for the recommendations, if any, of the executive director, commission, hearing panel or other person.
- (3) On receipt of a referral under subsection (1), the ministers
- (a) must consider the assessment report and any recommendations accompanying the assessment report,
  - (b) may consider any other matters that they consider relevant to the public interest in making their decision on the application, and
  - (c) must
    - (i) issue an environmental assessment certificate to the proponent, and attach any conditions to the certificate that the ministers consider necessary,
    - (ii) refuse to issue the certificate to the proponent, or
    - (iii) order that further assessment be carried out, in accordance with the scope, procedures and methods specified by the ministers.

(4) The executive director must deliver to the proponent the decision and the environmental assessment certificate, if granted.

### **Duration and effect of certificate**

**18** (1) An environmental assessment certificate must specify a deadline, at least 3 years and not more than 5 years after the issue date of the certificate, by which time the holder of the certificate, in the reasonable opinion of the minister, must have substantially started the project.

(2) However, the holder of an environmental assessment certificate may apply in writing to the executive director for an extension of the deadline specified in the environmental assessment certificate, stating why the proponent wishes an extension of the deadline.

(3) On receipt of an application under subsection (2), the minister or the executive director must complete a review of

(a) the application, and

(b) the reasons given under subsection (2),

in accordance with any procedure determined by the minister or the executive director to assess the proposed extension.

(4) The minister or the executive director may

(a) extend the deadline specified in the environmental assessment certificate, on one occasion only, for not more than 5 years, or

(b) refuse to extend the deadline.

(5) After the deadline specified under subsection (1) or, if an extension is granted under subsection (4), after the period of the extension, if the project has not yet been substantially started, in the reasonable opinion of the minister, the environmental assessment certificate expires.

(6) After a reviewable project is substantially started, in the reasonable opinion of the minister as set out in subsection (1) or (5), the certificate remains in effect for the life of the project, subject to cancellation or suspension under section 37.

### **Amending environmental assessment certificate**

**19** (1) A holder of an environmental assessment certificate may apply in writing to the executive director to amend the certificate, stating the holder's reasons, and must pay any prescribed fee in the prescribed manner.

(2) The executive director must consider an application under subsection (1) and the reasons stated, in accordance with any

procedures, determined by the executive director, for the assessment of the proposed change, including any time limits.

(3) After considering the application under subsection (1), the executive director, or the minister if the executive director refers the application to the minister, must

(a) amend the environmental assessment certificate, varying or deleting conditions of the certificate or attaching new conditions to the certificate that the executive director or the ministers consider necessary, or

(b) refuse to amend the certificate.

(4) The executive director must deliver a decision under subsection (3) of the executive director or of the minister to the holder of the environmental assessment certificate.

(5) In an environmental assessment certificate granted under section 17, the ministers may provide for an amendment procedure to be followed if changes to the certified project that are of a type specified in the certificate as requiring assessment are proposed by the holder of the certificate.

(6) Any amendment procedure provided for in an environmental assessment certificate under subsection (5) may specify that, at the conclusion of the assessment of the proposed change or changes, either the executive director or the minister may make a decision under subsection (3), and may add to, vary or delete conditions in the certificate.

## **Part 4 – Special Provisions for Environmental Assessment Process**

### **Class assessments and their effect on application requirements**

**20** (1) The executive director, in accordance with the prescribed procedures, may undertake and approve

(a) partial class assessments that address specified potential adverse environmental, economic, social, heritage or health effects of a specified category of reviewable projects, or

(b) a full class assessment of the potential adverse environmental, economic, social, heritage or health effects of a specified category of reviewable projects.

(2) In accordance with prescribed procedures, the executive director may specify conditions and circumstances under which a proponent of a reviewable project

(a) in a specified category referred to in subsection (1) (a), in applying for an environmental assessment certificate, is exempt from the requirement to provide information for the assessment of effects of the type that were the subject of the partial class assessment, or

(b) in a specified category referred to in subsection (1) (b) may proceed with the reviewable project without an assessment or an environmental assessment certificate, subject to compliance with the requirements for the project under other enactments.

(3) A proponent of a reviewable project in a specified category referred to in subsection (1) (a) to whom subsection (2) (a) applies must comply with the requirements of the relevant partial class assessment referred to in subsection (1) (a).

(4) A proponent of a reviewable project in a specified category referred to in subsection (1) (b) to whom subsection (2) (b) applies must comply with

(a) the requirements of the relevant full class assessment referred to in subsection (1) (b), and

(b) the requirements for the project under other enactments.

### **Policy direction from ministers during assessment**

**21** (1) If an application for an environmental assessment certificate is considered under section 16, or an application to amend an environmental assessment certificate is reviewed under section 19, the executive director, either before or during the review of the application, may refer a policy matter to the minister or ministers responsible for the policy area for clarification and direction.

(2) Any clarification and direction provided under subsection (1) by one or more ministers to the executive director must be reflected in the assessment conducted by the executive director under section 16 or 19.

(3) The minister or ministers providing clarification and direction under this section may also recommend to the ministers responsible for making a decision under section 17 (3) that

(a) the assessment being conducted by the executive director be terminated, and

(b) an environmental assessment certificate not be issued for the reviewable project that is the subject of the assessment.

(4) On receipt of any recommendations under subsection (3), or if the ministers to which a referral is made under subsection (1) are the same ministers who are responsible for making a decision under section 17 (3), the ministers may

(a) terminate the review, and notify the proponent that an environmental assessment certificate will not be issued for the project, stating the reasons for their decision, or

(b) decline to terminate the review, and instruct the executive director to continue the assessment in accordance with any direction they may provide.

### **Advice from consultants and mediators during assessment**

**22** (1) The executive director, and, subject to any restrictions imposed by the minister, a commission, hearing panel or another person appointed under section 14 (3) may retain consultants and mediators and set their remuneration and the terms of their retainers.

(2) All or part of the advice and recommendations of consultants and mediators retained under subsection (1) may be reflected in the assessment report and in any recommendations submitted to the ministers under section 17 (2).

### **Concurrent approval process under another enactment**

**23** (1) A proponent of a reviewable project that is undergoing assessment may apply, in accordance with the regulations, for concurrent review of one or more applications for approvals under other enactments to construct, operate, modify, dismantle or abandon the project.

(2) In determining under section 14 the procedure for assessment of a reviewable project, if the minister provides for the concurrent review of applications for approvals under other enactments to construct, operate, modify, dismantle or abandon a reviewable project, the proponent may apply for concurrent review in accordance with those procedures.

(3) The minister, in relation to an application for an environmental assessment certificate referred to the minister for a determination under section 14,

(a) may provide for a commission, a hearing panel, the executive director or another person, as the case may be, referred to in section 14 (3) to inquire into, and recommend whether, approval of applications made by the proponent for one or more approvals under other enactments that the minister specifies should be granted, and



(b) if granting of the approvals is recommended, and the ministers issue an environmental assessment certificate, the minister may order the person, board, tribunal or agency that has the authority to issue the approvals under other enactments to issue them

- (i) within a specified time,
- (ii) in accordance with any conditions specified in the order, and
- (iii) subject to other reasonable conditions that the person, board, tribunal or agency considers appropriate.

(4) Despite another enactment, the issuance of an approval under another enactment specified under subsection (3) by the minister is

- (a) final and binding, and
- (b) not subject to review or appeal under that specified enactment or under the Act of which that enactment forms part.

### **Time limits**

**24** (1) The following assessment steps must be completed within the prescribed time limits:

- (a) the evaluation of, and decision on accepting, an application for review under section 16;
- (b) the review of an application under section 16;
- (c) the making of a decision under section 17 on an application;
- (d) a decision on an application for concurrent review under section 23 of one or more applications for approvals under other enactments.

(2) The executive director may suspend the time limit prescribed for subsection (1) (b) if the executive director requires the proponent to provide additional information to complete the review under section 16, or if the review is delayed at the request of the proponent or because of action taken or not taken by the proponent.

(3) At any time after the executive director or the minister has determined under section 11 or 14 the information required for an application, the executive director or the minister may suspend or terminate an assessment under this Act if, after being requested to provide information in an application or at any other time in the

assessment, the proponent does not provide the information within the prescribed period.

(4) The minister or the executive director may extend by order, with or without conditions, the time limit for doing anything under this Act, and may order an extension even if the time limit has expired.

### **Project information centre**

**25** (1) For the purpose of facilitating public access to information and records relating to assessments conducted under this Act, the former project registry is continued in the Environmental Assessment Office as the project information centre, to be administered and maintained by the executive director.

(2) The executive director may determine

(a) which records relating to assessments conducted under this Act are to be available to the public through the project information centre, and

(b) in which form or format the records are to be made available.

### **Discretion as to non-written comments**

**26** For an assessment of a reviewable project in accordance with the procedures and methods determined

(a) under section 11 or 13 by the executive director,

(b) under section 14 or 15 by the minister, or

(c) under section 14 or 15 by a commission member, hearing panel member, the executive director or another person

the executive director, commission, hearing panel or other person, as the case may be, may agree to accept for the purposes of this Act any non-written comments in response to an invitation to comment during an assessment, if the comments are recorded in a form that is approved by the body or person accepting the non-written comments.

### **Agreements**

**27** (1) The minister may enter into an agreement regarding any aspect of environmental assessment with another jurisdiction including but not limited to

(a) Canada,

(b) one or more provinces or territories,

- (c) one or more municipalities or regional districts in British Columbia, or
  - (d) one or more neighbouring jurisdictions outside Canada.
- (2) The minister may enter into an agreement regarding any aspect of environmental assessment with any agency, board, commission or other organization, of British Columbia or of another jurisdiction.
- (3) An agreement under this section may
- (a) provide for arrangements with any other party or jurisdiction regarding research and development,
  - (b) provide for special assessment procedures and methods with any other party or jurisdiction, arising from innovation, technological developments or changing approaches to environmental assessment,
  - (c) establish notification and information-sharing arrangements with any other party or jurisdiction,
  - (d) provide for a means to accept another party's or jurisdiction's assessment as being equivalent to an assessment required under this Act,
  - (e) determine which aspects of a proposal or project are governed by the laws of each jurisdiction, and
  - (f) establish procedures with another party or jurisdiction to cooperatively complete an environmental assessment of a project through
    - (i) acknowledging, respecting and delineating the roles of each jurisdiction in the process,
    - (ii) providing for efficiency measures in environmental assessment to avoid overlap and duplication and to ensure timely results,
    - (iii) providing for cost recovery or cost-sharing measures,
    - (iv) establishing a means of resolving disputes regarding environmental assessment, and
    - (v) adopting any other measure considered necessary by each party or jurisdiction.

### **Variations to accommodate agreements with other jurisdictions**

**28** Effective on the date of an agreement under section 27, and for as long as the agreement remains in effect, both this Act and the regulations are by this section deemed to be varied, in their application to or in

respect of a reviewable project that is the subject of the agreement, to the extent necessary to accommodate that agreement.

### **Agreements with Nisga'a Nation**

**29** The minister may enter into agreements for the purposes set out in paragraph 1 of the Environmental Assessment and Protection chapter of the Nisga'a Final Agreement.

### **Agreements and consultations with treaty first nations**

**29 . 1** (1) If a final agreement requires the government to negotiate with a treaty first nation and attempt to reach agreement on harmonizing the government's and treaty first nation's procedures in relation to evaluating proposed developments on the treaty lands of the treaty first nation, the minister, on behalf of the government, may enter into an agreement reached in the negotiation.

(2) If a reviewable project

(a) is proposed for land specified in a final agreement as land in relation to which notice of a reviewable project is required in the circumstances described in paragraph (b), and

(b) may reasonably be expected to adversely affect the treaty lands of the treaty first nation, the residents of those treaty lands or the rights of the treaty first nation under the final agreement,

the executive director, on receiving the proposal, must

(c) promptly give notice of the project, along with relevant information about the project, to the treaty first nation,

(d) consult, within the meaning of the final agreement of the treaty first nation, with the treaty first nation, and

(e) ensure that the treaty first nation has an opportunity to participate in any environmental assessment of the project.

### **Suspension of assessment process pending other inquiries**

**30** (1) At any time during the assessment of a reviewable project under this Act, and before a decision under section 17 (3) about the proponent's application for an environmental assessment certificate or a decision under section 19 (3) about the proponent's application to amend an environmental assessment certificate, the minister by order may suspend the assessment until the outcome of any investigation, inquiry, hearing or other process that

(a) is being or will be conducted by any of the following or any combination of the following:

- (i) the government of British Columbia, including any agency, board or commission of British Columbia;
- (ii) the government of Canada;
- (iii) a municipality or regional district in British Columbia;
- (iv) a jurisdiction bordering on British Columbia;
- (v) another organization, and

(b) is material, in the opinion of the minister, to the assessment, under this Act, of the reviewable project.

(2) If a time limit is in effect under this Act at the time that an assessment is suspended under subsection (1), the minister may suspend the time limit until the assessment resumes.

### **Varying assessment process for emergency or other circumstance**

**31** (1) If the minister considers that

- (a) there is or will be an emergency or other circumstance that warrants or will warrant the variation of one or more provisions of this Act or the regulations, as the provisions apply to or in respect of a specified reviewable project or a specified category of reviewable projects, and
- (b) the variation is in the public interest,

the minister may order a variation that the minister considers necessary to respond to the emergency or other circumstance.

(2) The minister may

- (a) attach conditions to an order made under subsection (1),
- (b) categorize reviewable projects for the purpose of an order made under this section, including into categories that may differ from the categories of reviewable projects prescribed under section 5, and
- (c) provide differently in an order under this section for different reviewable projects or for different categories of reviewable projects.

(3) An order under subsection (1) is final and binding.

(4) With an order under subsection (1), the minister must identify the nature of the emergency or other circumstance.

### **Assessment costs may be recovered**

- 32** The executive director or the minister may order the proponent of a reviewable project or the holder of an environmental assessment certificate to pay prescribed fees or prescribed charges for all or part of the costs that are incurred by or on behalf of the Environmental Assessment Office, a commission, hearing panel or other party, as the case may be, in carrying out an assessment of the reviewable project under this Act.

## **Part 5 – Sanctions**

### **Inspection power**

- 33** (1) For any purpose related to the administration or enforcement of this Act or the regulations, a person authorized in writing by the minister may
- (a) enter at any reasonable time on property that is the site of a reviewable project, and
  - (b) inspect any works or activity connected with the reviewable project.
- (2) A person who enters on property under subsection (1), on request, must provide proof of identity to a person present on the property.

### **Minister's order to cease or remedy**

- 34** (1) If the minister considers that a reviewable project is not being constructed, operated, modified, dismantled or abandoned or, in the case of an activity that is a reviewable project, carried out, in accordance with an environmental assessment certificate, the minister,
- (a) if an environmental assessment certificate for the reviewable project has not been issued or has been issued but does not remain in effect, may order that construction, operation, modification, dismantling or abandonment of the project cease, or that the activity cease, either altogether or to the extent specified by the minister, until the proponent obtains an environmental assessment certificate, or
  - (b) if an environmental assessment certificate for the reviewable project has been issued and remains in effect, may
    - (i) order that construction, operation, modification, dismantling or abandonment of the project cease, or that the activity cease, either altogether or to the extent specified by the minister, until the holder of the certificate complies with it. or

(ii) order that the holder of the certificate carry out, within the time to be specified in the order, measures specified by the minister in order to mitigate the effects of non-compliance.

(2) If the minister considers that a person is not complying or has not complied with an order under this Act, in this section called the "original order", the minister may

- (a) order the person to comply with the original order, and
- (b) specify in the order measures to address the non-compliance and the time within which it must be remedied.

(3) An order under this section may be made to apply generally or to one or more persons named in the order.

### **Supreme Court order for compliance**

**35** (1) If the minister considers that any person or organization is not complying or has not complied with an order made under this Act, the minister may apply to the Supreme Court for either or both of the following:

- (a) an order directing the person or organization to comply with the order or restraining the person or organization from violating the order;
- (b) an order directing the directors and officers of the person or organization to cause the person or organization to comply with or to cease violating the order.

(2) On application by the minister under this section, the Supreme Court may make an order it considers appropriate.

### **Compliance agreement**

**36** (1) If the minister considers it appropriate to do so, the minister may give the holder of an environmental assessment certificate an opportunity to make a written compliance agreement with the minister, by which the holder undertakes to comply with the environmental assessment certificate within the time and on the terms specified in the agreement.

(2) Despite a written compliance agreement, the minister may make an order referred to in section 34 in respect of the holder of an environmental assessment certificate or another person that is the subject of an order under section 34

- (a) on matters not covered by the agreement,

(b) if the agreement is not complied with, on matters covered in the agreement, and

(c) on matters covered in the agreement if all the material facts related to those matters were not known by the minister at the time of the agreement.

(3) On the application of a holder of an environmental assessment certificate that has a compliance agreement with the minister, the minister may approve an alteration of the agreement.

### **Suspension, cancellation and amendment of certificates**

**37** (1) For any of the reasons listed in subsection (2), the minister by order may

(a) suspend all or some of the rights of the holder of an environmental assessment certificate under the certificate or cancel an environmental assessment certificate, or

(b) amend or attach new conditions to an environmental assessment certificate.

(2) The reasons referred to in subsection (1) are as follows:

(a) the holder of the environmental assessment certificate does not substantially start the project by the deadline specified in the certificate;

(b) the minister has reasonable and probable grounds to believe that the holder of the certificate is in default of

(i) an order of the Supreme Court made under section 35, 45 or 47,

(ii) an order of the minister made under section 34 or 36 (2), or

(iii) one or more requirements of the certificate;

(c) the holder of the certificate has been convicted of an offence under this Act;

(d) the holder of the certificate is in default of an order made under section 32 that the proponent pay costs.

(3) Any amendment made or condition attached to an environmental assessment certificate under this section is conclusively deemed to be part of the certificate, whether contained in or attached to it or contained in a separate document.

### **Notice requirements**

**38** (1) Except in a situation that the minister considers to be an emergency that warrants immediate action without notice to the holder



or former holder of an environmental assessment certificate, the minister must not make an order under section 37 without first giving the holder or former holder an opportunity to be heard.

(2) Immediately after the minister makes an order under section 37 or gives notice under subsection (1), the executive director must deliver a copy of the order or notice to the holder of the certificate or the former holder, as the case may be.

(3) Not later than 15 days after delivery under subsection (2) of a copy of the order or notice, the holder or former holder of the certificate, if not given an opportunity to be heard before the making of the order, may require an opportunity to be heard by the minister, by written notice delivered to the minister.

### **Opportunity to be heard**

**39** As soon as practicable after receiving written notice under section 38 (3), the minister must give the holder or former holder who delivered the notice an opportunity to be heard.

### **Reinstatement of certificate**

**40** The minister by order may

- (a) cancel a condition, attached under section 37, of an environmental assessment certificate, or
- (b) subject to any conditions the minister considers appropriate, reinstate an environmental assessment certificate that under section 37 has been suspended or cancelled.

### **Offences**

**41** (1) Section 5 of the *Offence Act* does not apply to this Act or the regulations.

(2) A person commits an offence who

- (a) contravenes section 8 (1) or (2),
- (b) does not comply with
  - (i) an environmental assessment certificate, or
  - (ii) an order referred to in section 34 or 35, or
- (c) makes a statement in a record filed or provided under this Act that is false or misleading with respect to a material fact or that omits to state a material fact, the omission of which makes the statement false or misleading.

(3) A person does not commit an offence under subsection (2) (c) if at the time of the statement the person did not know that the statement was false or misleading and, exercising due diligence, could not have known that the statement was false or misleading.

(4) If a corporation commits an offence under this Act, any employee, officer, director or agent of the corporation who authorizes, permits or acquiesces in the offence commits the same offence whether or not the corporation is convicted of the offence.

### **Effect of voluntary compliance agreement**

**42** An environmental assessment certificate holder that

(a) enters into a voluntary compliance agreement approved under section 36 by the minister, and

(b) is complying fully with the agreement

does not commit an offence under section 41 (2) in respect of a contravention of this Act that the agreement is intended to rectify.

### **Penalties**

**43** A person who commits any offence under section 41 is liable,

(a) in the case of a corporation on a first conviction, to a fine of not more than \$100 000 and, on each subsequent conviction, to a fine of not more than \$200 000, and

(b) in the case of an individual

(i) on a first conviction, to a fine of not more than \$100 000 or to imprisonment for not more than 6 months or to both, and

(ii) on each subsequent conviction, to a fine of not more than \$200 000 or to imprisonment for not more than 12 months or to both.

### **Remedies preserved**

**44** A proceeding, conviction or penalty for an offence under this Act does not relieve a person from any other liability.

### **Court order to comply**

**45** If a person is convicted of an offence under this Act, then, in addition to any punishment the court may impose, the court may order the person to comply with the provisions of this Act.

### **Limitation period**

- 46** A proceeding for an offence under this Act may not be commenced in any court more than 3 years after the facts on which the proceedings are based first come to the knowledge of the minister.

### **Restitution**

- 47** If a person is convicted of an offence under this Act, then, in addition to any other penalty, the court may order the person convicted to pay compensation or make restitution.

## **Part 6 – General Provisions**

### **Ministerial delegation**

- 48** The minister may delegate in writing to any employee of the Environmental Assessment Office any power or duty conferred or imposed on the minister under this Act.

### **Assessment of policies and practices**

- 49** The minister may direct the Environmental Assessment Office, in accordance with terms of reference established by the minister,
- (a) to undertake an assessment of any policy, enactment, plan, practice or procedure of the government, and
  - (b) to provide a report and recommendations to the minister at the conclusion of the assessment.

### **Power to make regulations**

- 50** (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.
- (2) In addition to regulations under subsection (1), the Lieutenant Governor in Council may make regulations as follows:
- (a) prescribing time limits not otherwise provided for under this Act for things required or permitted to be done under this Act, which time limits may differ for different categories of projects, events or circumstances;
  - (b) prescribing
    - (i) the fees for applications for certificates under section 16 (1) or (6), or for applications under section 19 to amend certificates, and
    - (ii) the fees and charges to be paid in respect of other matters connected with the administration of this Act;

- (c) prescribing information required for the purposes of an application under section 16 for an environmental assessment certificate;
- (d) respecting the form and content of applications for certificates;
- (e) prescribing procedures for consulting persons and organizations under section 11 (2) (f) and (g), including but not limited to the public, first nations, government agencies and neighbouring jurisdictions;
- (f) prescribing general policy requirements to be taken into account and reflected in an assessment;
- (g) for the purposes of section 23,
  - (i) prescribing the procedures under which
    - (A) applications for approvals under other enactments may be considered, and
    - (B) the approvals may be issued subject to conditions,as part of, or in conjunction with, an environmental assessment certificate issued under this Act,
  - (ii) specifying the approvals under other enactments that are eligible for concurrent review,
  - (iii) specifying requirements to be followed by the proponent in applying for concurrent review of applications for approvals under other enactments, and
  - (iv) prescribing duties of a ministry receiving an application for an approval under another enactment that is filed in compliance with section 23, including the time limits within which
    - (A) the ministry must inform the proponent and the executive director of its decision on the application, and
    - (B) if the ministry has decided to issue the approval, the approval must be issued;
- (h) prescribing additional powers and duties of the executive director;
- (i) for the purpose of section 51 (2), designating particular persons, prescribing classes of persons, designating particular projects and prescribing classes of projects;
- (j) defining a word or expression used but not defined in this Act;

(k) providing that a provision of this Act, or of the regulations, does not apply to or in respect of reviewable projects, and prescribing circumstances in which or conditions on which the provision is made inapplicable under this paragraph.

(3) A regulation made under subsection (2) may

(a) be made applicable generally or to a specific category of reviewable project,

(b) categorize reviewable projects for the purpose of the regulation, and

(c) provide differently for different categories of reviewable projects.

### **Transitional provisions**

**51** (1) This Act does not apply to any activity, construction, operation, modification, dismantling or abandonment that, immediately before this subsection comes into force,

(a) is substantially started, and

(b) is not a reviewable project under the *Environmental Assessment Act*, R.S.B.C. 1996, c. 119.

(2) This Act does not apply to any activity, construction, operation, modification, dismantling or abandonment that, on the date this subsection comes into force, has not been substantially started and

(a) is the subject of a proposal that is being made by a person who is designated by regulation or is within a prescribed class of persons, or

(b) is the subject of a proposal and is a project that is designated by regulation or is within a prescribed class of projects.

(3) An assessment of a project must be continued and disposed of under this Act as an application for an environmental assessment certificate if, immediately before this subsection comes into force, the project is a reviewable project under the *Environmental Assessment Act*, R.S.B.C. 1996, c. 119, and a review of an application under section 7 of that Act is in progress.

(4) Subject to subsection (2), an assessment of a project must be undertaken or continued and disposed of under this Act if,

(a) immediately before this subsection comes into force, the project

- (i) is a type of project for which one or more approvals under other enactments are required,
- (ii) is the subject of an existing proposal made by a person who does not have all of the required approvals under other enactments, and
- (iii) is not the subject of an application under the *Environmental Assessment Act*, R.S.B.C. 1996, c. 119, and

(b) on the date this subsection comes into force, the project is a reviewable project under this Act.

(5) The executive director may make an order

- (a) specifying the step in the environmental assessment process under this Act to which a project described in subsection (3) or (4) must proceed, or
- (b) varying the review process to the extent necessary to accommodate the review under this Act of that project.

(6) The executive director must give reasons for an order made under subsection (5) and may attach conditions to the order.

(7) Records that before the coming into force of this subsection were filed or submitted under the *Environmental Assessment Act*, R.S.B.C. 1996, c. 119, may be accepted by the executive director in full or partial fulfillment of the requirements of this Act.

(8) Any certificate, order, approval or decision that, immediately before the coming into force of this subsection, is in effect under the *Environmental Assessment Act*, R.S.B.C. 1996, c. 119,

- (a) is deemed to have been issued under this Act, and
- (b) subject to subsection (9), continues in force until it expires or, under this Act, is suspended or cancelled.

(9) An energy operation certificate or energy project certificate under the *Utilities Commission Act*, S.B.C. 1980, c. 60, an order issued under section 19 (1) of that Act, a mine development certificate or mine operation certificate under the *Mine Development Assessment Act*, S.B.C. 1990, c. 55, or an approval given as part of the major project review process, if the certificate, order or approval is in effect immediately before the coming into force of this subsection, remains in effect, despite its term or expiry date, for the life of the project in respect of which it was issued, unless it is suspended or cancelled under this Act.

(10) During the 6 month period beginning on the date this subsection comes into force, the executive director, with respect to a certificate

that remains in effect under subsection (8), by order may remove or amend any condition that requires the holder of the certificate, for the life of the certificate, to seek the written consent of the minister before materially altering the project that is the subject of the certificate.

### **Consequential Amendments**

*[Note: See Table of Legislative Changes for the status of sections 52 to 58.]*

<b>Section(s)</b>	<b>Affected Act</b>
52	<i>Agricultural Land Reserve Act</i>
53	<i>Drinking Water Protection Act</i>
54	<i>Freedom of Information and Protection of Privacy Act</i>
55	<i>Local Government Act</i>
56	<i>Mineral Tenure Act</i>
57	<i>Nisga'a Final Agreement Act</i>

### **Repeal**

**58** The *Environmental Assessment Act*, R.S.B.C. 1996, c. 119, is repealed.

### **Commencement**

**59** This Act comes into force by regulation of the Lieutenant Governor in Council.