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## C.C.S.M. c. E125

# The Environment Act

(Assented to July 17, 1987)

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

### Intent and purposes

**1(1)** The intent of this Act is to develop and maintain an environmental protection and management system in Manitoba which will ensure that the environment is protected and maintained in such a manner as to sustain a high quality of life, including social and economic development, recreation and leisure for this and future generations, and in this regard, this Act

- (a) is complementary to, and support for, existing and future provincial planning and policy mechanisms;
- (b) provides for the environmental assessment of projects which are likely to have significant effects on the environment;
- (c) provides for the recognition and utilization of existing effective review processes that adequately address environmental issues;
- (d) provides for public consultation in environmental decision making while recognizing the responsibility of elected government including municipal governments as decision makers; and
- (e) prohibits the unauthorized release of pollutants having a significant adverse effect on the environment.

### Definitions

**1(2)** In this Act,

**"abatement project"** means a project for the abatement of an undesirable environmental condition affecting premises by

- (a) the removal and relocation of the development causing the condition; or
- (b) the removal and relocation of the premises affected by the condition; (« opération de dépollution »)

**"adverse effect"** means impairment of or damage to the environment, including a negative effect on human health or safety; (« effet nocif »)

**"air"** means the atmosphere, but does not include the atmosphere within a mine or within a building other than any building designated by the minister; (« air »)

**"alter"** means to change a development or a proposal or to close, shut down or terminate a development where the alteration causes or is likely to cause a significant change in the effects of the development on the environment; (« changer »)

**"analyst"** means a government employee so appointed by the minister; (« analyste »)

**"assessment"** means an evaluation of a proposal to ensure that appropriate environmental management practices are incorporated into all components of the life cycle of a development; (« évaluation »)

**"class 1 development"** means any development that is consistent with the examples or the criteria or both set out in the regulations for class 1 developments, and the effects of which are primarily the release of pollutants; (« exploitation de catégorie 1 »)

- "class 2 development"** means any development that is consistent with the examples or the criteria or both set out in the regulations for class 2 developments and the effects of which are primarily unrelated to pollution or are in addition to pollution; (« exploitation de catégorie 2 »)
- "class 3 development"** means any development that is consistent with the examples or the criteria or both set out in the regulations for class 3 developments and the effects of which are of such a magnitude or which generate such a number of environment issues that it is as an exceptional project; (« exploitation de catégorie 3 »)
- "commission"** means the Clean Environment Commission established under this Act; (« Commission »)
- "corporation"** means a body corporate heretofore or hereafter incorporated and carrying on business or operating within Manitoba; (« corporation »)
- "department"** means the department of government over which the minister presides and through which this Act is administered; (« ministère »)
- "development"** means any project, industry, operation or activity, or any alteration or expansion of any project, industry, operation or activity which causes or is likely to cause
- (a) the release of any pollutant into the environment, or
  - (b) an effect on any unique, rare, or endangered feature of the environment, or
  - (c) the creation of by-products, residual or waste products not regulated by *The Dangerous Goods Handling and Transportation Act*, or
  - (d) a substantial utilization or alteration of any natural resource in such a way as to pre-empt or interfere with the use or potential use of that resource for any other purpose, or
  - (e) a substantial utilization or alteration of any natural resource in such a way as to have an adverse impact on another resource, or
  - (f) the utilization of a technology that is concerned with resource utilization and that may induce environmental damage, or
  - (g) a significant effect on the environment or will likely lead to a further development which is likely to have a significant effect on the environment, or
  - (h) a significant effect on the social, economic, environmental health and cultural conditions that influence the lives of people or a community in so far as they are caused by environmental effects; (« exploitation »)
- "director"** means except where the context otherwise requires, an employee of the department appointed as such by the minister; (« directeur »)
- "documents"** means data and information, whether maintained and stored as printed material or in computer files or discs; (« documents »)
- "environment"** means
- (a) air, land, and water, or
  - (b) plant and animal life, including humans; (« environnement »)
- "environment officer"** means a person or a member of a class of persons appointed under subsection 3(2); (« agent de l'environnement »)
- "environmental health"** means those aspects of human health that are or can be affected by pollutants or changes in the environment; (« salubrité de l'environnement »)
- "greenhouse gas"** means any of the following gases:
- (a) carbon dioxide,
  - (b) methane,
  - (c) nitrous oxide,
  - (d) hydrofluorocarbons,
  - (e) perfluorocarbons,
  - (f) sulphur hexafluoride,
  - (g) any other gas prescribed by regulation; (« gaz à effet de serre »)
- "Interdepartmental Planning Board"** means the board appointed pursuant to *The Planning Act*; (« Conseil interministériel d'aménagement »)
- "land"** includes soil, earth and terrain; (« bien-fonds »)

**"medical officer of health"** means a person so appointed pursuant to *The Public Health Act*; (« médecin hygiéniste »)

**"minister"** means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act; (« ministre »)

**"municipality"** means any locality, the inhabitants of which are incorporated and continued under the authority of *The Municipal Act*, *The Local Governments District Act* or any other Act of the Legislature and includes the City of Winnipeg, a rural municipality, an incorporated city, town or village, and a local government district; (« municipalité »)

**"person responsible for a pollutant"** means

- (a) the owner of the pollutant, and
- (b) any other person having charge, management or control of the pollutant; (« responsable d'un polluant »)

**"pollutant"** means any solid, liquid, gas, smoke, waste, odour, heat, sound, vibration, radiation, or a combination of any of them that is foreign to or in excess of the natural constituents of the environment, and

- (a) affects the natural, physical, chemical, or biological quality of the environment, or
- (b) is or is likely to be injurious to the health or safety of persons, or injurious or damaging to property or to plant or animal life, or
- (c) interferes with or is likely to interfere with the comfort, well being, livelihood or enjoyment of life by a person; (« polluant »)

**"proponent"** means a person who is undertaking, or proposes to undertake a development, or who has been designated by a person or group of persons to undertake a development in Manitoba on behalf of that person or group of persons; (« promoteur »)

**"proprietary information"** means information or data provided to the department on a confidential basis, the criteria for which is outlined in the regulations or any Act of the Legislature, or is negotiated between the department and the provider of the information; (« renseignements privés »)

**"public registry"** means the registry established under section 17; (« registre public »)

**"release"** includes to spill, discharge, dispose of, spray, inject, inoculate, abandon, deposit, pour, empty, throw, dump, place and exhaust, and to cause or allow to leak, seep or emit; (« émission »)

**"waste"** includes rubbish, litter, junk, or junked obsolete or derelict motor vehicles, or obsolete or derelict equipment, appliances or machinery; debris from construction, renovation and demolition projects; slimes, tailings, fumes, waste of domestic, municipal, mining, factory or industrial origin; effluent or sewage; human or animal wastes; organic wastes; solid or liquid manure; or waste products of any kind whatsoever or the run-off from such wastes; (« déchets »)

**"water"** includes flowing or standing water on or below the surface of the earth, and ice formed thereon. (« eaux »)

S.M. 1989-90, c. 60, s. 26; S.M. 1993, c. 26, s. 2; S.M. 1993, c. 48, s. 13 and 61; S.M. 1997, c. 61, s. 21; S.M. 2000, c. 35, s. 38; S.M. 2000, c. 44, s. 4; S.M. 2009, c. 25, s. 2; S.M. 2013, c. 35, s. 6.

## Department

**2(1)** The aims and objectives of the department are to protect the quality of the environment and environmental health of present and future generations of Manitobans and to provide the opportunity for all citizens to exercise influence over the quality of their living environment.

## Functions of the department

**2(2)** Without limiting the generality of subsection (1), departmental functions include

- (a) the administration and enforcement of this Act, the regulations, licences and orders made hereunder;
- (b) the administration and enforcement of any other Acts and regulations as determined by the Lieutenant Governor in Council;
- (c) the development and implementation of standards and objectives for environmental quality of Manitoba in consultation with other government departments and the public;
- (d) the establishment and maintenance of an effective method of public involvement in environmental decision making;

- (e) research, monitoring, studies and investigations related to the acquisition of knowledge, data or technological understanding necessary to perform its mandate;
- (f) the provision of technical, analytical services; and
- (g) the development of environmental management strategies and policies for the protection, maintenance, enhancement and restoration of environmental quality in Manitoba.

#### **Environmental awareness programs**

- 2(3) For the purposes of increasing environmental awareness in Manitoba, the minister may
- (a) cause the preparation and production of informational material respecting the environment of the province and make the material available to the public;
  - (b) undertake, or by means of grants or other assistance, support and encourage the development of educational programs or courses in the public education system, or educational programs for the public at large, respecting environmental management.

#### **Appointment of director**

- 3(1) The minister shall appoint a director for the purposes of this Act and the regulations.

#### **Environment officer**

- 3(2) The minister may appoint a person or the members of a class of persons as environment officers for the purpose of this Act and the regulations, any provision of this Act or a regulation or any provision of a regulation.

#### **Appointment of environmental mediator**

- 3(3) The minister may, where the minister deems it advisable, and where the conflicting parties concur, appoint an environmental mediator acceptable to the parties to mediate between persons involved in an environmental conflict, and the mediator so appointed shall, within six weeks after completion of the mediation, report to the minister the results of the mediation.

S.M. 1993, c. 26, s. 3.

4 [Repealed]

S.M. 1997, c. 61, s. 21.

#### **Advisory committees**

- 5 The minister may establish and appoint members of such advisory committees as the minister considers desirable for the purpose of providing advice and assistance in carrying out the objects and purposes of this Act.

#### **Clean Environment Commission**

- 6(1) There shall be a Clean Environment Commission with a minimum of 10 members appointed by the Lieutenant Governor in Council for such terms and remuneration as may be specified by the Lieutenant Governor in Council, for the purposes of
- (a) providing advice and recommendations to the minister;
  - (b) developing and maintaining public participation in environmental matters; and
  - (c) carrying out functions that it is required or permitted to carry out under *The Contaminated Sites Remediation Act* and *The Drinking Water Safety Act*.

#### **Chairperson**

- 6(2) In addition to the members appointed pursuant to subsection (1), the Lieutenant Governor in Council shall appoint, and fix the remuneration of a full time chairperson of the commission who shall report to the minister.

#### **Investigation into environmental matters**

- 6(3) The commission may on its own volition conduct an investigation into any environmental matter, except a matter involving the gathering of evidence to determine whether or not a specific proponent is complying with the provisions of this Act and the regulations, and advise and make recommendations thereon to the minister.

#### **Public meetings and hearings**

6(4) The commission may hold public meetings or public hearings for the purposes of its functions of gathering or disseminating information, or gathering evidence or information from the public.

#### Specific duties of Commission

6(5) When requested by the minister, the commission must do one or more of the following in accordance with any terms of reference specified by the minister:

- (a) provide advice and recommendations to the minister;
- (b) conduct public meetings or hearings and provide advice and recommendations to the minister;
- (c) conduct investigations into specific environmental concerns and report back to the minister;
- (d) act as a mediator between two or more parties to an environmental dispute and report back to the minister.

#### Terms of reference

6(5.1) When requesting the commission to do anything mentioned in subsection (5), the minister may specify the terms of reference that the commission is to follow in carrying out its duties.

#### Power of Commission under Evidence Act

6(6) Subject to subsection (7) for the purposes of carrying out its duties and functions, the commission has the like protection and powers and is subject to the like requirements, as are conferred on, or required of commissioners appointed under Part V of *The Manitoba Evidence Act*.

#### Non-application of section 86 of Evidence Act

6(7) Section 86 of *The Manitoba Evidence Act* does not apply to the commission.

#### Rules of procedure

6(8) The commission may make rules governing its procedure.

#### Quorum

6(9) Three members constitute a quorum at all meetings of the commission.

#### Annual reports

6(10) The commission shall prepare and submit an annual report to the minister on matters dealt with by the commission during the immediately preceding year, including

- (a) the investigations conducted;
- (b) the policy, legislation and regulations reviewed;
- (c) participation in public meetings and hearings;
- (d) activities related to environmental mediation;
- (e) a description of activities undertaken jointly by the commission and the council;
- (f) functions carried out by the commission under the authority of *The Contaminated Sites Remediation Act* and *The Drinking Water Safety Act*; and
- (g) any other information that the minister requests.

#### Tabling of report

6(11) Upon receipt of the report pursuant to subsection (10), the minister shall, if the Legislature is then in session, lay it before the Legislature forthwith, and if the Legislature is not then in session release the report to the members of the Legislature and to the public within six weeks of the minister's receipt of it.

S.M. 1989-90, c. 90, s. 15; S.M. 1992, c. 23, s. 2; S.M. 1993, c. 48, s. 13; S.M. 1996, c. 40, s. 67; S.M. 2002, c. 36, s. 40; S.M. 2009, c. 25, s. 3.

#### Notice to hold public hearings

7(1) Upon receipt of a proposal and a request from the minister to hold public meetings or hearings respecting a proposed development, the commission shall notify the proponent and shall by advertisement in such newspaper or other media as the commission deems fit, give notice of the proposal, its intentions to hold meetings or hearings, and the dates, times and location of such meeting or hearings, and the date for receipt of notice for presentation of a submission.

**Representations to Commission**

7(2) Any person who wishes to make representation to the commission at a hearing shall, not later than the date set out in the notice, in writing so notify the commission.

**Commission to submit recommendations to minister**

7(3) Unless otherwise specified by the minister, not later than 90 days from the date of completion of meetings or hearings requested by the minister, the chairperson shall forward a report to the minister outlining the terms of reference, the process, the dates and locations of the meetings or hearings that were held, a summary of the public response and opinions, and the advice and recommendations of the commission.

**Commission may add members**

7(4) Notwithstanding subsection 6(1), for the purpose of conducting certain specific hearings, meetings or investigations, the commission, with the approval of the minister, may add qualified persons to the commission to assist and advise the commission in conducting the hearings, meetings or investigations; and the members so added have all the powers of the commissioners with respect to those hearings, meetings or investigations.

**Three regular members required for hearings**

7(5) Notwithstanding subsection (4), the commission shall not hold a hearing unless a hearing panel of at least three members are present, two of whom are members of the commission.

**Transcript required**

7(6) Where a hearing is held by the commission, the commission shall transcribe the evidence and maintain a copy of the transcript for a period of not less than 10 years.

7(7) [Repealed] S.M. 1992, c. 23, s. 3.

**Application of this section**

7(8) Except as provided in subsection 16(5) of *The Contaminated Sites Remediation Act*, this section does not apply to proceedings under that Act.

S.M. 1992, c. 23, s. 3; S.M. 1996, c. 40, s. 67; S.M. 2000, c. 44, s. 4.

8 [Repealed]

S.M. 2000, c. 44, s. 4.

9 [Repealed]

S.M. 2000, c. 44, s. 4.

**CLASS 1 DEVELOPMENTS****Licence required for development**

10(1) No person shall construct, alter, operate or set into operation any Class 1 development unless

- (a) the person first files a proposal in writing with the department and obtains a valid and subsisting licence from the director for the development; or
- (b) the person is exempted under the Act or the regulations from the requirements of clause (a).

**Existing development**

10(2) Notwithstanding subsection (1)

- (a) where in the opinion of the director, new evidence warrants a change in the existing limits, terms or conditions; or
- (b) where no existing limits, terms or conditions exist, by licence or regulation;

the director may require any person operating an existing Class 1 development to file a proposal with the department for consideration under this section.

**Form of Class 1 proposal**

10(3) The proponent shall submit the proposal required under subsection (1) or (2) in a form prescribed by the director, and include matters required by the regulations.

**Action by director on Class 1 proposals**

**10(4)** Upon receipt of a proposal for a Class 1 development under this section, the director shall within such time as may be specified by the regulations

- (a) subject to section 47, file a summary of the proposal in the public registry and notify the public through advertisements in the local newspaper or radio that a proposal has been received, providing opportunity for comments and objections;
- (b) file a copy of the proposal with the Interdepartmental Planning Board and circulate a copy of the proposal, or notice thereof, to such other departments as may be affected by the development;
- (c) determine the form of the assessment required for the proposal;
- (d) notify the proponent of the assessment process and schedule for that proposal; and
- (e) provide the proponent with the name of a contact person to coordinate the process.

**Proposal may be considered as Class 2 development**

**10(5)** Upon reviewing the documents provided pursuant to subsection (4), the Interdepartmental Planning Board or other departments may within such time as may be fixed in the regulations request the Director to consider the proposal as a Class 2 development in which case the Director may consider the proposal in accordance with section 11.

**Assessment of Class 1 development**

**10(6)** For the purposes of assessing a proposed class 1 development, the director may do any or all of the following things:

- (a) require from the proponent such additional information as the director deems necessary;
- (b) issue guidelines and instructions for the proponent to conduct further studies;
- (c) require from the proponent detailed plans for environmental protection and management;
- (d) request the minister to direct the chairperson of the commission to conduct public meetings or hearings;
- (e) elevate the proposal to a Class 2 development, and consider the proposal in accordance with section 11.

**Public hearings**

**10(7)** Notwithstanding subsection (6), where the director receives objections, and reasons for the objections with respect to a proposed development, the director may, within such time as set out in the regulations recommend that the minister cause the commission to hold a public hearing but where the director decides not to recommend a public hearing be held, the director shall provide written reasons to the objector, and advise the objector that the decision can be appealed to the minister.

**Notice of decision**

**10(7.1)** If the minister decides not to request a public hearing on a proposal after receiving a recommendation from the director under subsection (7), the minister must give written notice of his or her decision to the objector. The notice must advise the objector that the decision can be appealed under section 28.

**Director to issue or refuse licence**

**10(8)** Upon receipt of a proposal for a class 1 development under subsection (1) or (2), the director shall consider the proposal and deal with the proposal in accordance with subsections (4), (6) and (7), and

- (a) issue a licence to the proponent with such specifications, limits, terms and conditions or with a requirement for such modifications as the director deems necessary to ensure effective environmental management; or
- (b) refuse to issue the licence and thereby prohibit the construction, alteration, operation or implementation of the development.

**Written reasons for refusal of licence**

**10(9)** Where, the director refuses to issue a licence pursuant to subsection (8), the director shall provide written reasons for the decision to the proponent, the minister, and the public registry within such time as may be specified in the regulations.

**Reasons for not adopting commission advice**



**10(10)** Where the minister has requested a public hearing regarding a proposal, and subsequently advice and recommendations are presented to the minister, and the recommendations of the commission are not included in the environmental licence, or refusal, the director shall provide written reasons for the decision to the proponent, the minister, the commission and the public registry at the time of notifying the proponent of the decision.

S.M. 2009, c. 25, s. 4.

## CLASS 2 DEVELOPMENTS

### Licence required for development

**11(1)** No person shall, construct, alter, operate or set into operation any Class 2 development unless:

- (a) the person first files a proposal in writing with the department and obtains a valid and subsisting licence from the director for the development; or
- (b) the person is exempted under subsection (2) or the regulations from the requirements of clause (a).

### Ministerial agreement

**11(2)** Notwithstanding subsection (1) where a development or type of development is subject to an existing approval process that, to the satisfaction of the minister

- (a) involves interested government departments and agencies;
- (b) includes public consultation; and
- (c) addresses environmental issues;

the minister may, by agreement with the minister responsible for the reviewing department, exempt that development or type of development from this section.

### Cancellation of agreement by minister

**11(3)** Notwithstanding subsection (2) where in the opinion of the minister, the agreement or terms therein have not been adhered to, the minister may cancel the agreement or the approval issued under the agreement and require the proponent to file a proposal pursuant to subsection (1).

### Status of approval

**11(4)** Any approval issued under a process subject to an agreement entered into pursuant to subsection (2) has the status of a licence issued under this section and is subject to the appeal process provided under this Act, and the limits, terms and conditions of the approval shall be complied with by the recipient of the approval.

### Enforcement of approval provisions

**11(5)** Where a development approved by agreement pursuant to subsection (2) is not in compliance with the limits, terms or conditions of the approval, enforcement will normally be carried out by the department issuing the approval.

### Existing developments

**11(6)** Notwithstanding subsections (1) and (2),

- (a) where in the opinion of the minister new evidence warrants a change in the existing limits, terms or conditions; or
- (b) where no existing limits, terms or conditions exist by licence or regulation;

the minister may require any person operating an existing Class 2 development to file a proposal with the department, to be considered under this section.

### Form of Class 2 proposal

**11(7)** The proponent shall submit the proposal required under subsection (1) or (6) in a form prescribed by the director, and include matters required by the regulations.

### Action by director in Class 2 developments

**11(8)** Upon receipt of a proposal for a Class 2 development under this section, the director shall within such time as may be specified by the regulation



- (a) subject to section 47, file a summary of the proposal in the public registry and notify the public through advertisements in the local newspaper or radio that a proposal has been received, providing opportunity for comments and objections;
- (b) file a copy of the proposal with the Interdepartmental Planning Board and other departments as may be affected by the development, for their review and comment;
- (c) on the advice of the Interdepartmental Planning Board and other departments so consulted, determine the form of assessment required for the proposal, which may include forwarding the proposal to the minister for consideration as a Class 3 development pursuant to section 12 or consideration as a Class 1 proposal under section 10;
- (d) notify the proponent of the assessment options and tentative schedule for the options; and
- (e) provide the proponent with the name of a contact person to coordinate the process.

#### **Assessment of Class 2 development**

**11(9)** For the purposes of assessing the environmental impacts of a proposed Class 2 development, the director may do any or all of the following things:

- (a) require from the proponent additional information;
- (b) issue guidelines and instructions for the assessment and require the proponent to carry out public consultation;
- (c) require the proponent to prepare and submit to the director an assessment report to include such studies, research, data gathering and analysis or monitoring, alternatives to the proposed development processes and locations, and the details of proposed environmental management practices to deal with the issues;
- (d) conduct or cause to be conducted a review of the assessment report;
- (e) request the minister to direct the chairperson of the commission to conduct a public hearing.

#### **Public hearings**

**11(10)** Notwithstanding subsection (9), where the director receives objections and reasons for the objections with respect to a proposed development, the director may, within such time as set out in the regulations recommend that the minister cause the commission to hold a public hearing; but where the director decides not to recommend a public hearing be held, the director shall provide written reasons to the objector, and advise the objector that the decision can be appealed to the minister.

#### **Notice of decision**

**11(10.1)** If the minister decides not to request a public hearing on a proposal after receiving a recommendation from the director under subsection (10), the minister must give written notice of his or her decision to the objector. The notice must advise the objector that the decision can be appealed under section 28.

#### **Director to issue or refuse a licence**

**11(11)** Upon receipt of a proposal for a class 2 development under subsection (1) or (6), the director shall deal with the proposal in accordance with subsections (8), (9) and (10), and shall

- (a) issue a licence to the proponent with such specifications, limits, terms and conditions or with a requirement for such modifications as the director deems necessary to ensure effective environmental management; or
- (b) refuse to issue the licence and thereby prohibit the construction, alteration, operation or implementation of the development.

#### **Written reasons for refusal of licence**

**11(12)** Where, the director refuses to issue a licence pursuant to subsection (11) the director shall provide written reasons for the decision to the proponent, the minister, and to the files in the public registry within such time as may be specified in the regulations.

#### **Reasons for not adopting commission advice**

**11(13)** Where the minister has requested a public hearing on a proposal and subsequently advice and recommendations are presented to the minister, and the recommendations of the commission are not included in the environmental licence, or refusal, the director shall provide written documentation of the reasons for the decision to the proponent, the minister, the commission and the files of the public registry at the time of notifying the proponent of the decision.

S.M. 2009, c. 25, s. 5; S.M. 2010, c. 33, s. 17.

### MINISTER MAY CONSIDER CLASS 1 OR 2 PROPOSALS

#### Minister may consider Class 1 or 2 proposals

**11.1** If a public hearing has been held or is to be held by the commission in respect of a proposal for a Class 1 or 2 development, the minister may, after giving written notice to the director and the proponent,

- (a) in the case of a Class 1 development, exercise the director's powers to issue a licence or refuse to issue a licence under clause 10(8)(a) or (b) and perform the director's duties under subsections 10(9) and (10);
- (b) in the case of a Class 2 development, exercise the director's powers to issue a licence or refuse to issue a licence under subsection 11(11)(a) or (b) and perform the director's duties under subsections 11(12) and 11(13).

The references to "the director" in those provisions are to be read as "the minister", with necessary changes.

S.M. 2009, c. 25, s. 6.

### CLASS 3 DEVELOPMENTS

#### Licence required for Class 3 development

**12(1)** No person shall construct, alter, operate or set into operation any Class 3 development unless

- (a) the person first files a proposal in writing with the department and obtains a valid and subsisting licence from the minister for the development; or
- (b) the person is exempted under the Act or the regulations from the requirements of clause (a).

#### Existing developments

**12(2)** Notwithstanding subsection (1),

- (a) where in the opinion of the minister new evidence warrants a change in the existing limits, terms or conditions; or
- (b) where no existing limits, terms or conditions exist by licence or regulation;

the minister may require any person operating an existing Class 3 development to file a proposal with the department, to be considered under this section.

#### Form of Class 3 proposal

**12(3)** The proponent shall submit the proposal required under subsection (1) or (2) in a form prescribed by the minister, and include matters as required by the regulations.

#### Action by minister in Class 3 developments

**12(4)** Upon receipt of a proposal under this section, the minister shall within such time as may be specified in the regulations

- (a) subject to section 47, file a summary of the proposal in the public registry and notify the public through advertisements in the local newspaper or radio of the proposal and provide opportunity for comments and objections;
- (b) file a copy of the proposal with the Interdepartmental Planning Board and other departments as may be affected by the development, for their review and comment;
- (c) submit a summary of the proposal to the chairperson of the commission;
- (d) notify the proponent of the assessment options and tentative schedule for the options; and
- (e) provide the proponent with the name of a contact person to coordinate the process.

#### Assessment of Class 3 developments

**12(5)** For the purpose of assessing a proposed Class 3 development, the minister, in consultation with the Interdepartmental Planning Board and other departments may do any or all of the following things:

- (a) require from the proponent additional relevant information;

- (b) issue guidelines and instructions for the assessment and require the proponent to carry out public consultation;
- (c) require the proponent to prepare and submit an assessment report to include such studies, research, data gathering and analysis or monitoring, alternatives to the proposed development processes and locations, and the details of proposed environmental management practices to deal with the issues as the minister deems necessary;
- (d) review the assessment report;
- (e) cause to be conducted a public hearing by the commission.

#### **Public hearings**

**12(6)** Notwithstanding subsection (5), where the minister receives objections with respect to a proposed development and reasons for the objections, the minister may, within such time as may be set out in the regulations, cause the commission to hold public hearings thereon; but if the minister decides not to hold public hearings the minister shall provide the objectors with written reasons therefor and shall cause a copy of those reasons to be filed in the public registry.

#### **Minister to issue or refuse licence**

**12(7)** Upon receipt of proposal under this section the minister shall deal with the proposal in accordance with subsections (4) and (5) and consider the proposal, and shall

- (a) issue a licence to the proponent, with such specifications, limits, terms and conditions or with a requirement for such modifications as the minister deems necessary to ensure effective environmental management; or
- (b) on the approval of the Lieutenant Governor in Council, refuse to issue a licence.

#### **Reasons for not adopting commission advice**

**12(8)** Where the minister has requested a public hearing regarding a proposal and subsequently advice and recommendations are presented to the minister, and the minister does not incorporate the recommendations of the commission in the environmental licence, the minister shall provide written documentation of the reason for the decision to the proponent, the commission and the files of the public registry at the time of notifying the proponent of the decision.

[S.M. 2009, c. 25, s. 7; S.M. 2010, c. 33, s. 17.](#)

### **MISCELLANEOUS PROVISIONS RESPECTING PROPOSALS**

#### **Public consultations by proponent to be considered**

**12.0.1(1)** When considering a proposal, the director and the minister may take into account any public consultations on the proposed development conducted by the proponent.

#### **Consultation results to commission**

**12.0.1(2)** If the commission holds public hearings on a proposal, the director or the minister may require the proponent to forward the results of any public consultations conducted by the proponent to the commission.

[S.M. 2009, c. 25, s. 8.](#)

#### **Climate change considerations**

**12.0.2** When considering a proposal, the director or minister must take into account — in addition to other potential environmental impacts of the proposed development — the amount of greenhouse gases to be generated by the proposed development and the energy efficiency of the proposed development.

[S.M. 2009, c. 25, s. 8.](#)

#### **Water quality standards, objectives and guidelines**

**12.1** A licence, or an alteration to a licence, issued under section 10, 11 or 12 after the date that this section comes into force, in respect of a development that affects or may affect water, must, in circumstances specified in *The Water Protection Act* or regulations made under it, include specifications, terms, limits or conditions as necessary to ensure compliance or consistency with a water quality standard, objective or guideline set or adopted under that Act.

S.M. 2005, c. 26, s. 43.

#### Issue of licence in stages

**13(1)** The director or minister, as the case may be, may issue a licence referred to in subsection 10(1), 11(1) or 12(1) as one of a series of licences, each of which is issued in respect of a specified stage in the construction, alteration or operation of a development and, notwithstanding subsections 10(1), 11(1) and 12(1), a licence so issued authorizes only the stage in the construction, alteration or operation specified in the licence.

#### Licensing of preliminary steps

**13(2)** Notwithstanding anything to the contrary in this Act, the minister or director may, in advance of approval of any stage in the construction, alteration, operation or setting into operation of the development, issue the first of a series of licences referred to in subsection 10(1), 11(1) or 12(1) authorizing such preliminary steps to be taken with respect to the construction or alteration of the development as are specified in the licence, if

- (a) in the opinion of the director or minister, the environmental impact of those preliminary steps is known and is either insignificant or capable of being mitigated with known technology; and
- (b) the director or minister has complied with clause 10(4)(a), 11(8)(a) or 12(4)(a), as the case may be.

#### Effect of issue of licences in series

**13(3)** Where the minister or director issues a licence as one of a series, the minister or director is not thereby obliged to issue any subsequent licence in the series.

S.M. 1992, c. 23, s. 4.

#### Agreements with other jurisdictions

**13.1(1)** If a proposed development that requires an environmental licence under this Act may have an environmental impact of concern to a jurisdiction other than Manitoba, the minister may, with the approval of the Lieutenant Governor in Council and subject to the regulations, enter into an agreement with that jurisdiction

- (a) to establish a joint assessment process; or
- (b) to provide for the use of that jurisdiction's assessment process;

for the purpose of gathering the information necessary to make a decision to issue or refuse to issue a licence under section 10, 11 or 12.

#### Equivalent assessment

**13.1(2)** The minister shall not enter into an agreement under subsection (1) unless

- (a) the minister is satisfied that the agreement provides for an assessment that is at least equivalent to the assessment that would otherwise be required under this Act; and
- (b) the agreement provides for
  - (i) notification of the public in Manitoba about the filing of the proposal through the use of the public registry and by way of advertisements in the media;
  - (ii) comments and objections from members of the public related, at a minimum, to the proposal, the guidelines for the assessment of the proposal, the assessment and the review of the assessment;
  - (iii) public hearings in Manitoba about the proposal by a panel established for the purposes of the assessment process;
  - (iv) the appointment jointly by the ministers who are parties to the agreement of the members of the panel when a joint assessment process is established under clause (1)(a);
  - (v) a requirement that the minister be satisfied that each proposed member of the panel is unbiased and free of any conflict of interest relative to the proposal and has special knowledge or experience relevant to the anticipated environmental effects of the proposal;
  - (vi) a program relating to the provision of financial assistance to members of the public participating in the assessment process when in the opinion of the minister such a program is desirable;
  - (vii) opportunity for the minister or the director, as the case may be, to require further information before making a decision regarding licensing if, in the opinion of the minister or

the director, the assessment process has not produced sufficient information on which to base such a decision.

S.M. 1990-91, c. 15, s. 2; S.M. 1991-92, c. 41, s. 9.

#### **Participant funding by proponents**

**13.2** The minister may, in accordance with the regulations, require a proponent of a development that is subject to an assessment under section 10, 11, 12 or 13.1 to provide financial or other assistance to any person or group participating in the assessment process.

S.M. 1990-91, c. 15, s. 2.

#### **Proponent to notify director or minister of alteration in development**

**14(1)** Where a proponent

(a) has submitted a proposal for a development in accordance with sections 10, 11 or 12, but is not yet in receipt of an environmental licence; or

(b) has received an environmental licence for a development;

and the proponent intends to alter that proposal or the development as licensed that does not conform to the limits, terms and conditions or that is likely to change the environmental effect, the proponent shall notify the director or the minister, as the case may be, of the proposed alteration before proceeding with it.

#### **Dealing with minor proposed alterations**

**14(2)** Where

(a) the director or the minister has received notice of a proposed alteration in accordance with subsection (1);

(b) the potential environmental effects resulting from the alteration are insignificant or will be accommodated by the ongoing assessment process; and

(c) in the case of a proposed alteration to the development as licensed, the proposed alteration is not an alteration to any limit, term or condition that was amended as a result of an appeal under section 27 or 28;

the director or the minister may in writing, and with such limits, terms and conditions as he or she consider advisable, give approval to the proponent to implement the alteration.

#### **Record of minor alteration decision**

**14(2.1)** If the director or minister approves a proposed alteration, he or she must file in the public registry

(a) a copy of the approval under subsection (2); and

(b) the name of a contact person in the department who can give information to the public about the proposed alteration.

#### **Dealing with major proposed alterations**

**14(3)** Where the director or the minister has received notice of a proposed alteration in accordance with subsection (1), and the proposal is other than as described in clauses 2(b) and (c), the director or minister shall direct the proponent to seek approval for the proposed alteration as a proposal in accordance with section 10, 11 or 12, as the case may be.

#### **Decision on proposed alterations**

**14(4)** The decision of the director or minister with respect to the disposition of the alteration in accordance with subsection (2) or (3) shall be communicated to the proponent within 21 days from the receipt of the request for the change.

#### **Prior approval of alteration required**

**14(5)** No person shall proceed with an alteration in a development until the person has received approval therefor from the director or minister.

S.M. 1992, c. 23, s. 5; S.M. 2009, c. 25, s. 9.

#### **Compliance with limits, etc.**

**15(1)** No person shall proceed with a development for which that person has received a licence from the director or the minister, as the case may be, except in accordance with the specifications, limits, terms and conditions set out in the licence.

#### **Development not to proceed**

**15(2)** No person shall proceed with a development for which a licence has been refused by the director or by the minister, as the case may be.

#### **Previous order deemed to be a licence**

**15(3)** Where prior to the coming into force of this Act, a person obtained an order pursuant to *The Clean Environment Act* being Chapter C130 of the *Continuing Consolidation of the Statutes of Manitoba*, it shall be deemed to be a licence issued under this Act.

#### **Licence binding on purchase**

**15(4)** An order, licence, or permit issued pursuant to this Act or the regulations and with respect to a person who owns or operates a development is binding on a person who purchases or otherwise acquires custody or control over the development.

#### **Deemed development**

**16** Where there is a disagreement as to whether any project, industry, operation or activity, or any alteration or expansion thereof is a development, the matter shall be determined by the minister.

#### **Public registry**

**17** Subject to section 47, the director shall maintain or cause to be maintained a public registry, containing for each proposal received

- (a) a summary, prepared by the proponent in form and detail approved by the department;
- (b) the disposition and status of each proposal;
- (c) a copy of the environmental licence, where applicable;
- (d) a copy of the assessment report;
- (e) justification for not accepting the advice and recommendations of the commission, where applicable; and
- (f) justification for refusing to issue an environmental licence, where applicable; and
- (g) such other information as the minister or director may from time to time direct.

#### **Suspension or variation in extra-ordinary circumstances**

**18(1)** Where a person is in possession of a licence issued under this Act, and where extraordinary circumstances warrant, that person may request the minister to suspend or vary all or any part of the licence; and the minister may comply with the request subject to such limits, terms and conditions as the minister deems necessary and suspend or vary any or all of the licence for a period not exceeding 14 days, as specified by the minister.

#### **Suspension to be recorded**

**18(2)** A suspension or variation granted pursuant to subsection (1) shall be recorded in the public registry and in the department's annual report.

#### **Suspension, etc. of licence**

**19(1)** The minister may suspend, withdraw or cancel a licence issued in accordance with sections 10, 11 or 12 where any provision of the licence, this Act or regulation is found to have been violated.

#### **Restoration of licence**

**19(2)** Where the minister is satisfied that adequate steps have been taken by a licensee whose licence was suspended or withdrawn or cancelled pursuant to subsection (1), to remedy the situation, the minister shall restore the licence.

S.M. 2009, c. 25, s. 10.

#### **Powers of environment officers**

**20** An environment officer may at any reasonable time and where requested, upon presentation of an identification card issued by the minister, for the purpose of enforcing this Act or the regulations or any order or licence made under this Act or the regulations

- (a) without a warrant, enter any place or premises other than a dwelling that is the subject of this Act and make such inspections of the place or premises as may be reasonably required to determine compliance with this Act, the regulations, licence or order issued under this act; or
- (b) without a warrant, enter any place or premises, other than a dwelling, in which there is reasonable and probable grounds to believe that a pollutant is or will be produced, stored, or used or from which a pollutant is being released, and conduct such inspections of the place or premises as are reasonably required or necessary; or
- (c) without a warrant, enter any place or premises, other than a dwelling, in which there is reasonable and probable grounds to believe that environmental damage is occurring within those premises or as a result of any development located within the premises, and conduct such inspections of the place or premises as are reasonably required; or
- (d) for the purposes of clauses (a), (b) or (c), inspect any installation, plant, machinery and vehicle, and inspect and test any process of production or manufacture and any raw or manufactured substance or material used therein or relating thereto for which the environment officer has reasonable or probable grounds to believe may be producing or releasing pollutants and take and retain samples of same for purposes of analysis; or
- (e) examine and make copies of any document required to be kept by this Act, the regulations, orders or licences.

S.M. 2009, c. 25, s. 11.

#### **Entry with warrant**

**21(1)** Where an environment officer has reasonable and probable grounds to suspect that an offence under this Act, the regulations, an order or a licence, has been or is being committed, the environment officer may with a warrant, issued for that purpose, or with the permission of the owner or operator of the premises or development enter the premises or development and secure, seize and take such evidence as may be required including samples of raw or manufactured products and documents related to the suspected offence.

#### **Where officer may act without warrant**

**21(2)** Notwithstanding subsection (1), where an environment officer, acting in the course and scope of the officer's duty discovers an offence in progress, the environment officer may, without a warrant, do those things mentioned in that subsection.

#### **Disposition of seized goods**

**22(1)** Where a product or container is seized under section 21 and the environment officer making the seizure reasonably believes that the product will spoil or perish before the conclusion of the proceedings in respect of the alleged offence, the environment officer shall cause the product to be sold if the product has any market value, or otherwise be disposed of if the product has no market value; and any proceeds from the sale shall be held, with interest to be paid thereon at a rate fixed from time to time by the Lieutenant Governor in Council, pending the outcome of the proceedings.

#### **Forfeiture of seized product**

**22(2)** Where proceedings under this Act or the regulations in respect of a product or container seized under section 21 have been finally resolved, and if the accused

- (a) is convicted, the product or container, or the proceeds of sale and accumulated interest referred to in subsection (1) are forfeited to the Crown; or
- (b) is acquitted or the charge against the person is stayed, the product or container, or the proceeds of sale and accumulated interest referred to in subsection (1), shall be turned over or paid to the person who is lawfully entitled to possess it or them.

#### **Disposal of seized goods**

**22(3)** Where material is forfeited to the Crown in accordance with clause (2)(a), and the material is of a nature or value that in the opinion of the director, it should be disposed of, the director may cause its disposal and the costs incurred by the Crown in disposing of the material is a debt due the Crown in a court of competent jurisdiction from the person from whom the material was forfeited.

#### **Information to be provided by accused person**



**23** For the purposes of commencing proceedings under this Act, an environment officer may require the person being charged to provide his or her name, address and date of birth.

#### **Environmental protection order**

**24(1)** If the director believes that

- (a) a pollutant may be released, is being released, or has been released; and
- (b) the release may cause, is causing or has caused an adverse effect on the environment;

the director may issue an environmental protection order against a person responsible for the pollutant.

#### **Contents of environmental protection order**

**24(2)** An environmental protection order may require the person named in the order — by a deadline set out in the order — to take any steps that the director considers necessary to protect the environment, including one or more of the following:

- (a) investigate the situation;
- (b) measure the rate of release or the ambient concentration, or both, of the pollutant;
- (c) take any action specified by the director to prevent or reduce the release of the pollutant;
- (d) minimize or remedy the effects of the pollutant on the environment;
- (e) restore the area affected by the release of the pollutant to a condition satisfactory to the director;
- (f) monitor, measure, contain, remove, store, destroy or otherwise dispose of the pollutant, or reduce or prevent further releases of the pollutant;
- (g) install, replace or alter any equipment or thing in order to control or eliminate the release of the pollutant;
- (h) report on any matter ordered to be done, in accordance with directions set out in the order.

#### **Consequences of failing to comply with order**

**24(3)** If a person fails to comply with an environmental protection order, the director or an environment officer may, without further notice to the person,

- (a) carry out the measures specified in the order, or cause them to be carried out; and
- (b) be accompanied by any other persons, and use any equipment, required to carry out the measures specified in the order.

[S.M. 2009, c. 25, s. 12.](#)

#### **Emergency action to protect environment**

**24.1** The director or an environment officer may take, or cause to be taken, any emergency action that he or she considers necessary to protect the environment if he or she believes that

- (a) a pollutant may be released, is being released, or has been released; and
- (b) the release may cause, is causing or has caused a significant adverse effect on the environment.

[S.M. 2009, c. 25, s. 13.](#)

#### **Order to pay costs**

**24.2(1)** The director may, by order, require

- (a) a person who failed to comply with an environmental protection order to pay the costs of any action taken under subsection 24(3); or
- (b) the person responsible for the pollutant in question to pay the costs of any emergency action taken under section 24.1.

#### **Enforcement of order**

**24.2(2)** An order to pay costs under subsection (1) may be filed in the Court of Queen's Bench and enforced as if it were an order of that court.

[S.M. 2009, c. 25, s. 13.](#)

**Action by minister to minimize danger**

25(1) Notwithstanding anything in this Act, where the Lieutenant Governor in Council considers it in the public interest to take emergency action to alleviate an environmental emergency or where a health emergency as declared by the Minister of Health exists, the minister may authorize the taking of such action as is deemed necessary by the Lieutenant Governor in Council or the Minister of Health to mitigate the emergency or alleviate the threat to health without reference to the normal approval or licencing processes pursuant to this Act.

**No injunction against minister**

25(2) No injunction lies against the minister to restrain or prevent the minister or any person acting under the authority of the minister from taking action under subsection (1).

**Order by minister to municipality re health emergency**

25.1(1) Notwithstanding anything in this Act, where the Minister of Health declares that a health emergency exists, or that one appears imminent, because of mosquitoes capable of transmitting diseases, the minister responsible for this Act may, by order, require a municipality to take measures specified in the order to prevent, minimize or alleviate the threat to health, on the terms and conditions and in the manner set out in the order.

**Variation, etc. of order**

25.1(2) The minister may, by order, vary, extend, suspend or terminate an order made under subsection (1).

**Communication of minister's order**

25.1(3) Immediately after making an order, the minister shall cause details of the order to be communicated by the most appropriate means to the residents of the affected municipality.

**No injunction**

25.1(4) No injunction lies against the minister, a municipality or any person acting under the authority of an order, to restrain or prevent the minister, municipality, or person from taking measures under this section.

**Normal processes not applicable if health emergency exists**

25.1(5) Where the minister's order is made after a declaration that a health emergency exists,

- (a) the municipality may take the measures specified in the order without reference to the normal approval or licensing processes pursuant to this Act; and
- (b) the minister may vary, suspend or terminate any approval given or licence issued pursuant to this Act that may affect the implementation of the order.

**Statutes and Regulations Act does not apply**

25.1(6) *The Statutes and Regulations Act* does not apply to an order made under this section.

**Municipality's power of entry**

25.1(7) Where the minister makes an order, a person authorized by the municipality may, without a warrant, enter on or pass over or through any lands in the municipality to implement the measures set out in the order.

**Action by minister if municipality fails to comply**

25.1(8) If the municipality fails to comply with the minister's order, the minister may, without reference to the normal approval or licensing processes pursuant to this Act,

- (a) cause anything to be done that is required by the order; and
- (b) take any other measures that the minister considers necessary to prevent, minimize or alleviate the threat to health.

**Subsection (7) applies**

25.1(9) Subsection (7) (power of entry) applies to an action taken by the minister under subsection (8), with necessary changes.

**Recovery of expenditures**

**25.1(10)** If the minister takes action under subsection (8), the municipality that failed to comply with the minister's order may be required to pay the amount of any expenditures made by the government, or a portion of that amount, on such terms as may be specified by the Lieutenant Governor in Council.

#### **Reimbursement to municipality for expenditures**

**25.1(11)** The government may reimburse a municipality for the amount of any expenditures made by the municipality in implementing an order, or a portion of that amount, on such terms as may be specified by the Lieutenant Governor in Council.

#### **Compensation for loss**

**25.1(12)** Notwithstanding section 46, where as a result of any action taken or done under this section a person suffers any loss of any real or personal property, the government may compensate the person for the loss in accordance with such guidelines as may be approved by the Lieutenant Governor in Council.

[S.M. 2002, c. 6, s. 2; S.M. 2013, c. 39, Sch. A, s. 55.](#)

#### **Appeals from environment officer**

**26(1)** Except as may be otherwise provided in this Act, any person who is affected by any order, instruction or permit of an environment officer may, within 14 days from the date of issuance of the order, instruction or permit, in writing appeal therefrom to the director.

#### **Action by director on appeal**

**26(2)** Where an appeal is made to the director under subsection (1), the director shall within 15 days after the receipt of the appeal affirm, rescind or amend the decision appealed and shall notify the appellant of the disposition of the appeal within seven days from the date of the decision of the director.

[S.M. 2009, c. 25, s. 14.](#)

#### **Appeal to minister**

**27(1)** Except as may be otherwise provided in this Act, any person who is affected by

- (a) the issuance of a licence or a permit by the director; or
- (b) the refusal by the director to issue a licence or permit; or
- (c) any decision, order, instruction, or directive of the director; or
- (d) the imposition of limits, terms and conditions in a licence or permit issued by the director; or
- (e) the disposition of an appeal under section 26;

may file an appeal in writing with the minister that includes the reasons for the appeal and any facts relative thereto, within the following periods:

- (f) in the case of a decision, issuance, refusal, order, instruction or directive or the imposition of limits, terms and conditions or the disposition of the appeal, within 30 days of the date thereof; and
- (g) in the case of a licence that sets out a limit, term or condition that is to take effect on or be imposed at a future date and specifies that an appeal is to be taken within a specified period, within the period so specified.

#### **Disposition of appeal by minister**

**27(2)** Where an appeal is made to the minister pursuant to subsection (1), the minister may, on such considerations as the minister deems advisable,

- (a) in the case of an appeal of the director's decision not to recommend a public meeting or hearing on a proposal, request the commission to hold a public meeting or hearing on the proposal;
- (b) refer the matter back to the director for reconsideration;
- (c) make any decision that in his or her opinion ought to have been made by the director; or
- (d) quash or vary the decision under appeal, or dismiss the appeal.

#### **L.G. in C. approval**

**27(3)** Before making a decision on an appeal in respect of the following matters, the minister must refer the proposed disposition to the Lieutenant Governor in Council for approval:

- (a) the issuance of a licence by the director under clause 10(8)(a) or 11(11)(a);
- (b) the refusal by the director to issue a licence under 10(8)(b) or 11(11)(b);
- (c) the imposition of specifications, limits, terms and conditions on a licence issued by the director under clause 10(8)(a) or 11(11)(a).

#### **Notice**

**27(4)** The minister must notify the appellant about his or her decision in the prescribed manner within the following time periods:

- (a) in the case of a proposed disposition that requires approval by the Lieutenant Governor in Council under subsection (3), within 30 days after the approval is given;
- (b) in the case of any other decision in respect of a matter referred to in subsection (1), within seven days after the date of the minister's decision.

S.M. 1992, c. 23, s. 6; S.M. 2009, c. 25, s. 15.

#### **Appeal of minister's decision**

**28(1)** A person who is affected by a decision of the minister made under section 10, 11 or 12 in relation to a proposal or a decision made under subsection 14(2) may file an appeal in writing with the minister. The appeal must set out the reasons for the appeal and must be filed within 30 days after the date of the decision.

#### **Appeal to Lieutenant Governor in Council**

**28(1.1)** The minister must refer the appeal to the Lieutenant Governor in Council.

#### **Disposition of appeal**

**28(2)** When an appeal is referred to the Lieutenant Governor in Council, it may, on such considerations as it deems advisable,

- (a) in the case of an appeal of the minister's decision not to request a public meeting or hearing on a proposal, request the commission to hold a public meeting or hearing on the proposal;
- (b) refer the matter back to the minister for reconsideration;
- (c) make any decision that in its opinion ought to have been made by the minister; or
- (d) quash or vary the decision under appeal, or dismiss the appeal.

S.M. 2009, c. 25, s. 16.

#### **Actions in case of new evidence**

**29** In the event that the appellant has new evidence that was not previously considered, the minister may reopen the appeal process and consider the new evidence with respect to the disposition of the appeal pursuant to section 27 or 28.

#### **Appeal does not act as stay of decision**

**30** An appeal filed under sections 26, 27 or 28 does not suspend the decision appealed against; but the minister may suspend the operation of the decision, in whole or in part, until the appeal is disposed of.

#### **No unauthorized release of pollutants**

**30.1(1)** No person shall release or allow the release of a pollutant in an amount or concentration, or at a level or rate of release, that causes or may cause a significant adverse effect, unless expressly authorized or permitted to do so

- (a) under this Act or the regulations;
- (b) under another Act of the Legislature or an Act of Parliament, or a regulation made under one of those Acts; or
- (c) by a licence, permit, order, instruction, directive or other approval or authorization issued or made under this Act, another Act of the Legislature or an Act of Parliament.

#### **Exception re agricultural operations**

- 30.1(2)** A person involved in an agricultural operation does not contravene subsection (1) if
- (a) the release occurred through the use of normal farm practices; and
  - (b) the release itself and the conduct that led to the release does not contravene another provision of this Act, another Act of the Legislature or an Act of Parliament, or a regulation made under one of those Acts.

#### **Duty to report release**

- 30.1(3)** A person who releases or causes or allows the release of a pollutant that may cause, is causing or has caused an adverse effect must report the release, in accordance with the regulations, to
- (a) the director;
  - (b) the person responsible for the pollutant, if the person reporting is not the person responsible for the pollutant but he or she knows or is readily able to determine the identity of that person; and
  - (c) any other person who the person reporting knows or ought to know may be directly affected by the release.

#### **Reporting by person responsible for pollutant**

- 30.1(4)** A person responsible for a pollutant that is released into the environment that may cause, is causing or has caused an adverse effect must report the release, in accordance with the regulations, to the persons referred to in subsection (3), unless he or she has reasonable grounds to believe that those persons are already aware of the release.

#### **Definitions**

- 30.1(5)** In this section, "**agricultural operation**" and "**normal farm practice**" have the same meanings as in *The Farm Practices Protection Act*.

S.M. 2009, c. 25, s. 17.

#### **No release of pollutants in excess of limits**

- 30.2** No person shall release or allow the release of a pollutant in an amount or concentration, or at a level or rate of release, that exceeds the limit that is expressly provided under this Act, another Act of the Legislature, or an Act of Parliament, or in a regulation, licence, permit, order, instruction, directive or other approval or authorization issued or made under one of those Acts.

S.M. 2009, c. 25, s. 17.

#### **Offence**

- 31** Any person who contravenes or violates any provision of this Act or the regulations or fails to comply with any provision of any order, licence or permit issued by the minister, director, or environment officer made pursuant to this Act or the regulations, or an order of a judge made pursuant to section 36 is guilty of an offence.

S.M. 1989-90, c. 36, s. 2.

#### **Continuing offence**

- 32** Where a contravention or violation of any provision of this Act or the regulations, or a failure to comply with an order, licence, permit, approval or instruction of the minister, director or environment officer, or any terms or conditions therein, or an order of a judge made pursuant to section 36 continues for more than one day, the offender is guilty of a separate offence for each day that the contravention, violation or failure continues.

S.M. 1989-90, c. 36, s. 3.

#### **Penalties on individuals**

- 33(1)** Subject to subsection (2), any person found guilty of an offence under this Act is liable
- (a) for a first offence, to a fine of not more than \$50,000. or to imprisonment for not more than six months, or to both; and
  - (b) for each subsequent offence, to a fine of not more than \$100,000. or to imprisonment for not more than one year, or to both;

and in addition, where in the opinion of the judge the individual is unwilling or unable to remedy the situation or condition giving rise to the offence, the judge may suspend, or revoke all or part of the environmental licences, or permits under which the individual operates, for such time as the judge deems fit; and the individual shall not thereafter continue to carry on any operation affected thereby until the licences, approvals or permits, as the case may be, are restored by the judge or by the minister.

#### **Penalties on corporations**

**33(2)** Any corporation found guilty of an offence under this Act is liable

- (a) for a first offence, to a fine of not more than \$500,000; and
- (b) for each subsequent offence, to a fine of not more than \$1,000,000;

and in addition, where in the opinion of the judge the corporation is unwilling or unable to remedy the situation or condition giving rise to the offence, the judge may suspend or revoke all or part of the environmental licences, or permits under which the corporation operates, for such time as the judge deems fit; and the corporation shall not thereafter continue to carry on any operation affected thereby until the licences, or permits, as the case may be, are restored by the judge or by the minister.

S.M. 1989-90, c. 36, s. 4.

#### **Judge may restore licence**

**34** Where a judge suspends or revokes a licence, or permit in accordance with section 33, the judge or the minister shall restore the licence, or permit upon receipt of satisfactory evidence that the condition or situation giving rise to the offence has been rectified.

#### **Offence by director of corporation**

**35** Any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of an offence is a party to and guilty of the offence and is liable on conviction to the punishment set out in subsection 33(1).

#### **Other penalties**

**36** A judge may, in addition to a fine or other penalty, require the convicted person to do any or all of the following things

- (a) take such action as may be necessary to refrain from committing any further offence under this Act, or from causing further environmental damage;
- (b) take such action as may be necessary to clean or restore the environment from damage caused by the offence;
- (c) pay such damages or make restitution to any person who suffered damages by the offence as the judge may deem appropriate;
- (d) pay such additional fine in an amount no greater than the monetary benefit acquired by or that accrued to the person as a result of the commission of the offence, notwithstanding any maximum fine elsewhere provided.

#### **Obstruction in performance of duties prohibited**

**37** No person shall obstruct or attempt to obstruct an environment officer, director or any other person in the performance of their duties or the exercise of their authority under this Act.

S.M. 2002, c. 6, s. 3.

#### **Who may lay information**

**38** Any person may lay an information in respect of any offence against this Act or the regulations.

#### **Limitation on prosecution**

**39** An information in respect of an offence under this Act may be laid within one year from the time when the subject matter of the proceedings arose or within one year from the day on which evidence, sufficient to justify a prosecution for the offence, came to the knowledge of the environment officer and the certificate of the environment officer as to the day in which such evidence came to his or her knowledge is prima facie proof of the date of the receipt of the evidence.

#### **Admissibility of certificate in evidence**

**40(1)** A certificate or report purporting to have been signed by an analyst stating that the analyst has analyzed or examined a pollutant, product, substance, or organism and stating the results of the analysis or examination, is admissible in evidence in any prosecution for an offence under this Act without proof of the signature or official character of the analyst who signed the certificate or report, and in the absence of any evidence to the contrary, is proof of the statements contained in the certificate or report, as the case may be.

#### **Service of certificate on party**

**40(2)** No certificate or report or any copy or extract of a certificate or report referred to in subsection (1) shall be received in evidence unless the party intending to produce it has served on the party against whom it is intended to be produced, at least seven days prior to the date fixed for the hearing a notice of the intention together with a duplicate of the certificate or report.

#### **Prohibition — confined livestock areas and manure storage facilities for pigs**

**40.1(1)** Except as authorized by a permit issued under this section, no person shall construct, expand or modify a confined livestock area for pigs or a pig manure storage facility on land that is within

- (a) an area listed in the Schedule; or
- (b) any other area of Manitoba.

#### **Permit for manure storage facility**

**40.1(2)** The director may, in accordance with the regulations, issue a permit in respect of a pig manure storage facility if

- (a) the permit authorizes the construction, expansion or modification of the storage facility to allow the manure to be subjected to
  - (i) anaerobic digestion in a manner acceptable to the director, or
  - (ii) another environmentally sound treatment that is similar to or better than anaerobic digestion and is acceptable to the director;
- (b) the permit authorizes modifications to the storage facility to make the manner of handling manure more environmentally sound in the director's opinion;
- (c) the permit authorizes modifications to the storage facility to repair or upgrade it, and the director has directed the operator to apply for the permit; or
- (d) the permit authorizes modifications to correct something that the director considers to be a deficiency in a storage facility that is not registered under the regulations, and the director has required the operator to obtain the permit.

#### **Permit for confined livestock area**

**40.1(3)** The director may, in accordance with the regulations, issue a permit authorizing modifications to a confined livestock area for pigs to make the manner of handling manure more environmentally sound in the director's opinion.

#### **Permit to construct replacement facility or area**

**40.1(4)** The director may, in accordance with the regulations, issue a permit authorizing the construction of a pig manure storage facility or a confined livestock area for pigs that will replace an existing facility or area if the director is satisfied that the existing one

- (a) has been significantly damaged and its repair is not feasible; or
- (b) is of an age or condition where it is more appropriate to stop using it.

#### **No increase in animal units allowed**

**40.1(5)** The director must not issue a permit under clause (2)(b), (c) or (d) or subsection (3) or (4) authorizing modifications or construction that results in an increase in the number of animal units capable of being handled by the livestock operation.

#### **Director may impose conditions on permit**

**40.1(6)** The director may impose limits, terms and conditions on a permit issued under this section.

#### **Definitions**



**40.1(7)** In this section, "**animal unit**", "**confined livestock area**", "**manure**" and "**manure storage facility**" have the meanings prescribed in the regulations.

S.M. 2008, c. 39, s. 2; S.M. 2011, c. 36, s. 4.

#### **Prohibition — winter spreading**

**40.2(1)** No person shall apply livestock manure to land between November 10 of one year and April 10 of the following year.

#### **Exception — fewer than 300 units**

**40.2(2)** Until November 10, 2013, subsection (1) does not apply to the operator of, or a person employed in, an agricultural operation with fewer than 300 animal units if the operation was in existence on March 30, 2004, and had fewer than 300 animal units on that date.

#### **Regulations**

**40.2(3)** Subsections (1) and (2) are subject to the regulations.

#### **Definitions**

**40.2(4)** In this section, "**agricultural operation**", "**animal unit**", "**livestock**" and "**manure**" have the meanings prescribed in the regulations.

S.M. 2011, c. 36, s. 5.

#### **Prohibition — disposal fields in capital region**

**40.3(1)** No person shall construct, install, site, locate, replace, expand or modify a disposal field on any parcel of land resulting from a subdivision of land approved after this section comes into force, if

- (a) the parcel of land is within the City of Winnipeg and is less than 0.8 ha (2 acres); or
- (b) the parcel of land is within a municipality named in clauses 3(1)(a) to (o) of *The Capital Region Partnership Act*, and is either
  - (i) within the Red River corridor, or
  - (ii) outside the Red River corridor and less than 0.8 ha (2 acres).

#### **Exception — existing disposal fields**

**40.3(2)** Subsection (1) does not apply to the replacement, expansion or modification, as permitted under the regulations, of a disposal field that existed before the subdivision was approved.

#### **Definition of "Red River corridor"**

**40.3(3)** In this section, "**Red River corridor**" means the Red River Corridor Designated Area as described in Plan No. 8303-2009, which is filed at the head office of Environmental Services of the Department of Conservation and Water Stewardship in Winnipeg.

S.M. 2011, c. 36, s. 5; S.M. 2012, c. 40, s. 58.

#### **Prohibiting pesticide use on lawns**

**40.4** No person shall use or cause or permit the use of a prescribed pesticide in, on or over a lawn.

S.M. 2014, c. 21, s. 2.

#### **Prohibiting pesticide use on grounds of specified facilities**

**40.5** No person shall use or cause or permit the use of a prescribed pesticide in, on or over the exterior property of a school, hospital or child care centre.

S.M. 2014, c. 21, s. 2.

#### **Exceptions**

**40.6** Sections 40.4 and 40.5 do not apply to the following uses of a prescribed pesticide:

- (a) uses related to agricultural activities, including use on a turf or sod farm;
- (b) uses related to forestry activities;

- (c) uses related to golf course operations;
- (d) uses related to the protection of public health or safety;
- (e) uses related to activities or for purposes that are prescribed by regulation.

S.M. 2014, c. 21, s. 2.

#### Restricting sale of prescribed pesticides

**40.7(1)** Except as permitted by regulation, no person shall sell a prescribed pesticide.

#### Exception

**40.7(2)** Subsection (1) does not apply to a person who holds a valid pesticide dealer licence issued under *The Pesticides and Fertilizers Control Act*.

S.M. 2014, c. 21, s. 2.

#### Exception for allowable pesticides

**40.8** Sections 40.4, 40.5 and 40.7 do not apply if the pesticide in question is on a list of allowable pesticides established by regulation.

S.M. 2014, c. 21, s. 2.

#### Ministerial regulations re prescribed pesticides

**40.9** The minister may make regulations

- (a) prescribing activities and purposes for the purpose of clause 40.6(e);
- (b) governing the sale of prescribed pesticides;
- (c) establishing a list of allowable pesticides for the purpose of section 40.8;
- (d) prescribing specific pesticides or types or classes of pesticides for the purpose of the definition "prescribed pesticide" in subsection 40.10(1);
- (e) defining a word or phrase used in sections 40.4 to 40.8 that is not otherwise defined.

S.M. 2014, c. 21, s. 2.

#### Definitions

**40.10(1)** The following definitions apply in this section and in sections 40.4 to 40.9.

"**child care centre**" means a child care centre or a child care home as defined in *The Community Child Care Standards Act*. (« garderie »)

"**hospital**" means a hospital as defined in *The Health Services Insurance Act*. (« hôpital »)

"**lawn**" means a plot of grass that is maintained at a regular and approximately uniform height through periodic and regular mowing, and includes any associated walkway, driveway or patio. (« pelouse »)

"**prescribed pesticide**" means a specific pesticide prescribed by regulation or a pesticide of a type or class of pesticide that is prescribed by regulation. (« pesticide visé par règlement »)

"**school**" means a public school or a private school as defined in *The Education Administration Act*. (« école »)

"**sell**" includes to offer for sale, display for sale and supply. (« vendre »)

#### Interpretation: "exterior property"

**40.10(2)** For the purpose of section 40.5, the exterior property of a school, hospital or child care centre consists of all parts of the parcel of land on which the school, hospital or child care centre is located on which there is no building or other enclosed structure.

S.M. 2014, c. 21, s. 2.

#### Regulations

**41(1)** For the purpose of carrying out the provisions of this Act according to their intent, the Lieutenant Governor in Council may make such regulations and orders as are ancillary thereto and are not inconsistent therewith and every regulation or order made under and in accordance with the

authority granted by, this section has the force of law; and, without restricting the generality of the foregoing, the Lieutenant Governor in Council may make regulations and orders,

- (a) respecting the classification of development in class 1, class 2 or class 3 developments, and the setting out of assessment process for each class of development;
- (a.1) prescribing gases as greenhouse gases for the purpose of clause (g) of the definition "greenhouse gas" in subsection 1(2);
- (b) respecting the classification of certain geographic areas of the province by pollution assimilative capacity and the setting of ambient loading standards for those areas;
- (c) setting out the policies for environmental management as they relate to economic development, conflicting land or resource use, and industrial density;
- (d) restricting or limiting the number and types of developments that may cause adverse cumulative effects that may be permitted to be constructed or operated in the province, or any part thereof;
- (d.1) governing or prohibiting any use, activity or thing that may cause adverse effects, including governing or prohibiting the construction, alteration, modification or expansion of developments or classes of developments;
- (e) respecting the setting of environmental quality objectives for part or all of Manitoba, the process for setting of those objectives, and the use of objectives;
- (f) exempting developments or classes of developments from the requirements of section 10, 11 or 12 of the Act;
- (g) setting out the procedures to be followed with regard to applications for licences or permits required under the Act or the regulations and the issuance, refusal, withdrawal, revocation or suspension of the licences or permits;
- (h) respecting fees payable for service, licence or permit and the disposition or administration of same;
- (i) respecting the requirement of evidence of financial responsibility in the form of insurance or an indemnity bond, or other form as may be satisfactory to the director, for persons owning or operating developments that will or may cause environmental damage;
- (j) respecting the design, location, configuration, construction, adaptation, alteration, operation, maintenance and installation of developments to mitigate their adverse effects;
- (k) respecting the design, construction, adaptation, alteration, operation, maintenance and installation of systems, processes or works to abate or control pollution or other environmental damage including but not limited to waste disposal grounds, landfills, sewage collection and treatment, sewage or industrial sludge handling and disposal, incinerators, and recycling systems;
- (l) prescribing, setting standards or conditions for, or prohibiting the methods of collection, treatment, distribution and disposal of pollutants;
- (m) respecting the location of waste disposal grounds and landfills, and regulating, prohibiting and requiring approvals for the construction and placing of structures of any kind on land located within such distance of waste disposal grounds and landfills as is specified in the regulation, whether or not the waste disposal grounds and landfills are abandoned or not;
- (m.1) prohibiting or restricting the depositing of prescribed types of materials in waste disposal grounds and landfills or in prescribed classes of waste disposal grounds and landfills;
- (n) prescribing limits, terms and conditions on the release of pollutants, or the prohibition of release of pollutants or in the type, quantity, or conditions respecting resource utilization from any development;
- (n.1) respecting the burning of vegetation or the remains of vegetation in connection with agricultural activities and the release of pollutants resulting from that burning;
- (o) respecting the use restriction, or prohibition of use of any product or substance that may pollute or damage the environment;
- (p) respecting the disposal, reuse or recycling of any product or residual flow or packaging offered for sale in the province which may become a component of a wastestream;
- (p.1) respecting the reporting of releases of pollutants under section 30.1, including exempting releases or classes of releases from the reporting requirements of section 30.1;
- (q) requiring certain developments or certain classes of developments to register with the department;

- (r) requiring a permit for the construction or operation of certain developments, and the issuance or withdrawal of the permits by the director or environment officer and the limits, terms and conditions to be included in the permits issued by the director or the environment officer;
- (s) respecting the methods of testing samples and prescribing the equipment or apparatus or structures to be used for taking samples;
- (t) respecting livestock production operations;
- (u) respecting the declaration of equivalent standards or status by the minister;
- (v) prohibiting litter and regulating the disposal of litter;
- (w) setting out environmental management practices to be incorporated into the design, construction, operation, closure or rehabilitation of a development;
- (x) respecting the use, storage, handling, disposal, or prohibitions of the use, storage, handling or disposal of pesticides and containers;
- (y) prescribing forms for use under this Act;
- (y.1) prescribing the manner of giving notice of any decision or matter under this Act;
- (z) respecting applications for grants under section 45.2 and the amount and the terms and conditions of grants;
- (aa) respecting agreements and assessment processes under section 13.1 and, without limiting the generality of the foregoing, respecting the criteria and procedures for entering into agreements with other jurisdictions regarding the use of the assessment process of the other jurisdiction to gather the information necessary for decisions required under section 10, 11 or 12;
- (bb) respecting the financial and other assistance to be provided under section 13.2 to persons and groups participating in the assessment process by proponents of a development including
  - (i) the mechanism for receiving and approving requests for such assistance,
  - (ii) eligibility requirements for such assistance,
  - (iii) expenditures that may be included in a request for such assistance,
  - (iv) information to be provided with a request for such assistance,
  - (v) the allocation of such assistance among participants;
- (cc) respecting costs that are payable by the proponent associated with hearings held with respect to joint assessment processes referred to in section 13.1 or with respect to Class 1, Class 2 or Class 3 developments;
- (dd) respecting costs that are payable by a person with respect to the monitoring of, or the review of that person's obligation to monitor, pollutants, effluent quality, environmental quality or other similar matters in accordance with the limits, terms and conditions of a licence, order or regulation;
- (ee) in addition to orders for which provision is made in this Act, providing for the making of an order for enforcing a regulation made under clause (n.1) against a person responsible for the burning of vegetation or the remains of vegetation in connection with agricultural activities and the release of pollutants resulting from that burning, including providing for
  - (i) the power to direct any other person to do the acts ordered in place of the person responsible and to recover the costs of doing those acts from the person responsible, and
  - (ii) the right of a person responsible to recover his or her costs against other persons responsible;
- (ff) respecting the admission of evidence by certificate and providing that, in the absence of evidence to the contrary, the certificate is conclusive proof of the statements contained in it;
- (gg) defining any word or phrase used but not defined in this Act.

#### **Regulation development**

**41(2)** Except in circumstances considered by the minister to be of an emergency nature, in the formulation or substantive review of regulations incorporating environmental standards, limits, terms or conditions on developments under this Act, the minister shall provide opportunity for public consultation and seek advice and recommendations regarding the proposed regulations or amendments.

#### **Adoption of standards by reference**

**41(3)** A regulation made under subsection (1) or section 40.9 may adopt by reference in whole or in part, with such changes as may be necessary, any code or standard, or any regulation made by

any other government in Canada or recognized technical or professional organization, and may require compliance with any code, standard or regulation so adopted.

#### **Varying of requirements by minister**

**41(4)** The minister may, where authorized by a regulation, vary certain requirements of the regulation or grant equivalent status to standards in the regulation for the purposes of that regulation, and the variation as decided by the minister shall be complied with as a part of the regulation so varied.

#### **Reasons for certain ministerial actions**

**41(5)** Where the minister acts in accordance with subsection (4), the minister shall provide written reasons therefor, and shall make those reasons available to interested persons upon request.

#### **Order re costs filed in court**

**41(6)** An order issued to a person to pay costs as required by a regulation made under clause (1)(bb), (cc) or (dd) may be filed in the Court of Queen's Bench and on being filed may be enforced as if it were an order of that court.

#### **Delegation of power under clause (1)(n.1)**

**41(7)** Where

- (a) in the exercise of the power conferred under clause (1)(n.1), the Lieutenant Governor in Council considers it advisable that a period or periods be established when, or that an area be designated in which, or any similar thing be done having as an effect that, the burning of vegetation or the remains of vegetation in connection with agricultural activities and the release of pollutants resulting from that burning is permitted or prohibited; and
- (b) the exercise of the power contemplates the existence of circumstances, such as weather conditions, that are not ordinarily known in sufficient time to permit notice of the establishment or designation or other thing to be given by way of a regulation published in accordance with *The Statutes and Regulations Act*;

the Lieutenant Governor in Council may in a regulation made under clause (1)(n.1) provide that

- (c) the period or periods be established or area be designated for a specified time or other thing be done, by order of the minister or a delegate of the minister;
- (d) *The Statutes and Regulations Act* not apply to an order under clause (c);
- (e) an order under clause (c) be published by a means such as a recorded message accessible by telephone, by broadcast on radio or television or by publication in a newspaper or by any combination of those or other means, that in the opinion of the Lieutenant Governor in Council is likely to give notice of the order to affected persons; and
- (f) an order comes into force on or after first publication by a specified means and that that publication is notice to all persons.

S.M. 1989-90, c. 60, s. 26; S.M. 1990-91, c. 15, s. 3; S.M. 1991-92, c. 41, s. 9; S.M. 1992, c. 23, s. 7; S.M. 1993, c. 26, s. 4; S.M. 1995, c. 33, s. 7; S.M. 2006, c. 24, s. 8; S.M. 2008, c. 39, s. 3; S.M. 2009, c. 25, s. 18; S.M. 2013, c. 35, s. 7; S.M. 2013, c. 39, Sch. A, s. 55; S.M. 2014, c. 21, s. 3.

#### **Regulation may apply to part or all of province**

**42** A regulation, or any provision thereof, may apply to all or a part of the province only, and may apply specifically to one or more particular developments.

#### **Regulations re sensitive areas**

**43** The minister may make regulations declaring or designating certain areas of the province as sensitive or critical areas and prescribing standards or controls respecting environmental matters in those areas.

#### **Conflict between licence and regulation**

**44** Where a licence is issued by the director or minister as the case may be, in respect of the construction, alteration, operation or implementation of a development and after the date on which the licence was made a regulation is made prescribing standards, limits, terms or conditions which apply to that operation that are different to those set out in the licence, the standards, limits, terms or conditions of the regulations prevail.

**Sale of marketable emission rights**

**45** The Lieutenant Governor in Council may, where it is consistent with established environmental quality objectives, market units of allowable emission of specific pollutants, in accordance with the regulations, and the revenue so generated may be held in trust by the Minister of Finance as an environmental contingency fund, to be used at the request of the minister in the event of an environmental emergency.

**45.1 and 45.2** [Repealed]

S.M. 1989-90, c. 60, s. 26; S.M. 1993, c. 48, s. 13; S.M. 1997, c. 61, s. 21.

**Exemption from civil liability**

**46** No action lies or shall be instituted against any person acting under the authority of this Act, any employee or person acting as an agent for the Crown, including members of the board, commission, any advisory committee or panel appointed by the minister or Lieutenant Governor in Council or any person operating under an agreement with the minister, to recover any loss or damage alleged to have been suffered by any person as a consequence of any act or omission of the person, employee, agent or member in connection with the carrying out of the powers and duties given under this Act or the regulations to the person, employee, agent or member unless the act or omission resulted from negligence or malice of the person, employee, agent or member.

S.M. 2002, c. 6, s. 4.

**Information confidential**

**47** Where proprietary information is provided to any official of the department under this Act, that official shall not without the consent in writing of the person by whom the information was provided

- (a) communicate or allow to be communicated to any person; or
- (b) allow any other person to inspect or have access to;

the information except for the purposes of administration and enforcement of this Act, or as otherwise required by law.

**Abatement project**

**48(1)** The council of a municipality may, by resolution, approve a proposal for an abatement project within the municipality.

**Contents of proposal for abatement project**

- 48(2)** A proposal for an abatement project shall outline the details of the project and shall include
- (a) a description of the development or premises to be removed and relocated;
  - (b) a description or a plan of any land to be acquired for the purposes of relocation of the development or premises;
  - (c) a description of the methods planned by the municipality for the direction and control of the use of the land in the area affected by the abatement project, including zoning controls, building controls and standards of occupancy of buildings;
  - (d) a description of any changes in any planning scheme, building controls or development plan affecting a municipality that are required in conjunction with the carrying out of the proposed abatement project;
  - (e) the estimated cost of the abatement project; and
  - (f) a proposal for the planning and use of the lands that are to be acquired.

**Reference of proposal to commission**

**48(3)** Upon approving a proposal for an abatement project, the municipality shall submit the proposal to the minister who shall refer the proposal to the commission for its advice and recommendations.

**Public hearing by commission**

**48(4)** Upon receiving a proposal for an abatement project from the minister, the commission shall fix a suitable time and place for public hearings with respect thereto and cause reasonable notice thereof to be given by publication in at least one issue of a newspaper having a general circulation in the municipality in which the abatement project is proposed and by sending a notice

thereof to the municipality and to every occupant of and every owner of an estate or interest in the lands, developments or premises that are intended to be removed and relocated or that are intended to be acquired to carry out the proposed abatement project.

#### **Parties to hearing**

**48(5)** The parties to a hearing before the commission include the municipality, each person who has been served with a notice in accordance with subsection (4) and such other persons or groups of persons whose lands the commission may consider to be adversely or injuriously affected by the undesirable environmental conditions sought to be abated by the abatement project.

#### **Report to minister after hearing**

**49(1)** After conducting a hearing with respect to a proposed abatement project, the commission shall submit a written report to the minister setting out its recommendations with respect to the abatement project or any part of the proposal with respect thereto.

#### **Action by minister respecting proposal**

**49(2)** Upon receiving the report from the commission with respect to an abatement project under subsection (1), the minister may approve the abatement project in whole or in part or with such variations and subject to such terms and conditions as the minister deems advisable in the public interest or may refuse to approve the abatement project.

#### **By-law for carrying out project**

**49(3)** Where the minister approves an abatement project, the municipality may, by by-law, authorize the abatement project to be carried out within the municipality in accordance with the terms and conditions, variation, or other provisions of the approval of the minister.

#### **Municipality may acquire lands for project**

**50(1)** Where a municipality authorizes an abatement project to be carried out, if the approval of the minister included an approval for the acquisition of lands by the municipality for the purposes of relocation of a development or premises as part of the abatement project, the municipality may proceed to acquire the lands by purchase, expropriation or otherwise.

#### **Application of Expropriation Act**

**50(2)** Where a municipality takes proceedings to acquire lands for the purposes of an abatement project by expropriation, *The Expropriation Act* applies thereto; but notwithstanding any provision of that Act

- (a) the provisions of Schedule A of that Act pertaining to a hearing by an inquiry officer do not apply in respect of the expropriation; and
- (b) the owner of the land expropriated, intending in good faith to relocate in some other place, may elect to have due compensation payable by the municipality assessed on the basis of the reasonable cost of equivalent reinstatement as provided by subsection 26(3) of that Act, and the due compensation shall be assessed accordingly, notwithstanding that the land may not be devoted to a purpose of such a nature that there is not general demand or market for land for that purpose.

#### **Agreement by minister for abatement projects**

**51(1)** With the approval of the Lieutenant Governor in Council, the minister may enter into an agreement with any municipality that intends to proceed with an abatement project.

#### **Contents of agreement**

- 51(2)** An agreement entered into pursuant to subsection (1)
- (a) may set out the approved capital cost for the abatement project which may include the cost of acquiring the land and any interest on moneys advanced by any party as progress payments;
  - (b) shall provide for the proportions in which the parties will contribute to the approved capital cost, which in the case of the province shall not exceed 50%;
  - (c) shall provide that
    - (i) any moneys received from the sale, lease or other disposition of lands or buildings in the abatement project shall be shared between the parties to the agreement in the same proportions as the parties thereto share in the approved capital cost, and



- (ii) where land acquired by the municipality pursuant to the abatement project is retained by the municipality the land shall be valued in the manner prescribed in the agreement and the retention of the land shall be deemed a sale of the land at a price equal to the value thereof and the deemed proceeds thereof shall be paid by the municipality and be shared in accordance with subclause (i);
- (d) may include as a condition precedent to any payment by the province that the municipality shall
  - (i) adopt such controls of the use of the land in the municipality, including zoning, building controls and standards of occupancy of buildings, and
  - (ii) have enacted such changes in any planning scheme, building controls or development plan affecting the municipality.

S.M. 2004, c. 42, s. 27.

#### Agreement between municipality and government

**52** A municipality, if authorized to do so by a by-law passed by the council of the municipality, may enter into an agreement with the Government of Manitoba respecting any abatement project.

#### Borrowing by-law

**53** Where a municipality enters into an agreement authorized under this Act, it may, by by-law

- (a) borrow moneys necessary to enable it to carry out the agreement;
- (b) issue debentures to secure money so borrowed;
- (c) assume as a debt of the municipality, and pay, in accordance with the terms of the agreement, any principal or interest payments which the municipality is obligated to pay under the agreement;

or do all or any of those things, and may impose special levies required to pay principal and interest payable on any debt incurred or debentures issued in accordance with this section.

#### Crown bound

**54** The Crown and agents of the Crown are bound by this Act.

#### Water Resources Conservation Act takes precedence

**54.1** This Act is subject to the provisions of *The Water Resources Conservation Act*.

S.M. 2000, c. 11, s. 7; S.M. 2005, c. 26, s. 43.

#### Reference in C.C.S.M.

**55** This Act may be referred to as Chapter E125 in the *Continuing Consolidation of the Statutes of Manitoba*.

#### Repeal

**56** *The Clean Environment Act*, being Chapter C130 in the *Continuing Consolidation of the Statutes of Manitoba* is repealed.

S.M. 1988-89, c. 13, s. 10.

#### Commencement of Act

**57** This Act comes into force on a day fixed by proclamation.

**NOTE: S.M. 1987-88, c. 26 came into force by proclamation on March 31, 1988.**

#### SCHEDULE (Section 40.1)

The Red River Valley Special Management Area, which is the land described in Plan No. 4298-2006, filed at the head office of Environmental Services of the Department of Conservation and Water Stewardship in Winnipeg

The Rural Municipality of Armstrong

The Rural Municipality of Bifrost and the Town of Arborg and the Village of Riverton

The Rural Municipality of Coldwell

The Rural Municipality of De Salaberry and the Village of St. Pierre-Jolys

The Rural Municipality of Eriksdale  
The Rural Municipality of Fisher  
The Rural Municipality of Gimli and the Town of Winnipeg Beach  
The Rural Municipality of Grahamdale  
The Rural Municipality of Hanover, the City of Steinbach and the Town of Niverville  
The Rural Municipality of La Broquerie  
The Rural Municipality of Rockwood and the Town of Teulon  
The Rural Municipality of Rosser  
The Rural Municipality of Siglunes  
The Rural Municipality of Springfield  
The Rural Municipality of St. Andrews and the Village of Dunnottar  
The Rural Municipality of St. Clements  
The Rural Municipality of St. Laurent  
The Rural Municipality of Ste. Anne and the Town of Ste. Anne  
The Rural Municipality of Tache  
The Rural Municipality of Woodlands  
The area legally described as follows:

All those portions of Townships 27, 28 and 29, Range 1 East of the Principal Meridian in Manitoba, Townships 28 and 29, Range 1 West of the Principal Meridian in Manitoba and Townships 26, 27, 28 and 29, Range 2 West of the Principal Meridian in Manitoba that are contained within the limits shown bordered hatched on Plan No. 4298-2008, filed at the head office of Environmental Services of the Department of Conservation and Water Stewardship in Winnipeg

[S.M. 2008, c. 39, s. 4; S.M. 2012, c. 40, s. 58.](#)