A GUIDE TO THE ENVIRONMENT ACT

February 2006

NOVA SCOTIA

Environment and Labour

A GUIDE TO THE ENVIRONMENT ACT

February 2006

* In this document “act” refers to the *Environment Act*.

** This is a guide to the legislation, not a legal document. The Guide provides an overview of the legislation. It is not intended to be a complete description or to replace reading the *Environment Act* and regulations or seeking advice from a lawyer or an environmental expert. Examples given and interpretations placed on sections of the act or regulations are not binding on the Crown. Amendments may be made to the legislation after the publication of this Guide, therefore it is important to refer to the most recent official version of the legislation.

Contact:
Nova Scotia Environment and Labour
P.O. Box 697
Halifax, Nova Scotia
B3J 2T8
Phone: (902)424-5300
Fax: (902)424-0503

TABLE OF CONTENTS

TABLE 1 Website addresses i

Part I: Introduction 1
Part II: Administration 2
Part III: Environmental Education and Research 4
Part IV: Environmental Assessment 4
Part V: Approvals and Certificates 6
Part VI: Release of Substances 10
Part VII: Dangerous Goods and Pesticides 11
Part VIII: Contaminated Sites 12
Part IX: Waste-Resource Management 14
Part X: Water-Resource Management 15
Part XI: Air Quality Management 17
Part XII: Inspections and Investigations 17
Part XIII: Orders 18
Part XIV: Appeals 20
Part XV: Civil Remedies 21
Part XVI: Transboundary Pollutio 22
Part XVII: Environmental Industries, Innovations and Technologies 22
Part XVIII: Penalties and Prosecutions 23
Part XIX: Documentary Evidence 26
Part XX: Miscellaneous 27

TABLE 1. Website addresses for documents referred to in Guide.

Category	Specific Site	Web Address
Legislation Referenced	*Environment Act*	www.gov.ns.ca/legislature/legc/statutes/envromnt.htm
	Regulations under the *Environment Act*	www.gov.ns.ca/just/regulations/rxaa-l.htm#env
	Evidence Act	www.gov.ns.ca/legislature/legc/statutes/evidence.htm
	Freedom of Information and Protection of Privacy Act	www.gov.ns.ca/legislature/legc/statutes/freedom.htm
	Land Registration Act	www.gov.ns.ca/legislature/legc/statutes/landreg.htm
	Summary Proceedings Act	www.gov.ns.ca/legislature/legc/statutes/summaryp.htm
Nova Scotia Environment and Labour	NSEL Home Page	www.gov.ns.ca/enla/
	Guide to the Environment Act	www.gov.ns.ca/enla/ea/docs/EAActGuide.pdf
	List of NSEL Offices	www.gov.ns.ca/enla/offices

PART 1: INTRODUCTION

➥ What is the purpose of the act?

The purpose of the act is to promote protection and prudent use of the environment (s.2). This purpose includes the goal of maintaining the principles of sustainable development which include:

- ecological value (i.e. maintaining and restoring ecological processes and biological diversity);
- the precautionary principle (i.e. lack of absolute scientific certainty is not a reason not to take action to stop contamination from occurring);
- pollution prevention (i.e. taking action to prevent pollution before it happens instead of simply cleaning up pollution after it occurs);
- shared responsibility;
- stewardship (e.g. responsibility for a product from "cradle to grave"); and
- the link between the environment and the economy.

➥ To whom does the legislation apply?

The act makes all provincial and federal departments, agencies, boards and commissions and the general public subject to prosecution, ministerial orders and other remedies under the act (s.4).

➥ What happens if a provision of this act conflicts with another act?

Where there is a conflict, the act prevails over any other legislation (s.6), with the exception of the *NS Freedom of Information and Protection of Privacy Act*. A conflict exists where obeying one law would result in violating another. For example, if a municipal bylaw explicitly allowed a pesticide to be sprayed at a closer distance to a watercourse than is allowed in the act and regulations, the municipal bylaw would be in conflict and that part of the municipal bylaw would not be valid.

It should be noted that a conflict is an inconsistency and not merely a stricter provision in other legislation. If a bylaw is not inconsistent, but is simply stricter, this would not be a conflict. For example, the act provides that no pesticide may be sprayed within 30m of a watercourse. A municipal bylaw would conflict with this if it provided for no spraying within 20m. The bylaw would not conflict if it provided for no spraying within a greater distance, for example 50m.

PART II: ADMINISTRATION

➥ How does the act provide public access to information?

Information under the custody and control of the department is accessible to the public subject to the provisions of the NS *Freedom of Information and Protection of Privacy Act (FOIPOP)*. Personal information provided to the department will be collected, used, and maintained in keeping with the privacy provisions of FOIPOP. Any business information, which you consider confidential, that is provided to the department should be clearly marked confidential. Rationale for claiming confidentiality should also be provided. Confidential information may only be disclosed in keeping with the provisions of FOIPOP.

The act establishes an environmental registry (s.10) where the public has access to many types of information including: approvals, orders, decisions, convictions, policies, notices of designations of contaminated sites, and notices of charges and liens. To request access to information in the custody and control of the department, please contact the Information Access and Privacy Section of the department.

➥ How does the act provide for public participation?

Within Part II of the act, several provisions encourage public participation:

- the ability to set up advisory and ad hoc committees and retain experts (s.9);
- mandatory requirement for public review of all new regulations and substantive amendments to the regulations (s.26).

Throughout the act, there are many opportunities for public participation, some of which include:

- respecting the environmental assessment process, there is a wide range of opportunities provided including receiving notice or registration of the undertaking (e.g. project) (s.33), public comment on the proposed terms of reference (s.36); release of the assessment report to the public (s.38) and public hearings of certain undertakings involving written and/or oral submissions (s.44).
- public participation in the supervision and management of water resources (s.105(4)); and mandatory public consultation being required before designating a protected water area (s.106(7)).
- citizen - initiated investigations (s.115(1)).

➥ What other mechanisms have been introduced to improve the efficient administration of the act?

The purpose clause (s.2) states the goal of providing a responsive, effective, fair, timely and efficient administrative system. Part II describes some ways to accomplish this which include:

1. Alternate dispute resolution (ADR) has been introduced as an inexpensive, timely, effective method to resolve environmental issues (s.14). ADR includes, but is not limited to, conciliation, negotiation, mediation, and arbitration. Using ADR is voluntary. Although ADR can be used for any type of conflict resolution, some types of disputes where it may be most helpful include:

   - disputes over the terms of a remedial action plan for rehabilitation of a contaminated site;
   - disputes over the allocation of costs among responsible parties;
   - scientific or technical matters in a public hearing or other specific issues within the environmental assessment process.

   The act requires that ADR processes strive for consensus (s.14(3)). Consensus processes do not rely on the adversarial approach of parties in a dispute taking opposing positions. In contrast the goal of consensus processes is to find ways to reconcile competing interests and satisfy the needs of all the participants.

2. The act provides the ability to use economic instruments as another way of achieving environmental objectives in a cost-effective and efficient manner (s.15).

   Some common types of economic instruments that are used in many jurisdictions include:

   - tradeable emission and effluent permits (approvals) - A permit is issued to a producer of a substance allowing the permit holder to emit up to a certain set amount of the substance. Permit holders who do not use all of the allowable emissions quota, may sell the excess amount to someone else.

   - user charges - Charges are imposed on the users of products or services that have an adverse effect on the environment.

   - deposit/refund systems - Charges (deposits) are added to the product cost at the time of sale and then they are refunded when the product is returned.

   - tax incentives - Projects or activities that do not have a significant adverse effect on the environment can receive tax exemptions, deductions, or credits.

3. Delegation of ministerial powers to qualified persons and transfer of administration and control to other departments or levels of governments also have been provided to increase the efficient administration of the act (ss.17-18).

4. Administrators may be appointed by the Minister to administer the act (s.21(1)).

PART III: ENVIRONMENTAL EDUCATION AND RESEARCH

This Part of the act builds on a number of the goals described in the purpose clause including providing access to information, facilitating public participation and placing emphasis on achieving environmental goals through non-regulatory means instead of punitive measures.

- It makes the Minister responsible for the development and distribution of environmental education and research (s.27).

- It formally establishes the Youth Conservation Corps to promote youth involvement in the preservation and enhancement of the environment. It provides summer and longer term employment, including training and education. It can also guide participants into private sector employment through cooperative work programs (s.29).

PART IV: ENVIRONMENTAL ASSESSMENT

➥ What is environmental assessment (EA)?

EA is a regulatory tool through which the environmental effects of a proposed undertaking are predicted and evaluated, and a subsequent decision is made on the acceptability of the undertaking.

The purpose of EA is to promote sustainable development by protecting and conserving the environment. EA promotes better project planning by identifying and assessing possible adverse effects on the environment before a new undertaking begins. This is accomplished by involving government agencies, non-government organizations (NGOs), First Nations, local residents and the general public throughout the review of a proposed development.

➥ Which undertakings need an assessment?

The types of undertakings that require environmental assessment are listed in Schedule “A” of the *Environmental Assessment Regulations*. They are divided into Class 1 and Class 2 undertakings.

Class I undertakings are usually smaller in scale and have potential to cause significant environmental impacts. Class II undertakings are typically larger in scale and have greater potential to cause significant environmental impacts.

➥ Do existing facilities or operations have to register?

Registration under Part IV of the *Environment Act* is not required of existing facilities and operations if they were registered under the 1989 *Environmental Assessment Act* and regulations.

Any modification, extension, abandonment, demolition or rehabilitation of an existing undertaking listed in Schedule "A" of the *EA Regulations* which was established either before or after March 17, 1995 may require registration for environmental assessment. The act and regulations do not apply to routine maintenance or repair of existing facilities or operations.

➥ When can work begin on an undertaking?

Work can begin on an undertaking only when the Minister grants an EA approval, and the proponent obtains all other necessary approvals, permits or authorizations required by municipal, provincial and federal acts, regulations, by-laws, guidelines, policies or standards.

➥ What are the steps of the environmental assessment process?

EA in Nova Scotia is a government-wide process that is co-ordinated by the EA Branch of Nova Scotia Environment and Labour (NSEL).

The first step is for the proponent to meet the department staff to discuss the proposed project and its regulatory requirements. The next step is for the proponent to collect the necessary information and submit a registration document, which provides information about the proposed development.

CLASS 1 UNDERTAKINGS

Registration
An EA of a Class 1 undertaking begins the day after the proponent submits the required copies of the registration document to the EA Branch.

Copies of the document will be distributed to the government reviewers, some interest groups and First Nations (depending on the project) for comments. Public access to the document is provided through public viewing locations as well as via the department's internet site

Following the review period, the EA Branch will carefully consider all the information submitted during the review period. The EA Branch will then provide the Minister with a report summarizing the issues and comments and make a recommendation for the Minister's consideration.

The Minister's Decision
The Minister must provide the proponent with a decision in writing. The Minister has the following decision options: a) additional information required; b) undertaking is approved; c) undertaking is rejected; d) focus report required; or e) environmental assessment report required.

Under Section 138(2) of the *Environment Act*, a decision of the Minister to approve or reject an undertaking for environmental assessment cannot be appealed.

CLASS 2 UNDERTAKINGS

Registration
An EA for a Class 2 undertaking begins the day after the proponent submits the required number of hard copies of the registration document to the EA Branch. As stated in Section 9 (1) of the *Environmental Assessment Regulations*, the proponent is required to include project description information in the registration document.

Terms of Reference
The EA Branch will prepare and release a proposed terms of reference for public review, accompanied by the registration document. The proponent will have an opportunity to reply to any comments submitted by the public, interest groups, First Nations and the review committee prior to receiving the final terms of reference from the EA Branch.

Environmental Assessment Report
Following receipt of the final terms of reference, the proponent has up to two years to prepare and submit the EA report to the EA Branch. An initial review of the report will be carried out by the EA Branch to ensure that the terms of reference have been met. If the EA report information is not sufficient, the proponent will be required to include further information before the report can be accepted. Once the report is accepted by the EA Branch, the proponent must submit the required number of copies of the report before it can be referred to the EA Board.

Environmental Assessment Board
Once the EA report is referred to the EA Board, the Board must notify the public of the report and conduct a public review. All comments received during the public review period will be considered by the Board when making a recommendation to the Minister for a decision.

Instead of providing the Minister with a recommendation following the review period, the Board may decide to conduct a public hearing made up of a Hearing Panel to provide information which will assist in the preparation of its report and recommendations to the Minister.

The Minister's Decision
The Minister must decide one of the following: a) undertaking is approved with conditions; b) undertaking is approved without conditions; or c) undertaking is rejected.

PART V: APPROVALS AND CERTIFICATES

➥ What is an approval?

"Approval" is a term that replaces what used to be referred to as permits, licenses and letters of authority. Approvals include renewals of approvals (s.3(f)). Approvals are written permissions granted by the department to engage in certain activities that potentially could damage the environment. Approvals contain specific terms and conditions designed to mitigate the potential adverse effects associated with a particular activity.

Approvals are issued to ensure that these activities are regulated and monitored so that the environment is protected. That does not mean that having an approval is all that you need to do to operate legally. An approval holder must still comply with all provisions of the act. For example, you must still report and remediate spills.

Permits or approvals required under other legislation must also be obtained. Activities may include modifications or extensions. Any person proposing to engage in an activity or to modify or expand an existing activity that has possible environmental consequences should contact the department about the need for an approval.

➥ What activities require approvals?

Over 100 designated activities require approval from the department. They are listed under 6 divisions in the *Activities Designation Regulations*. Also, individual regulations can require that an approval be obtained (e.g. *Sulphide Bearing Material Regulations).*

Activities on federal lands which will have an impact off-site on provincial lands are required to have an approval (s.4(2)).

Part V of the act is not complete without reference to the *Approvals Procedure Regulations* and the *Activities Designation Regulations.* Therefore, reference to these regulations will be mentioned in this discussion of Part V of the act.

➥ What happens if I fail to obtain an approval?

Two types of offences may be created if you do not obtain an approval for a designated activity (s.50). The first type is where you know you need an approval but intentionally choose to begin or continue a designated activity without first obtaining an approval. This is referred to as a mens rea offence. It has the most severe penalty - $1000 to $1 million or up to 2 years imprisonment, or both. The other type of offence for failing to obtain an approval requires no specific intent. This is referred to as an absolute liability offence or a strict liability offence. Although this creates a lesser offence, the penalties are still severe. There is no minimum fine or jail term but there is a $1 million maximum fine.

The process to obtain an approval is comprised of the following steps:

1. Filing an Application

An approval application must be filed with the department (s.53). Generally, the information required to accompany an application includes a detailed description of process and site specifications, any substances that will be released, and any public consultation that will be undertaken. The *Approvals Procedure Regulations* (s.5(1)) sets out more fully the types of information that should accompany the application. Any required municipal approval, permit or other authorization may need to be submitted at the time the application is made (s.53(4)).

The Administrator will inform the applicant if the activity is one that does not require an approval. If an approval is required, it will not be processed until all the required information is submitted (s.53(3)). If an application is not considered "completed", the applicant must be notified within 14 days of filing the application what further information is needed to make it complete. If the request to supply additional information is not supplied within 3 months, the application may be rejected. (See the *Approvals Procedure Regulations* s.6(3) and s.6(4) which provide for requesting an extension of time.)

It is crucial that all the necessary information be supplied. If you are in doubt about what information should be included, the department staff will provide assistance to you.

2. Review of the Application

Once a decision is made that the application is complete, a letter is sent to the applicant within 10 days advising how long it will be before the Minister will make a decision to approve or reject the approval application. Unless the letter provides that it will be longer, a decision must be made within 60 days of receipt of the completed application (s.54).

During the detailed review of the application, the Administrator will consider many factors such as the suitability of the site and the effectiveness of monitoring and rehabilitation programs. If during the detailed review crucial information is found to be missing, incomplete, or wrong, the application can be rejected or the applicant can waive the 60 day time frame for processing, provide the additional information and the approval process will continue.

3. Decision to Approve/Reject the Application

The Minister may issue an approval or refuse to do so. Generally, when an approval is issued it is subject to terms and conditions (s.56). The ministerial power to decide whether or not to issue an approval can be delegated to the staff level (e.g. Regional Managers; District Managers; Inspectors) as a means of streamlining the procedure (s.17) or it can be transferred to another government department (s.19).

The Minister has a public interest override power to refuse to issue an approval (s.52(1)). Certain limits have been imposed on the Minister's exercise of this discretion (s.52(2)).

➥ Does an approval last forever? Can it be changed? Can it be transferred?

Approvals do not last more than 10 years unless the regulations provide a longer term (See the *Approvals Procedure Regulations* s.11(1)). Approvals may be renewed upon the payment of renewal fees (See the *Approvals Procedure Regulations* s.11(3)).

Once an approval is issued, the applicant cannot change the activity in any way that would result in an adverse effect (s.55(1)). For example, the applicant must not discharge new contaminants not covered by the approval, or increase the amount of a contaminant being discharged. The applicant is allowed to do maintenance, adjustments and repairs in the normal course of business (s.55(3)). An approval can be changed if an application is made to do so. An approval holder can request to have the approval amended (s.58(1)).

The approval holder can also apply to abandon the approval. The terms and conditions respecting monitoring and security will apply for 2 years or longer after the date of abandonment, and rehabilitation plans will be required (*See the Approvals Procedure Regulations* s.21 and s.22).

The Minister may also unilaterally amend a term or condition of an approval (s.58(2)) if:

- new information comes to light about an adverse effect that was not reasonably foreseeable when the approval was issued;
- the term or condition is about monitoring or reporting; or
- a temporary suspension of the activity is involved.

Further, the Minister may cancel or suspend an approval (s.58(2)(b)) if:

- there is a breach or default of the approval; or
- new information about an adverse effect becomes available.

An approval holder can not sell or transfer an approval without the written consent of the Minister. There is a 60 day time period for the consent unless the Minister gives notification that more time is needed (s 59(2)). With the consent of the applicant, a term of the existing approval could be altered (s.59(3)). A name change of an approval holder is not a transfer and does not require a formal assignment. The Minister must be notified. (See the *Approvals Procedure Regulations* s.9(2)). The *Approvals Procedure Regulations* (s.12) outline specifically when consent from the Minister to transfer an approval is needed:

- the sale of a controlling interest in a business;
- a transfer from a parent company to a subsidiary or an affiliate;
- sales by receivers, trustees, or fiduciaries.

➥ What else should I know about approvals?

Although such a list is never complete, the following points may be helpful to remember:

- An approval holder must advise the department of any new or relevant information respecting adverse effects (s.60).
- In environmentally sensitive areas, more stringent terms and conditions can be added to the approval than are required under the regulations and policies of the department (s.56(4)).
- Although there is no provision in the act to give public notice that an approval has been requested, a "consultative process" may be set up (See the *Approvals Procedure Regulations* s.7(3)).
- Financial or other security may be requested by the Minister when an application is made (s. 57).

➥ What Is a certificate of variance?

A document called a certificate of variance may be issued by the department to vary a condition of an approval or a requirement of a regulation (s. 61). The variance differs from granting an amendment to an approval because a variance will only be issued for a specified period of time. The certificate will only be issued after a review has been done to ensure that the proposed variance will not cause a significant adverse effect.

➥ What is a certificate of qualification?

Certificates of qualification are required if a person earns a livelihood conducting certain activities that may have an adverse effect on the environment if they are done improperly. Examples of persons who need to apply for certificates of qualification include:

- pesticide applicators and sellers
- well drillers and diggers
- septic tank/pump installers
- petroleum storage tank installers
- waste and/or wastewater facility operators
- water facilities operators
- on-site sewage disposal system installers

The application process for a certificate of qualification is similar to the application for an approval discussed above. The Minister may cancel a certificate of qualification or change, add or delete a term or condition in a certificate (s. 65).

PART VI: RELEASE OF SUBSTANCES

➥ Is it okay to ignore an accident such as a spill or a release of a substance?

It is an offence to release a substance into the environment that may:

1. cause a significant adverse effect or

2. exceed a level authorized by an approval

Similar to the offences discussed under Part V- APROVALS AND CERTIFICATES, there are two levels of offences here:

1. mens rea (i.e. knowingly) offences
   - knowingly cause an adverse effect (s.67(1))
   - knowingly exceed an approval level (s.68(1))

2. absolute or strict liability
   - cause an adverse effect (s.67(2)) (i.e. unintentional) offences
   - exceed an approval level (s.68(2))

Again, the mens rea offences carry heavier sanctions.

If such a release occurs, the person responsible for the release has two duties:

1. the duty to report the release includes reporting to the department at 1-800-565-1633 or (902) 426-6030 and to the owner of the substance and a person having control of the substance and anyone else who may be directly affected by the release (s.69).

2. the duty to remediate the damage which includes cleanup and rehabilitation (s.71).

➥ If the person fails to remediate, will the department clean up the spill?

Where there is an environmental emergency, department staff can order immediate response (s.72). Where an order is served and they fail to comply, the Minister may take action considered necessary to carry out the terms of the order and then can issue an order to pay (s. 132). If the department incurs the cost of clean up, it can issue an order against the person responsible so that the department is reimbursed.

➥ Will I be prosecuted if I have an audit done and it discloses I have violated part of the act?

Where a person conducts an environmental audit or an environmental site assessment and volunteers information to the department about not being in compliance with a requirement of the act or regulations, the person will not be prosecuted if the person discloses the document and enters into an agreement with the department to remedy the problem. However, this does not apply if the department becomes aware of the problem independently of the environmental audit or site assessment (s.70).

➥ Where can I find out more information about reporting spills?

The *Emergency Spills Regulations* provide detailed support for the provisions in the act by defining which releases must be reported, how they are to be reported, and standards for training emergency responders.

PART VII: DANGEROUS GOODS AND PESTICIDES

➥ What are "dangerous goods"?

Dangerous goods means a substance designated as such by the regulations (s.3(n)). There are numerous sets of regulations which have designated substances as dangerous goods and deal with the management of dangerous goods. These include:

- *Dangerous Goods Management Regulations*
- *Asbestos Waste Management Regulations*
- *PCB Management Regulations*
- *Petroleum Management Regulations*
- *Pesticides Regulations*
- *Used Oil Regulations*
- *Motive Fuel and Fuel Oil Approval Regulations*

➥ How does the act prevent dangerous goods, pesticides and petroleum products from causing harm to the environment?

Respecting dangerous goods, there are two key ways to prevent them from causing harm:

- People who handle dangerous goods, waste dangerous goods and pesticides are required to do so in a manner that will not harm the environment. The regulations specify what these requirements are (s.75).
- People can't sell or distribute food, water, crops, products, etc. that exceed the concentrations of dangerous goods allowed by legislation.

Respecting pesticides, consider the following:

- People who handle pesticides must follow the requirements outlined in the regulations about the sale, application, storage and disposal of pesticides.
- People conducting pesticide research must notify the department (s.80(4)).

- Crops used for pesticide research must be destroyed or prevented from getting into food markets (s.80(2)).

- The Minister must develop integrated pest management programs and policies for alternatives to pesticides (s.81).

- Respecting petroleum products, anyone selling or storing motive fuel from a terminal plant or other facility must obtain an approval. Motive fuel includes gasoline and diesel oil, but does not include kerosene or fuel oil. Propane is regulated by the Fire Marshal. The *Motive Fuel and Fuel Oil Approval Regulations* provide additional requirements to support proper use of motive fuel and fuel oil.

PART VIII: CONTAMINATED SITES

➥ Do these provisions apply only to sites that have become contaminated since the act was enacted?

This Part of the act applies regardless of when a site became contaminated (s.85). Although the act became effective January 1, 1995, these provisions may apply to sites that became contaminated before that time.

➥ Who is responsible for cleaning up contaminated sites?

The act broadly defines persons responsible for contaminated sites as:

- a person responsible for the contaminating substance;

- anyone that caused or contributed to the release of the substance;

- an owner, occupier, or operator of the contaminated site;

- a previous owner who was the owner when the substance was released;

- an administrator, receiver, trustee ;

- an agent of the potentially responsible parties - (s.3(al)).

This broad net of responsibility can be limited (responsible parties) when the Minister is deciding who should be named in an order (s.129). The Minister does not need to name everyone who is caught by the net. The Minister must consider criteria including the following:

- when the substance became present;

- whether the substance was present when the person became the owner;

- whether the person knew or ought to have known about the substance;

- whether the presence of the substance was caused entirely by someone else;

- whether the person received economic benefits (e.g. paid less for the property because of the presence of the substance);
- whether the person dealing with the substance ignored industry standards;
- whether the person contributed to further accumulation of the substance.

The intent of these criteria is to provide a checklist to assist the Minister when issuing an order to narrow the broad scope of potentially responsible parties. No order will be issued unless there is a contravention or an anticipated contravention of the act.

➥ Where there is no "person responsible," how will the contaminated site be cleaned up?

Sometimes there may be more than one person responsible (s.134(6)). Other times a "person responsible" can not be found. Where a person responsible for the contaminated site cannot be found or can't pay for the clean up, the Minister may enter into agreements with present day owners and/or establish other means to pay for the clean up (s.86). These agreements are commonly referred to as "orphan site agreements".

➥ What is the process for designating a contaminated site?

The Minister may designate a site as a contaminated site if it is believed to be causing an adverse effect on the environment (s.87(1)). In making this designation, the Minister shall follow standards or guidelines of the department (s.87(2)). Notice of a preliminary determination of the designation must be given to any person responsible for the site, the owner of the site, and the municipality where the site is located (s. 88). A list of designated contaminated sites is to be kept in the environmental registry (s.88©)).

➥ How is a contaminated site remediated after it is designated?

After a site is designated, there are several approaches that may be taken to rededicate the affected area. First, the persons responsible may voluntarily prepare a remedial action plan and enter into a written agreement with the Minister providing for remedial action and any apportionment of costs (s.89(1)(2)). If the parties fail to reach an agreement the matter may be referred to alternate dispute resolution (ADR) (s.89(3)). Where ADR is unsuccessful or the agreement is not honoured, the Minister may issue an order to have the site cleaned up (s. 89(4)).

➥ Are there any limits placed on the amount of liability respecting the rehabilitation of contaminated sites?

Certain groups are likely to be exposed to liability respecting the costs of cleaning up contaminated sites, even though they did not cause or contribute to the damage respecting the property. Therefore, caps or limits have been established for these circumstances.

The cap applies to people who are involved in the administration of contaminated sites, such as receivers, receiver managers, trustees, executors or administrators (s.165(1)) and to lenders (secured

creditors) (s.165(4)). The liability of these groups have been capped so that the upper limit does not exceed the value of the assets they are administering minus costs and fees (s.165(1); s.165(4)). It is specified in relation to the liability of trustees, receivers, executors and administrators that this cap applies to any adverse effect that occurred before or after their appointment. However, if the adverse effect occurs after the appointment and resulted from the failure of that person to exercise "due diligence" the cap will not apply (See PART XVIII: PENALTIES AND PROSECUTIONS).

These caps do not apply if care, management or control was exercised (s.165(2)(3)(a)), or if the secured creditor becomes the owner of the property at a contaminated site (s.165(3)(b) (e.g. through a foreclosure). Much has been written about the parameters of "care, management and control". The act provides some examples of a secured creditor not in care, management or control. In these instances the secured creditor is not responsible for rehabilitation of a contaminated site (s.165(3)(d)). Some of these examples include where the secured creditor:

- participates only in financial matters;
- does not influence the operation of the contaminated site to cause or increase contamination;
- requires people to act in ways that do not cause or increase contamination; and
- appoints someone to investigate a contaminated site to determine steps that the secured creditor might take.

PART IX: WASTE-RESOURCE MANAGEMENT

➥ What is waste-resource management?

Waste-resource management covers a variety of activities dealing with the reduction, re-use, recycling, composting and disposal of waste. It focuses on waste as a resource to be used, instead of something to be thrown away or discarded.

➥ What preventative measures are outlined in the act to encourage proper waste-resource management?

This Part of the act requires that a number of preventative measures be taken to reduce waste and encourage the management of "waste" as a resource:

1. There is a direct responsibility on the Minister to establish a waste-resource management strategy (s.92).
2. The Canadian target of a 50 percent solid waste diversion goal for the year 2000 was adopted (s.93). Within the province there may be some variation with respect to this goal (s.93(4)).
3. The Minister must conduct or support research on waste-resource management (s.94(1)).
4. The Minister must encourage composting (s.97) and litter prevention (s.99(1)).

5. The Resource Recovery Fund was formally established (s.98). The Fund is used to finance waste resource management programs.

6. The Minister may enter into cooperative agreements with municipalities or others to promote integrated waste-resource management (s.95). This may include: cost-sharing agreements, model bylaws and industry stewardship programs.

7. Focusing on recycling, the Minister has the option to restrict the storage and disposal of recyclable materials and to prescribe the minimum amount of recyclable material required in a new recycled product. Also, the Minister may restrict the production or sale of products which can not be reused or recycled (s.96).

8. Cabinet may establish programs or policies on packaging and labeling (e.g. standards for material degradability, source reduction). It is an offence to sell packaging that does not conform to the requirements of the act or the regulations (s.102).

➥ What is litter and litter prevention?

Litter is not defined in the act. In the *Solid Waste-Resource Management Regulations* (s.2(s)), litter is defined as any intentionally or accidentally discarded, manufactured, or organic material not placed in a proper receptacle or disposed of as approved or regulated. A number of ways to prevent littering are outlined (s.99(1)) which include:

- regulating waste disposal at construction sites, commercial and service outlets etc.
- requiring receptacles for recyclables and litter, and
- regulating or prohibiting activities which result in litter.

Littering is an offence (s.99(2)) which carries a maximum fine of $5,000 (s.159(3)). Litter abatement orders may be issued to require the clean up of litter (s.127).

➥ What is a designated material surcharge?

The Minister may designate materials which are to be used only in an authorized way: e.g. banned, reduced, recycled or composed. The act allows the manufacturer or distributor of these designated materials to collect a fee or surcharge, which surcharge is set by the Minister, and establishes a means of collecting the surcharge (e.g. through the use of depots) if it is required in the regulations (s.100). It is an offence to sell or use a designated material for a non-authorized purpose (s.100(4)).

PART X: WATER-RESOURCE MANAGEMENT

➥ Who owns the water in Nova Scotia?

Every "watercourse" in Nova Scotia is owned by the Province (s.103). "Watercourse" is defined in the act because it is used in a way that may be different from its common usage. "Watercourse" means the "bed" and "shore" of every natural water body as well as the water in them and it includes all groundwater. It does not refer to non-natural bodies of water like swimming pools or fire ponds. It includes rivers, streams, lakes, creeks, ponds, springs, lagoons and groundwater. Swamps, marshes and wetlands are not included in the definition of a watercourse because it is recognized that in some

cases they are privately owned; however, swamps, marshes or wetlands are considered water resources. The Minister has supervision of all water resources, watercourses and allocation of water (s.105(1)). Therefore, although the Province may not claim ownership of a wetland, the Minister may regulate their use to fulfil that supervisory role over water resources (s.105). In fact, the Minister has designated alteration of wetlands as activities which need approvals.

The department is the lead agency of Government to ensure that water is managed appropriately and that the Province's water resources are allocated in a way that furthers sustainable development. (s.104).

The act does not give any legal interest or right in a water resource or watercourse based on use (s.108). This means that use, occupation or obstruction of a watercourse or water resource does not entitle you to claim that you own that watercourse or water resource (s.108). Also, the act does not authorize the granting of any fishing rights (s.107).

➥ What measures are outlined in the act to encourage proper water-resource management?

1. The Minister must develop a water-resource management strategy for the Province (s.105). The strategy may deal with topics such as the alteration of watercourses, establishing water quality guidelines, establishing total allowable waste loads for water bodies, and classifying water resources according to their sensitivity or uses (s.105(3)).

2. The Minister may identify qualified persons, including watershed advisory boards, to provide advice and promote public participation on watershed management (s.105(4)).

3. The Minister may designate water supply areas as protected water areas (s.106(1)). The operator of the water works has a responsibility to protect the area designated on their behalf (s.106(3)). Before designating a protected water area there must be public consultation about the proposed designation (s.106(7)). Under the act a landowner in such an area will not receive compensation by claiming that he/she has suffered harm or a loss because of injurious affection suffered as a result of the designation (s.106(8)).

4. All new water and wastewater facilities must be classified and can not operate without a certified operator.

➥ How does the act deal with the potential adverse effects on water quality that may result from the improper digging or drilling of wells?

The act requires well drillers, well diggers and pump installers to obtain a certificate of qualification (s.109). The *Well Construction Regulations* provide further information about well construction requirements.

Part XI: AIR QUALITY MANAGEMENT

➥ What are the obligations placed on the Minister to protect air quality?

This Part of the act provides for mandatory ministerial duties including establishing ambient air quality standards and reporting requirements and also powers such as establishing air emission standards, overall provincial emission caps and regional management programs. (For more information see the *Air Quality Regulations* and the *Ozone Layer Protection Regulations*.)

For example, the act allows the Minister to take the following actions:

1. Establish ambient air-quality standards or objectives. For example, the *Air Quality Regulations* establish the maximum allowable levels for carbon monoxide, hydrogen sulfide, nitrogen dioxide, ozone, sulphur dioxide and total suspended particulate matter.

2. Establish performances specifications and standards for air-quality testing and monitoring. For example, specifications and standards are found in approvals that specify what air quality monitoring is needed for facilities.

3. Maintain inventories and establish reporting requirements for emissions of air contaminants. For example, reporting requirements are found in approvals.

4. Establish overall provincial emission caps. For example, the *Air Quality Regulations* contain emission caps for sulphur dioxide, nitrogen oxide and mercury.

5. Establish sale and use restrictions to address air-quality issues of regional or global significance. For example, the *Ozone Layer Protection Regulations* restrict the sale of ozone-depleting substances.

6. Enter into agreements respecting air-management issues. For example, the Minister has signed national and international agreements (e.g. Canada-Wide Acid Rain Strategy for Post-2000; Canada-Wide Standards for Mercury Emissions from Coal-Fired Electric Power Generation Plants) to protect air quality.

7. Operate a province-wide monitoring network to monitor the outdoor air quality in Nova Scotia.

8. Issue an air quality index (AQI), which is a numeric scale of air quality based on hourly measurements.

9. Deliver education programs to inform Nova Scotians about air-quality issues.

PART XII: INSPECTIONS AND INVESTIGATIONS

➥ What are the powers of an inspector?

Under the act, the inspector has the same powers and protections as a peace officer while carrying out duties pursuant to the act (s.113). Inspectors are appointed by the Minister (s.21). If requested to do so, the inspector must show an identification card before entering a place to do an inspection (s.22).

Approval holders must allow inspectors to inspect the facility that is the subject of the approval (s.117). The inspector may carry out inspections at any reasonable time. The act specifies the parameters of an inspection including the extent of the inspections and the reasons for an inspection (s.119(1)). Where the inspector believes that something may cause an adverse effect, the inspector may remove it (s.119(1)(g)) for up to 5 days, or longer if an order is obtained (s.119(2)(3)). An inspector can seize anything that is in plain view if the inspector believes that it will provide evidence about an offence (s.122(1)). The inspector must advise the person why the item is being taken and provide the person with a receipt for the item (s.122(3)).

Inspectors may not enter a dwelling place without the permission of the owner or occupant or a search warrant (ss.117, 120). Where access is denied to the inspector or nobody is available to give access, then an entry order may be obtained allowing the inspector to enter and inspect (s.121).

➥ What is my recourse if I am dissatisfied with an investigation carried out by the department or their failure to investigate a matter?

Anyone may request in writing that the department investigate an alleged offence. Every formal request must be investigated and a report must be made to the person within 90 days of making the request (s.116(1) and (2)). If an investigation is discontinued reasons must be given for the discontinuance (s.116(3) and (4)). It is important to note that it is an offence for the person requesting the investigation to wilfully or intentionally provide false information (s.115(3)).

➥ What protection will I be given if I report an environmental offence in my place of employment?

The act provides that no employer should dismiss, discipline, penalize or intimidate anyone who reports an environmental offence by their employer (s.124(1)). This is commonly referred to as "whistle blower protection". As a balance to ensure that disgruntled employees do not misuse this provision, it is an offence for an employee to wilfully or intentionally provide false or misleading information (s.124(2)).

PART XIII: ORDERS

➥ When will an order be issued?

An order may be issued when there is a need to stop or control an activity or undertaking through binding corrective action and there may be a need for remediation. An order is issued when there is a need for the specific details of the requirements to be enforceable. The issuance of an order does not prevent a prosecution from proceeding.

➥ What types of orders can be issued?

There are various types of orders that may be issued (s.125). These include:

1. **Control Orders** - Where the Minister believes that there has been, or will be, a contravention of the act, control orders may be issued to take action to remedy the adverse effect or clean up the pollution; or avoid the adverse effect before it occurs (e.g.,

refraining from altering a watercourse or prohibiting the use of a contaminated site).

2. **Stop Orders** - These may be issued where the Minister believes there is likely to be an irreparable adverse effect. Because the threat of environmental damage that cannot be repaired or mitigated is such a serious concern, the Minister can order a facility or activity to shut down or stop permanently or for a specific time period.

3. **Litter Orders** - These may be issued by the Minister, an administrator or inspector to order the clean up of litter.

4. **Emergency Orders** - These may be issued in environmental emergencies by an Administrator, instead of by the Minister, but such an order must be confirmed by the Minister within 72 hours to continue in effect.

➥ When do orders take effect?

Unless specified otherwise in the order, there is no waiting period so orders take effect immediately (s.132(1)) and the order remains in effect until it is revoked by the Minister (s.131).

➥ What happens if I don't comply with the terms of the order?

If the person to whom the order is directed does not comply with the terms and conditions of the order, the Minister may take whatever action the Minister considers necessary to carry out the terms of the order. Reasonable costs, expenses or charges incurred by the Minister are recoverable by order of the Minister against the person to whom the order was directed (s.132(2) and (3)). In addition to any other penalty that may be imposed for failure to comply with an order, the court may issue a court order to require compliance with the Ministerial Order (s.133).

In carrying out the terms of the order, the Minister may recover any costs from any insurance coverage carried by the person named in the order for the cost of cleaning up environmental damage (s.135(1)). The insurer is not obliged to pay any costs that exceed the coverage limit in the insurance policy (s.135(4)).

Once the order to pay is issued and filed with the Prothonotary of the Supreme Court and recorded at the environmental registry, then it has the same effect as a judgement against the real property of the person named. A first priority lien is established which is often referred to as a "super lien" because it comes ahead of all others and is in the same priority as taxes due and owing on the property. For example, if there was money owing on a mortgage on the property, the costs of the clean up would be paid out before the outstanding balance of the mortgage was paid. The order may be enforced as if it were a court judgment (s.132(7)). If the property is registered under the *Land Registration Act*, the Order to Pay must be recorded in the parcel registry before a lien can be created.

➥ What happens if more than one person is named in an order?

Everyone named in the order is responsible together as a group, but also everyone is each individually responsible for fully carrying out the terms of the order and for the costs of carrying out the terms of the order. This means that each person named in the order is 100% liable for the cost of the clean up etc. However, one person will not be totally responsible if the various persons named in the

order agree to share, or apportion the costs (s.134(2)). The apportionment process can be reached by a private agreement among the parties or with the aid of a third party (e.g. mediator).

If a person named as a "person responsible" in the order did not actually cause or contribute to the problem, then the other persons liable to pay may bear the costs of the "blameless" person to the extent that they are "blameworthy" (s.134(5)). For example, if you were named in an order as a person responsible because you are the present owner of the property, but you did not cause or contribute to the problem in any way, then you may seek indemnification from the person who caused the problem (e.g. past owner) whether or not they are named in the order.

This situation can get more complicated where there are 2 or more people who are at fault or negligent. Then it is necessary for those people to agree on the relative degree or fault for each of them. If they are not able to allocate the degree of blame (e.g.. person X - 60% at fault, person Y - 40% at fault), then each of the people will be considered to be equally at fault (e.g.. person X - 50%; person Y - 50%) (s.134(6)).

PART XIV: APPEALS

➥ What matters can be appealed?

Any decision of an administrator can be appealed to the Minister (s.137(1)). Decisions of the Minister can be appealed to the Supreme Court of Nova Scotia (s.138(1)), except for a decision of the Minister to approve or reject an undertaking in the environmental assessment process (s.138(2). A decision of the Nova Scotia Supreme Court is final. There is no further appeal to the Nova Scotia Court of Appeal (s.138(6)).

➥ Who can launch an appeal?

Any person aggrieved by a decision of the Minister or an administrator may initiate an appeal.

➥ Are there time limits on my rights of appeal?

An appeal must begin within 30 days after the decision was made (s.138(4)).

➥ Does initiating an appeal mean I don't need to comply with the original decision or order?

The initiation of an appeal does not suspend (stay) the decision or order. Until the appeal is heard and a decision made, the terms of the original order or decision must be followed (s.138(6)).

PART XV: CIVIL REMEDIES

➥ What is a civil remedy?

Civil remedies are court actions or lawsuits that a person (this includes a company) may take to resolve a dispute with another person, as opposed to offence provisions where the government is almost always the party who is taking an action against a person. Examples of civil remedies include nuisance, trespass, and negligence actions.

Under the act a number of offences are created where the government may prosecute those who contravene one of the offence provisions. These are quasi-criminal remedies. They are not civil remedies.

➥ What civil remedies are available?

The act does not take away the civil remedies that already existed before the act or at common law (s.141). A person's common law right to apply for an injunction to stop an activity that is causing damage remains although it is not mentioned in the act. The ability of a citizen to initiate a private prosecution under a federal statute is not taken away simply because a similar provision does not exist under this act.

The act provides for a civil cause of action. This means that anyone who suffers a loss from pollution or environmental damage caused by someone else can sue that person in court (i.e.. civil remedy). Generally, the basis of the lawsuit is that one person's negligence resulted in damage to the other person or their property. If the person causing the damage has already been convicted of an offence under the act, that conviction can be used as evidence of negligence in the civil lawsuit (s. 142). It should be noted that the conviction will not automatically guarantee that negligence is proven, but it provides some (i.e. *prima facie)* evidence of negligence.

In addition to a fine, the court may impose on an offender a restitution order to compensate another person for their loss. Where a person is convicted of an offence, another person may appear at the court at the time of sentencing without starting a separate court action on their own, and request compensation for loss or damage to property they have incurred as a result of the offence. For instance, if the offence occurred on a property adjacent to yours and as a result you suffered damage, (e.g. your garden was damaged) you may claim for that amount (s.168(1)). This provision applies without making a separate application if your claim is less than $5000.

➥ Can a person initiate a lawsuit against the government under the act?

There is a statutory exemption that limits the types of actions that can proceed against the department. No action can be taken against the department (e.g. employee, agent) if the person is carrying our their duties in "good faith".

➥ What means does the government have to recover its costs respecting clean ups it carries out on behalf of the polluter?

One of the goals recognized in the act is the "polluter pay principle". Generally, the "polluter pay principle" means that anyone who damages the environment should repair the damage and pay for the costs of the repairs. This means that when a polluter doesn't fix the problem and the government

pays for the cost of the repairs, the taxpayers should not bear the costs of the cleanup. Several methods have been established to assist the government in recovering these costs:

1. As discussed above, where the terms of an order are not complied with the government can do the clean up to recover the costs through an Order to Pay (s.132).

2. Where someone is convicted of an offence, the Government may sue to recover any costs and expenses related to the offence or any related preventive or remedial action (s.144).

3. Where an offender has been prosecuted and convicted for an offence under the act, the court may order the offender to pay any costs incurred by the government respecting remedial action (s.166(1)).

4. Costs incurred in relation to resolving an environmental emergency are also recoverable (s.169).

PART XVI: TRANSBOUNDARY POLLUTION

➥ **If pollution occurs in Ontario and I suffer damage from that here, can I pursue my civil remedies in a court in Nova Scotia?**

Because pollution does not respect boundaries, measures have been provided to allow a person to choose to bring an action either where the person lives or where the pollution occurred, if it involves a jurisdiction (state or province) that also has reciprocal transboundary pollution legislation (s.146).

Normally pollution originates in the same jurisdiction where the damage occurs. However, the act allows an action for injury or damage occurring in a reciprocating jurisdiction caused by pollution on property in Nova Scotia to be brought either where the pollution originated or in the area where the damages occurred (s.147). (e.g. Acid rain may originate in one jurisdiction and the damage may occur in another jurisdiction.) If the person chooses to enforce their rights in Nova Scotia, then the laws of Nova Scotia will apply (s.148).

PART XVII: ENVIRONMENTAL INDUSTRIES, INNOVATIONS AND TECHNOLOGIES

➥ **What is the department doing to promote "green" business?**

The department is designated under the act as the lead agency for the promotion, development and use of environmental industries, technologies and innovations (s. 156(1)). This is another way that the department can be involved in environmental protection in a non-regulatory context. The role here is not merely reacting to clean up environmental damage, but to look at ways of preventing this damage from occurring in the first place (pollution prevention).

The department has established the Environmental Industries and Innovations Branch with a mandate to support and promote environmental industries, innovations and technologies (s.156(2(a)). The focus is to identify and facilitate the commercialization of environmental technologies by solving real issues. This creates local permanent economic spinoffs that are sold throughout the world.

PART XVIII: PENALTIES AND PROSECUTIONS

➥ What are the offences and penalties provided in the act?

A list of key offences is given below:

Section Offences

S. 32 - commencing work on an undertaking without an approval
S. 50 - operating without an approval
S. 55 - changing an approval activity resulting in an adverse effect
S. 59 - transferring an approval without consent
S. 60 - failure to submit new information
S. 62 - operating without a certificate of qualification
S. 67 - releasing a substance into the environment that causes a significant adverse effect
S. 68 - releasing a substance that exceeds an approval requirement
S. 69 - failure to report a release
S. 70 - failure to remediate a release
S. 75 - allowing dangerous goods to cause an adverse effect
S. 76 - selling a product that exceeds allowable concentrations of dangerous goods
S. 79 - handling pesticides contrary to the regulations
S. 83 - selling motive fuel or fuel oil without an approval
S. 89 - violating terms of an agreement respecting a contaminated site
S. 99(2) - littering
S. 100(4) - using a designated material which has been banned
S. 101(3) - using packaging contrary to regulations
S. 109 - digging a well without certificate of qualification
S. 115(3) - providing false information when requesting an investigation
S. 124 - disciplining of an employee who reports an offence
S. 132 - failing to comply with an order
S. 158 - providing false information; obstructing an inspector; contravening an approval; contravening an order; or otherwise contravening the act.

There are four levels of penalties provided for different types of offences. The most serious penalties are for the 6 *mens rea* or "knowingly" offences:

1. knowingly commencing an activity without an approval (s.50(1))
2. knowingly releasing a substance into the environment that causes a significant adverse effect (s.67(1))
3. knowingly releasing a substance that exceeds the amount authorized by the approval (s.68(1))
4. knowingly providing false or misleading information (s.158(a))
5. knowingly contravenes a terms or condition of an approval (s.158(e))
6. knowingly contravenes an order (s.158(g))

In each of these "knowingly" offences it is possible to receive a 2 year jail term in addition to a fine between $1,000 - $1,000,000 (s.159(1)).

The second level of offences has no jail term and no minimum fine level, but the maximum penalty is $1,000,000 (s.159(2)). Some offences included in the category are:

1. commencing work on an undertaking before receiving notification that it is approved (s.32)
2. commencing an activity without an approval (s.50(2))
3. changing an activity in an approval (s.55)
4. transferring or selling an approval (s.59)
5. failing to submit new information (s.60)
6. operating without a certificate of qualification (s.62)
7. releasing a substance into the environment that causes a significant adverse effect (s.67(2))
8. releasing a substance that exceeds the amount authorized by the approval (s.68(2))
9. failing to report a release (s.69)
10. failing to remediate a release (s.71)
11. allowing dangerous goods to cause an adverse effect (s.75)
12. selling a product that exceeds the concentration of dangerous goods allowed by the legislation (s.76)
13. handling pesticides contrary to the regulations (s.79)
14. selling motive fuel or fuel oil without an approval (s.83)
15. violating the terms of a contaminated site agreement (s.89)
16. providing false information when requesting an investigation (s.115)
17. disciplining an employee who reports an offence (s.124)
18. failing to comply with an order (s.132)
19. providing false information, failing to provide information, binding an inspector; contravening an approval or contravening an order (s.158)

The third level of offences carries no minimum fine and a maximum fine of $500,000 (s.159(4)). This category includes any offences in the act which are not specifically listed in Section 159. These include:

1. using a banned designated material (s.100(4))
2. using packaging contrary to the regulations (s.101(3))

In the fourth level, littering is the only offence (s.159(3)). There is no minimum fine and the maximum fine is $5,000.

For any offence in the act, every day on which the offence occurs can be considered a separate offence. In other words, it is possible for a court to impose the maximum penalties described above for each and every day that the offence continues (s.162).

The regulations, as well as the act, contain offence provisions. Many of these offences may be handled by using summary offence tickets (SOTS) under the *Summary Proceedings Act*.

In addition to the fines described above, the court may also order the offender to pay any monetary benefits that may have accrued to him or her as a result of committing the offence (s.161). For example, a company may be able to operate more cheaply by ignoring terms specified in an approval, or an order. This section provides that any money that was saved based on violating the act can be added to the amount of the fine. The intention here is to remove any economic incentive that may exist for not complying with the law (profit stripping).

The act also provides the court with the power to impose a large range of orders on those convicted of offences (in addition to the fines and jail terms) (s.166). Some of the order-making powers include:

1. prohibiting the offender from continuing or repeating the offence
2. directing the offender to publish the facts relating to the conviction
3. posting a bond to ensure compliance with an order
4. directing the offender to perform community service

➥ Will I be convicted of an offence if I tried to prevent the offence from occurring?

The offences under the act are absolute or strict liability offences except for the 6 "knowingly"offences. For those 6 offences it is necessary to prove that the offender intentionally violated the provision. For the other offences, the doing of the act is the offence, regardless of the intent.

For strict liability offences, "due diligence" is a defense recognized under the act (s.160).

➥ Can employers and directors of companies be convicted of offences or do the offence provisions apply only to individuals?

Directors, officers and agents of companies can be charged with offences committed by their companies if they participated in, went along with, or turned a blind eye to the offence (s.164).

Also, employers may be liable for offences committed by their employees unless the employee committed the offence without the knowledge or consent of their employer (s.163).

➥ What is the limitation period for taking a legal action to prosecute an offence under the act?

The prosecution of an offence must begin within 2 years of the date that the offence was committed, or where the department did not know that an offence had been committed, then the limitation period is 2 years after the date that the department became aware of the offence (s.157).

PART XIX: DOCUMENTARY EVIDENCE

➥ What are the rules about getting documents admitted into a court?

This part of the act sets out the types and forms of documents that can be entered as evidence in court. Proof of their contents does not require proof of the signature of the person signing the document. (e.g. certificate, report or statement) (s.172(1)). This part of the act is in addition to other legal rules of evidence (e.g. *Evidence Act*) and the rules of court in the Nova Scotia Civil Procedure Rules.

PART XX: MISCELLANEOUS

➥ Will the order or permit/approval I have been issued under the old laws continue to be valid, or must a new one be issued?

All approvals and orders granted under the legislation administered by the department when this act came into effect continue to be valid until suspended or cancelled by this act (s.175(1)).

➥ What are the statutes that were administered by the department and have been replaced by this act?

The *Environment Act* repeals 16 statutes (s.176):

1. *Dangerous Goods and Hazardous-Wastes Management Act*
2. *Derelict Vehicles Removal Act*
3. *Environmental Assessment Act*
4. *Environmental Protection Act*
5. *Environmental Trust Act*
6. *Gasoline and Fuel Oil Licensing Act*
7. *Litter Abatement Act*
8. *Ozone Layer Protection Act*
9. *Pest Control Products (Nova Scotia) Act*
10. *Recycling Act*
11. *Salvage Yard Licensing Act*
12. *Smelting and Refining Encourage Act*
13. *Transboundary Pollution Act*
14. *Most of the Water Act*
15. *Well Drilling Act*
16. *Youth Conservation Corps Act*