



PLEASE NOTE

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CHAPTER E-9

ENVIRONMENTAL PROTECTION ACT

INTERPRETATION

1. In this Act	Definitions
(a) “agricultural crop” means any crop that is cultivated for the production of food, fibre or pharmaceuticals;	agricultural crop
(a.1) “animal unit” means an animal or animals which consume, on average, daily forage of 12 kilograms dry matter per animal or animals;	animal unit
(a.2) repealed by 2001,c.34,s.1;	basal area
(a.3) “beach” includes that portion of the shoreline land commencing at (i) the base of the bank or slope where the terrestrial land meets the shoreline, or (ii) the seaward extremity of a sand dune, as may be relevant in the circumstances and extending seaward a distance of three miles, and containing water, sand, gravel, rock, shale or other earthen material;	beach
(a.4) “broadcast” means to cast, spread, spray, or scatter seed, pesticides, or other material over an area greater than 2 square metres per application;	broadcast
(a.5) repealed by 2002,c.5,s.1;	buffer zone
(a.6) “cereal crop” means a grass cultivated for its edible seeds or grains;	cereal crop
(a.7) “clear-cut” means an area within a forested riparian zone where more than 90% of the live trees, having a stem diameter greater than 10 centimetres, measured less than 20 centimetres above ground level, have been cut or removed;	clear-cut
(b) “contaminant” includes any solid, liquid, gas, waste, odour, vibration, radiation, sound, or a combination of them (i) which is foreign to or in excess of the natural constituents of the environment into which it is being introduced, (ii) which will or may adversely affect, either directly or indirectly, the natural, physical, chemical, or biological quality of the environment,	contaminant

	(iii) which is or may be injurious to the health or safety of a person or be damaging to property or to plant or animal life, (iv) which interferes with or is likely to interfere with the comfort, well-being, livelihood, or enjoyment of life of a person, or (v) which is declared by regulation to be a contaminant;
contaminated site	(b.1) “contaminated site” means an area of the environment designated as a contaminated site by the Minister under subsection 21.1(3);
contaminated sites registry	(b.2) “contaminated sites registry” means the contaminated sites registry established under subsection 21.1(1);
Department	(c) “Department” means the Department of Environment and Energy;
discharge	(d) “discharge” includes any drainage, deposit, release, spill, leak or emission;
Division	(e) repealed by 1989(2nd),c.1,s.2;
environment	(f) “environment” includes (i) air, land and water, (ii) plant and animal, including human, life, and any feature, part, component, resource or element thereof;
environment officer	(g) “environment officer” means a government employee so designated or appointed by the Minister;
environmental health	(h) “environmental health” means those aspects of human health that are or can be affected by contaminants or changes in the environment;
excavation pit	(i) “excavation pit” means any excavation in the ground opened for the purpose of searching for or removing clay, gravel, sand, shale, subsoil, topsoil, rock or any other surface or subterranean deposit, but does not include an excavation made within the boundaries of a highway;
farm field	(i.01) “farm field” means an area of agricultural crop land that is managed and cropped in the same manner in a single growing season;
forage crop	(i.1) repealed by 2002,c.5,s.1;
forested riparian zone	(i.2) “forested riparian zone” means a forested riparian zone required to be established and maintained under section 11.3;
frost seeding	(i.3) “frost seeding” means the practice of broadcast seeding of forage grasses or legumes in early spring on frozen ground;

(i.03) repealed by 2002,c.5,s.1;

(i.4) “heavy equipment” means

headland
heavy equipment

- (i) equipment classified as excavators, mechanical harvesters, porters, skidders, and wood processors;
- (ii) farm tractors over 50 horsepower; and
- (iii) trucks and bulldozers,

but does not include wheeled and tracked equipment being used in the active suppression of wildfire;

(i.5) “intensive livestock operation” means a livestock operation where

intensive livestock
operation

- (i) animals are kept or housed in a confined area, with or without access to an outside lot or yard,
- (ii) the animal density, based on total living area, is greater than 7 animal units per acre; and
- (iii) feed and water are delivered to the animals;

(i.6) “landlocked pond” means an excavated depression or hole in the terrain, that holds water some or all of the time, and has no inlet or outlet;

landlocked pond

(j) “litter” as a verb, means to discard trash, garbage, rubbish or any other objects, and, as a noun, means trash, garbage or other objects so discarded;

litter

(j.1) “livestock” includes, but is not limited to, animals commonly referred to as cows, cattle, swine, horses, sheep, goats and poultry;

livestock

(k) “Minister” means the Minister of Environment and Energy;

Minister

(l) “motor vehicle” means a vehicle that is powered, drawn, propelled or driven by any means other than muscular power;

motor vehicle

(m) “municipality” has the same meaning as in the *Municipalities Act* R.S.P.E.I. 1988, Cap. M-13 but includes the City of Charlottetown and the City of Summerside;

municipality

(n) repealed by 1991,c.10,s.1;

person

(n.1) “perimeter coastline” means the coastal area of the Prince Edward Island landmass that borders directly on waters of the Northumberland Strait, the Gulf of St. Lawrence, Egmont Bay, Bedeque Bay, Hillsborough Bay, Cardigan Bay, Boughton Bay, Howe Bay, Rollo Bay, and Colville Bay, as outlined in black on the map attached as Appendix 2;

perimeter coastline

(n.2) “row crop” means any crop planted in parallel rows that are wide enough apart to allow for inter-row cultivation;

row crop

sand dune	(o) “sand dune” means a wind or wave-deposited formation of vegetated or drifting wind-blown sand that lies generally parallel to and landward of the beach and between the upland limit of the beach and the foot of the most inland dune slope;
selection harvest	(o.1) “selection harvest” means a silvicultural practice where <ul style="list-style-type: none"> (i) trees are removed periodically from an area, either individually or in small groups, (ii) the total area clear cut does not exceed 0.2 hectares; and (iii) the area between clear-cuts within a forested riparian zone shall be greater than 0.1 hectare;
source of contaminant	(o.2) “source of contaminant” means anything that discharges a contaminant into the environment;
under seeded cereal crop	(o.3) “under seeded cereal crop” means a forage crop established by seeding it at the same time as a cereal crop;
undertaking	(p) “undertaking” includes any construction, industry, operation or other project or any alteration or modification of any existing undertaking which will or may <ul style="list-style-type: none"> (i) cause the emission or discharge of any contaminant into the environment, (ii) have an effect on any unique, rare or endangered feature of the environment, (iii) have a significant effect on the environment or necessitate further development which is likely to have a significant effect on the environment, or (iv) cause public concern because of its real or perceived effect or potential effect on the environment, but excludes all undertakings mentioned in sections 10, 12 and 13;
waste	(p.1) “waste” includes materials discarded by persons in the course of their daily activities at home or at commercial businesses, industries and institutions or other related activities;
waste management	(p.2) “waste management” means a system or process for the collection, transportation, separation, treatment or disposal of waste and includes disposal sites and landfill sites;
waste treatment system	(q) “waste treatment system” means any plant or installation used, or intended to be used to treat a contaminant prior to disposal on land, or into air or water and includes a sewerage system;
water	(r) “water” includes liquid and frozen surface and ground water;
watercourse	(s) “watercourse” includes, unless a provision of this Act indicates otherwise, the full length and width of the sediment bed, bank and shore of any stream, spring, creek, brook, river, lake, pond, bay,

estuary or coastal water body or any part thereof, whether the same contains water or not, but does not include

- (i) a grassed waterway, or
- (ii) a tap drain, unless a watercourse has been diverted into the tap drain;

(s.1) repealed by 2001,c.34,s.1;

watercourse
boundary
water supply system

(t) “water supply system” means a water works for the collection, treatment, purification, storage, supply or distribution of water to

- (i) five or more households, or
- (ii) a public building or place of assembly;

(u) “well” means an artificial opening in the ground

well

- (i) from which water is obtained, or
- (ii) made for the purpose of exploring for or obtaining water;

(u.1) “well-head protection area” means the surface and sub-surface area surrounding a well, supplying any water supply system, through which contaminants may or are reasonably likely to move toward and reach such well;

well head protection
area

(v) “wetland” means, unless a provision of this Act indicates otherwise, lands commonly referred to as marshes, salt marshes, swamps, bogs, flats and shallow water areas that are saturated with water long enough to promote wetland or aquatic biological processes which are indicated by poorly drained soil, water-tolerant vegetation, and biological activities adapted to a wet environment;

wetland

(w) “wetland boundary” means the upland boundary of a wetland as defined by the line of demarcation formed where vegetation changes from aquatic plants or water-tolerant vegetation to terrestrial plants or water intolerant vegetation. 1988,c.19,s.1; 1989(2nd),c.1,s.2; 1991,c.10,s.1; 1992,c.21,s.1; 1993,c.29,s.4; 1997,c.20,s.3; 1999,c.24,s.1; 2000,c.5,s.3; 2001,c.34,s.1; 2002,c.5,s.1; 2004,c.36,s.3; 2004,c.30,s.1.

wetland boundary

PURPOSE

2. The purpose of this Act is to manage, protect and enhance the environment. 1988,c.19,s.2.

Purpose

ADMINISTRATION

3. (1) The Minister may take such action as he considers necessary in order to manage, protect or enhance the environment including

Powers of Minister

- (a) investigating and inquiring into any activity or situation that causes, appears to be the cause of, or may cause, contamination of the environment;
- (b) coordinating the work and efforts of public departments, boards, commissions, agencies and interest groups in the province respecting management of the environment;
- (c) preparing and publishing policies, strategies, objectives and standards;
- (d) planning, designing, constructing, operating and maintaining works and undertakings;
- (e) exercising exclusive control over
 - (i) the quality, use, protection or alteration of all surface, ground and shore waters and all beaches, sand dunes, and wetlands within the jurisdiction of the province,
 - (ii) the allocation of the use of water,
 - (iii) preservation of the environment within the jurisdiction of the province;
- (f) entering into agreements;
- (g) delegating any of his functions under this Act or the regulations;
- (h) performing such other functions as may be assigned to him by the Lieutenant Governor in Council.

Environmental awareness program

(2) For the purpose of increasing environmental awareness in the province, the Minister may support and encourage the development of educational programs respecting environmental management. 1988,c.19,s.3; 1992,c.21,s.2.

Council

4. (1) The Lieutenant Governor in Council may appoint an Environmental Advisory Council.

Functions

- (2) The Council shall
 - (a) serve as an advisory board to the Minister;
 - (b) perform such functions as may be prescribed by regulations.

Composition

(3) The Council shall consist of not less than ten and not more than fifteen members appearing to the Minister to be representative of the public, including representation of the interests of agriculture, tourism, fisheries and industry and one member nominated by the Federation of Prince Edward Island Municipalities.

Powers of Cabinet

- (4) The Lieutenant Governor in Council
 - (a) shall designate a chairman and vice-chairman of the Council from the membership thereof;
 - (b) may authorize payment of a daily allowance and expenses to members of the Council;

(c) may appoint local advisory boards for specified areas, or designate an existing board, commission, or other body as a local advisory board.

(5) Members of the Council shall be appointed for such term as the Lieutenant Governor in Council may determine in the case of each member and, subject to subsection (6), are eligible for reappointment. Term of office

(6) A person who has served two consecutive terms as a member of the Council is not, during the twelve months following the completion of his second term, eligible for reappointment to the Council. Reappointment

(7) Where a member dies, retires or is removed from office, the Lieutenant Governor in Council may appoint a person to serve the unexpired term of that member. Vacancies

(8) The Council shall submit annual reports to the Minister on matters dealt with by the Council including Annual reports
 (a) submissions received by the Council;
 (b) investigations conducted by the Council;
 (c) reports made by the Council;
 (d) recommendations of the Council.

(9) Upon receiving an annual report from the Council, the Minister shall lay the report before the next ensuing session of the Legislature. Tabling report

(10) The Council may, with the approval of the Minister, engage the services of persons having special technical or other knowledge in connection with any public hearing, investigation or study under this Act. 1988,c.19,s.4; 1992,c.21,s.3. Specialist services

5.(1) The Lieutenant Governor in Council may establish an Environmental Coordinating Committee to be made up of the Deputy Ministers of such departments as he may determine and such other persons as he considers appropriate. Environmental Coordinating Committee

(2) The Deputy Minister of the Department shall be chairman of the Committee. Chairman

(3) The Committee Powers
 (a) may inquire into any matter pertaining to the environment
 (i) referred to it by the Minister, or
 (ii) on its own initiative;
 (b) may review any policies, programs or projects of government departments and agencies as they relate to the environment;
 (c) shall make recommendations to the Minister respecting its inquiries and reviews under clauses (a) and (b). 1988, c.19, s.5.

Environmental
Management
Functions
Division
Environment
officers

6. (1) Repealed by 1989(2nd),c.1,s.2.

(2) Repealed by 1991,c.10,s.2.

(3) The Minister may designate employees of the government as environment officers for the purposes of this Act. 1988,c.19,s.6; 1989(2nd),c.1,s.2; 1991,c.10,s.2.

Application

7. (1) This section applies to natural persons.

Orders

(2) Where the Minister or an environment officer believes, on reasonable and probable grounds,

(a) that a contaminant has been, is being, or is going to be, discharged into the environment, or, otherwise, that an act or omission of a natural person is or may be a contravention of this Act or the regulations or otherwise be a threat to the environment or environmental health; and

(b) that it is necessary or advisable for the protection of the environment or the prevention or control of danger to human life or health or of damage to property,

he may issue an order to

(c) the natural person who is the owner or previous owner of the contaminant or the source of the contaminant;

(d) the natural person who is or was in occupation of the contaminant or the source of the contaminant;

(e) the natural person who has, or had, the charge, management, or control of the contaminant or the source of the contaminant;

(f) the natural person whose act or omission is or may be a contravention of this Act or the regulations or otherwise be a threat to the environment or environmental health; or

(g) one or more of the above persons.

Terms, conditions
and requirements

(3) An order issued pursuant to subsection (2) may specify terms and conditions, including time limits, and may require the natural person to whom it is directed, at his own cost, if any, to

(a) permit inspection;

(b) permit testing and sampling;

(c) carry out inspections, testing, and sampling, including professional hydro-geological or engineering investigations, to determine the extent and effects of the contaminant;

(d) cease an activity specified in the order either permanently or for a period of time, as specified in the order;

(e) clean, repair, and restore the area affected by the contaminant to the extent indicated in the order or, otherwise, to the satisfaction of the Minister;

- (f) take specified action to prevent or avoid danger to human life or health or damage to property;
- (g) submit a written report with respect to his activities pursuant to clauses (c), (e) and (f);
- (h) do any or all of those things specified in clauses (a) to (g) either forthwith or as of the future date specified in the order.

- (4) For the purpose of investigating threats to the environment or environmental health or otherwise ensuring compliance with this Act or the regulations, an environment officer, or a peace officer may
- Powers of environment officers
- (a) subject to subsections (5), (6) and (7), at any reasonable time, enter and inspect any place in which he believes on reasonable grounds there is a contaminant or any other thing in respect of which this Act or the regulations apply;
 - (b) examine any contaminant or suspected contaminant, or any other thing in respect of which this Act or the regulations apply and take samples of it;
 - (c) require any natural person to produce for inspection or copying, in whole or in part, any record or other document that the environment officer or peace officer believes on reasonable grounds contains any information relevant to the administration of this Act or the regulations; and
 - (d) conduct any tests or analyses or take any measurements.

- (5) An environment officer or a peace officer may not enter a dwelling-place except with the consent of the occupant of the dwelling-place or under the authority of a warrant.
- Entry to dwelling-place

- (6) Where on *ex parte* application a justice is satisfied by information on oath that
- Authority to issue warrant
- (a) the conditions for entry described in subsection (4) exist in relation to a dwelling-place;
 - (b) entry to the dwelling-place is necessary for any purpose relating to the administration of this Act or the regulations; and
 - (c) entry to the dwelling-place has been refused or there are reasonable grounds to believe that entry will be refused,
- the justice may at any time sign and issue a warrant authorizing the environment or peace officer named in the warrant to enter the dwelling-place, subject to any conditions that may be specified in the warrant.

- (7) An environment officer who executes a warrant shall not use force unless he is accompanied by a peace officer and the use of force is specifically authorized in the warrant.
- Use of force

Seizure	<p>(8) Where an environment officer or a peace officer believes on reasonable grounds that an offence under this Act or the regulations has been committed, he may seize and detain any thing</p> <p style="padding-left: 40px;">(a) by means of or in relation to which he believes on reasonable grounds the offence was committed; or</p> <p style="padding-left: 40px;">(b) that he believes on reasonable grounds will afford evidence in respect of the commission of an offence under this Act or the regulations.</p>
Warrant	<p>(9) Where on <i>ex parte</i> application a justice is satisfied by information on oath that there are reasonable grounds to believe that there is in any place any thing</p> <p style="padding-left: 40px;">(a) by means of or in relation to which an offence under this Act or the regulations has been committed or is suspected of having been committed; or</p> <p style="padding-left: 40px;">(b) that there are reasonable grounds to believe will afford evidence in respect of the commission of an offence under this Act or the regulations,</p> <p>the justice may at any time sign and issue a warrant authorizing the environment officer or peace officer named in the warrant to enter and search the place for the thing and, subject to any conditions that may be specified in the warrant, to seize and detain it.</p>
Things liable to seizure	<p>(10) The environment officer or peace officer who executes a warrant may exercise the powers described in subsection (4) and may seize and detain, in addition to any thing mentioned in the warrant, any other thing</p> <p style="padding-left: 40px;">(a) by means of or in relation to which the inspector believes on reasonable grounds an offence under this Act or regulations has been committed; or</p> <p style="padding-left: 40px;">(b) that the inspector believes on reasonable grounds will afford evidence in respect of the commission of an offence under this Act.</p>
Execution of warrant	<p>(11) A warrant shall be executed by day unless the justice authorizes its execution by night.</p>
Where warrant not necessary	<p>(12) A peace officer or an environment officer may exercise any of the powers referred to in subsections (9) and (10) without a warrant if the conditions for obtaining a warrant exist, but, by reason of exigent circumstances, it would not be practical to obtain a warrant.</p>
Notice of reason for seizure	<p>(13) A peace officer or environment officer who seizes and detains a thing under this Act or the regulations shall, as soon as is practicable, advise the owner of the thing or the natural person having possession, care, or control of it at the time of its seizure, of the reason for the seizure.</p>

(14) A peace officer or environment officer who seizes and detains a thing under this Act or the regulations or any person designated by such officer, may

Storage, removal etc.

(a) store, treat, or dispose of the thing at the place where it was seized or move it to any other place for storage, treatment, or disposition; or

(b) recommend to the Minister that an order be issued pursuant to subsection (2) directing the natural person who owns or had the possession, care, or control of it at the time of its seizure, to store, treat, or dispose of it or move it to any other place and store, treat, or dispose of it, in which case the Minister may make such an order.

(15) Subject to subsection (16), a thing that is seized and detained under this Act shall not be detained after

Detention

(a) a determination by a peace officer or an environment officer that the thing or use of it is in conformity with the Act or regulations or will not afford evidence in respect of a commission of an offence under this Act or the regulations; or

(b) the expiration of one hundred and eighty days after the day of seizure,

unless before that time proceedings are instituted in relation to the thing, in which case the thing may be detained until the proceedings are finally concluded.

(16) Where the Minister believes on reasonable and probable grounds that a thing is a threat to the environment or environmental health, or where proceedings mentioned in subsection (15) are instituted within the time provided in that subsection, and at the final conclusion thereof the court orders the forfeiture of the thing that was seized and detained, the Minister may dispose of the thing as he sees fit.

Disposal of forfeited things

(17) Where subsection (16) does not apply, the thing shall be returned to the natural person who owns the thing or who had the possession, care or control of it at the time of its seizure.

Return of things seized where no forfeiture ordered

(18) A sample taken under this Act or regulations may be disposed of in such manner as the Minister considers appropriate.

Samples, disposition of

(19) The Crown, nor any agent or employee thereof is not liable for any costs, loss or damage, resulting from the exercise in good faith of powers pursuant to this Act or the regulations.

Liability

(20) An order issued pursuant to subsection (2) shall run with the land and shall be binding upon the successor or assignee of the natural person to whom it is directed.

Order to bind successors in title

Copies of order on request	<p>(21) Upon the written request of any person as to whether an order has been issued against a particular person, the Minister shall provide the information and if an order has been issued, make a copy available. 1991,c.10,s.3; 1995,c.11,s.1; 2005,c.32.s.1.</p>
Application	<p>7.1 (1) This section applies to corporations.</p>
Orders	<p>(2) Where the Minister or an environment officer believes, on reasonable and probable grounds,</p> <ul style="list-style-type: none"> (a) that a contaminant has been, is being, or is going to be, discharged into the environment, or, otherwise, that an act or omission of a corporation is or may be a contravention of this Act or the regulations or otherwise be a threat to the environment or environmental health; and (b) that it is necessary or advisable for the protection of the environment or the prevention or control of danger to human life or health or of damage to property, <p>he may issue an order to</p> <ul style="list-style-type: none"> (c) the corporation which is the owner or previous owner of the contaminant or the source of the contaminant; (d) the corporation which is or was in occupation of the contaminant or the source of the contaminant; (e) the corporation which has, or had, the charge, management, or control of the contaminant or the source of the contaminant; (f) the corporation whose act or omission is or may be a contravention of this Act or the regulations or otherwise be a threat to the environment or environmental health; or (g) one or more of the above persons.
Terms, conditions and requirements	<p>(3) An order issued pursuant to subsection (2) may specify terms and conditions, including time limits, and may require the corporation to whom it is directed, at its own cost, if any, to</p> <ul style="list-style-type: none"> (a) permit inspection; (b) permit testing and sampling; (c) carry out inspections, testing, and sampling, including professional hydro-geological or engineering investigations, to determine the extent and effects of the contaminant; (d) cease an activity specified in the order permanently or for the period of time specified in the order; (e) clean, repair, and restore the area affected by the contaminant to the extent indicated in the order or, otherwise, to the satisfaction of the Minister; (f) take specified action to prevent or avoid danger to human life or health or damage to property;

- (g) submit a written report with respect to its activities pursuant to clauses (c), (e) and (f);
- (h) do any or all of those things specified in clauses (a) to (g) forthwith or as of the future date specified in the order.

(4) For the purpose of investigating threats to the environment or environmental health or otherwise ensuring compliance with this Act or the regulations, an environment officer, or a peace officer may, Powers of environment officers

- (a) subject to subsections (5), (6) and (7), at any reasonable time, enter and inspect any place in which he believes on reasonable grounds there is a contaminant or any other thing in respect of which this Act or the regulations apply;
- (b) examine any contaminant or suspected contaminant, or any other thing in respect of which this Act or the regulations apply and take samples of it;
- (c) require any corporation to produce for inspection or copying, in whole or in part, any record or other document that the environment officer or peace officer believes on reasonable grounds contains any information relevant to the administration of this Act or the regulations; and
- (d) conduct any tests or analyses or take any measurements.

(5) An environment officer or a peace officer may not enter a dwelling-place except with the consent of the occupant of the dwelling-place or under the authority of a warrant. Entry to dwelling-place

(6) Where on *ex parte* application a justice is satisfied by information on oath that Authority to issue warrant

- (a) the conditions for entry described in subsection (4) exist in relation to a dwelling-place;
 - (b) entry to the dwelling-place is necessary for any purpose relating to the administration of this Act or the regulations; and
 - (c) entry to the dwelling-place has been refused or there are reasonable grounds to believe that entry will be refused,
- the justice may at any time sign and issue a warrant authorizing the environment or peace officer named in the warrant to enter the dwelling-place, subject to any conditions that may be specified in the warrant.

(7) An environment officer who executes a warrant shall not use force unless he is accompanied by a peace officer and the use of force is specifically authorized in the warrant. Use of force

(8) Where an environment officer or a peace officer believes on reasonable grounds that an offence under this Act or the regulations has been committed, he may seize and detain any thing Seizure

- (a) by means of or in relation to which he believes on reasonable grounds the offence was committed; or
- (b) that he believes on reasonable grounds will afford evidence in respect of the commission of an offence under this Act or the regulations.

Warrant

(9) Where on *ex parte* application a justice is satisfied by information on oath that there are reasonable grounds to believe that there is in any place any thing

- (a) by means of or in relation to which an offence under this Act or the regulations has been committed or is suspected of having been committed; or
- (b) that there are reasonable grounds to believe will afford evidence in respect of the commission of an offence under this Act or the regulations,

the justice may at any time sign and issue a warrant authorizing the environment officer or peace officer named in the warrant to enter and search the place for the thing and, subject to any conditions that may be specified in the warrant, to seize and detain it.

Things liable to seizure

(10) The environment officer or peace officer who executes a warrant may exercise the powers described in subsection (4) and may seize and detain, in addition to any thing mentioned in the warrant, any other thing

- (a) by means of or in relation to which the inspector believes on reasonable grounds an offence under this Act or regulations has been committed; or
- (b) that the inspector believes on reasonable grounds will afford evidence in respect of the commission of an offence under this Act.

Execution of warrant

(11) A warrant shall be executed by day unless the justice authorizes its execution by night.

Where warrant not necessary

(12) A peace officer or an environment officer may exercise any of the powers referred to in subsections (9) and (10) without a warrant if the conditions for obtaining a warrant exist, but, by reason of exigent circumstances, it would not be practical to obtain a warrant.

Notice of reason for seizure

(13) A peace officer or environment officer who seizes and detains a thing under this Act or the regulations shall, as soon as is practicable, advise the owner of the thing or the corporation having possession, care, or control of it at the time of its seizure, of the reason for the seizure.

Storage, removal etc.

(14) A peace officer or environment officer who seizes and detains a thing under this Act or the regulations or any person designated by such officer, may

(a) store, treat, or dispose of the thing at the place where it was seized or move it to any other place for storage, treatment, or disposition; or

(b) recommend to the Minister that an order be issued pursuant to subsection (2) directing the corporation which owns or had the possession, care, or control of it at the time of its seizure, to store, treat, or dispose of it or move it to any other place and store, treat, or dispose of it, in which case the Minister may make such an order.

(15) Subject to subsection (16), a thing that is seized and detained under this Act shall not be detained after Detention

(a) a determination by a peace officer or an environment officer that the thing or use of it is in conformity with the Act or regulations or will not afford evidence in respect of a commission of an offence under this Act or the regulations; or

(b) the expiration of one hundred and eighty days after the day of seizure,

unless before that time proceedings are instituted in relation to the thing, in which case the thing may be detained until the proceedings are finally concluded.

(16) Where the Minister believes on reasonable and probable grounds that a thing is a threat to the environment or environmental health, or where proceedings mentioned in subsection (15) are instituted within the time provided in that subsection, and at the final conclusion thereof the court orders the forfeiture of the thing that was seized and detained, the Minister may dispose of the thing as he sees fit. Disposal of
forfeited things

(17) Where subsection (16) does not apply, the thing shall be returned to the corporation which owns the thing or which had the possession, care or control of it at the time of its seizure. Return of things
seized where no
forfeiture ordered

(18) A sample taken under this Act or regulations may be disposed of in such manner as the Minister considers appropriate. Samples,
disposition of

(19) The Crown, nor any agent or employee thereof is not liable for any costs, loss or damage, resulting from the exercise in good faith of powers pursuant to this Act or the regulations. Liability

(20) An order issued pursuant to subsection (2) shall run with the land and shall be binding upon the successor or assignee of the corporation to which it is directed. Order to bind
successors in title

(21) Upon the written request of any person as to whether an order has been issued against a particular person, the Minister shall provide the information and if an order has been issued, make a copy available. Copies of order on
request
1991,c.10,s.3; 1995,c.11,s.2; 2005,c.32,s.2.

Analysis	8. (1) The Minister may, for purposes of this Act or the regulations, designate any person as an analyst, and the person so designated may, with respect to any sample analyzed by him, issue a certificate of analysis.
Certificate	(2) A certificate of an analyst stating that he has analyzed or examined a sample submitted by an environment officer or other person authorized by the Minister and stating the results of his analysis or examination, is admissible in evidence in any legal proceeding or prosecution under this Act or the regulations, without proof of the signature or official character of the person appearing to have signed the certificate of analysis and, in the absence of any evidence to the contrary, is proof of the statements contained in the certificate of analysis.
Attendance of analyst in court	(3) The party against whom a certificate of analysis is produced under subsection (1) may, with leave of the court, require the attendance of the analyst for purposes of cross-examination. 1988,c.19,s.8.

ENVIRONMENTAL IMPACT ASSESSMENT

Undertakings	9. (1) No person shall initiate any undertaking unless that person first files a written proposal with the Department and obtains from the Minister written approval to proceed with the proposed undertaking.
Environmental impact information	(2) The Minister, in considering a proposal submitted pursuant to subsection (1), may <ul style="list-style-type: none"> (a) require the person submitting it to supply such additional information as the Minister considers necessary; (b) require that person to carry out an environmental impact assessment and submit an environmental impact statement; (c) notify the public of the proposal and provide opportunity for comment.
Form and content	(3) An environmental assessment and environmental impact statement shall have such content as the Minister may direct.
Form of statement	(3.1) An environmental impact statement shall be in such form as the Minister may direct.
Fees	(3.2) A person who is required to submit an environmental impact statement under subsection (2) shall pay such fees as and when may be required by the regulations for the Department's review of the environmental impact statement.
Saving	(4) The approval required by this section is in addition to any other requirement imposed by the province or a municipality. 1988,c.19,s.9; 2004,c.4,s.1; 2004,c.4,s.1.

- 9.1** (1) In this section, “C & D disposal site” means a construction and demolition debris disposal site used for the disposal of C & D debris. C & D disposal site, defined
- (2) On the coming into force of this subsection, no approval may be issued by the Minister pursuant to subsection 9(1) of this Act in respect of a proposal for a C & D disposal site. Approval may not be issued
- (3) For greater certainty, subsection (2) shall not be construed to
- (a) terminate or otherwise affect the validity of any approval issued before the commencement of that subsection; or
- (b) affect the ability of the Minister to issue permits under the regulations in respect of C & D disposal sites for which an approval was issued under section 9 prior to the commencement of that subsection. Validity of earlier approvals
- (4) This section applies to every proposal that was made, and not decided by the Minister, before the date this section comes into force, including any proposal that has been or is subject to court proceedings. Proposals
- (5) This section is repealed. Repeal
- (6) This section, other than subsection (5), comes into force on assent. Commencement
- (7) Subsection (5) comes into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council. 2005,c.32,s.1. *Idem*

WATERCOURSES

- 10.** (1) In this section, “watercourse boundary” means
- (a) in the case of a watercourse other than a tidal watercourse, the visible high water mark of the watercourse; and
- (b) in the case of a tidal watercourse, the ordinary or mean high tide mark. watercourse boundary
- (2) No person shall, without a permit from the Minister, alter a watercourse, or wetland, or any part thereof, or water flow therein or the land within 10 metres of the watercourse boundary or wetland boundary, in any manner including
- (a) constructing a control dam, river diversion or drainage diversion;
- (b) draining, pumping, dredging, excavating, or removing soil, water, mud, sand, gravel, aggregate of any kind, or litter from any watercourse or wetland;
- (c) deliberately dumping, infilling, or depositing in any watercourse or on any wetland any soil, water, stones, sand, gravel, mud, rubbish, litter or material of any kind; Permit required for alteration of watercourse

- (d) placing or removing structures, including wharves, breakwaters, slipways, or placing or removing obstructions, including bridges, culverts, or dams;
 - (e) operating machinery on the bed of a watercourse or wetland;
 - (f) disturbing the ground, either by excavating or depositing earthen or other material, in or on a watercourse or wetland; and
 - (g) carrying out any type of instream activity, including debris removal, habitat development, or placement of instream structures.
- 1988,c.19,s.10; 1991,c.10,s.4; 1992,c.21,s.4; 1999,c.24,s.2; 2001,c.34,s.2; 2002,c.5,s.2.

Advisory
Committee

11. The Minister may appoint a watercourse alteration advisory committee to review applications for watercourse or wetland alteration permits and to advise the Minister on proposed watercourse and wetland alteration projects. 1991,c.10,s.5.

BUFFER ZONES, INTENSIVE LIVESTOCK OPERATIONS, FORESTED RIPARIAN ZONES

Definitions

11.1 (1) In this section and in sections 11.2 to 11.5,

buffer zone

(a) “buffer zone” means a buffer zone required to be established and maintained under this section or section 11.2;

forested land

(b) “forested land” means land on which the dominant vegetative cover is trees or shrubs;

headland

(c) “headland” means an area of agricultural land within 200 metres of a watercourse or wetland that intercepts the drainage from row crops;

owner

(d) “owner” includes

- (i) in respect of land of any type referred to in these sections, a lessee and a person having control of that land, or
- (ii) in respect of an intensive livestock operation, a person having control of that operation;

watercourse

(e) “watercourse” means a watercourse that

- (i) has a defined sediment bed and flow-defining banks that connect with a larger watercourse; or
- (ii) exhibits a continuous flow of water during any 72-hour period from July 1 to October 31 of any year;

watercourse
boundary

(f) “watercourse boundary” means the top edge of the bank or slope that defines, under normal high water conditions, the course of water flow or the edge of standing water in a watercourse;

- (g) “wetland” means a wetland identified as open water, deep marsh, shallow marsh or salt marsh as defined in the 1990 Prince Edward Island Wetland Inventory, as amended. wetland
- (1.1) Every owner of non-forested land shall, in accordance with the requirements of this section, establish and maintain buffer zones on all non-forested land owned by that person that is adjacent to a watercourse or wetland. Buffer zones - establishment and maintenance
- (2) This section does not apply in respect of any non-forested land adjacent to a landlocked pond or to a perimeter coastline. Exception
- (2.1) Buffer zones shall be established and maintained on the strip of non-forested land on the upland side of, and immediately adjacent to, a watercourse boundary or a wetland boundary. Location
- (3) For the purposes of this section, buffer zones shall be measured landward from a watercourse boundary or a wetland boundary. Measurement
- (4) Where non-forested land is in non-agricultural use, including but not limited to residential, commercial, industrial, institutional and recreational use, buffer zones shall be at least 10 metres in width. Width, non-agricultural use
- (5) Within a buffer zone referred to in subsection (4)
- (a) the planting and mowing of grass, and the planting and management of trees and shrubs, through natural or artificial means, is permitted; and
 - (b) no person shall disturb the soil or cover vegetation by the dumping or placement of soil or other material, or by excavation, except as permitted pursuant to section 10.
- 10 metre buffer zone; non-agricultural use
- (6) Subject to subsection (6.1), buffer zones shall be at least 10 metres in width where land is in agricultural use. Width, agricultural use
- (6.1) Where land in agricultural use is within 50 metres of the upland boundary of a buffer zone and has a slope of 5% or greater, the buffer zone shall be at least 20 metres in width. Width, certain buffer zones
- (7) Subject to subsections (8) and (10), no person shall plant an agricultural crop in a buffer zone. Prohibition
- (8) Perennial grasses may be planted within a buffer zone where
- (a) no fall tillage is undertaken;
 - (b) renewal of perennial grasses has not occurred within the previous four years;
 - (c) the perennial grass renewal occurs by means of an under seeded cereal crop or by means of frost seeding; and
- Exception--forage crops

(d) tillage of the land and renewal of the perennial grass in the buffer zone does not occur during a year when the land immediately adjacent to the buffer zone is planted in a row crop.

Perennial grass
cover in headland

(9) No person shall plant a row crop on non-forested land in agricultural use within 200 metres of a watercourse boundary or a wetland boundary, unless the downslope direction of the rows ends at a headland that has a perennial grass cover established prior to the year in which the row crop is planted.

Planting in the
buffer zone

(10) An agricultural crop may be planted on non-forested land between 10 metres from a watercourse boundary or a wetland boundary and the upland boundary of the buffer zone if, in the area between 10 and 60 metres from the watercourse boundary or wetland boundary,

(a) no fall tillage of the land is undertaken; and

(b) where the land is planted with a row crop, either

(i) an effective winter cover crop is established by

(A) drilling the seed in within three weeks after the row crop harvest, or

(B) broadcasting seed prior to harvest; or

(ii) a hay or straw mulch is applied to the land at a rate of 3.5 to 4.5 tonnes per hectare within three weeks after the row crop harvest,

not later than November 30 of the year in which the row crop was planted.

Fall tillage
restriction

(11) No person shall undertake fall tillage within a buffer zone. 1999,c.24,s.3; 1999,c.24,s.4.1, 1999,c.3,s.2; 2001,c.34,s.3; 2002,c.5,s.3,s.4; 2005,c.32,s.3.

Prohibition

11.2 (1) No person shall construct a new intensive livestock operation, including any associated buildings, manure storage facilities, exercise yards or concentrated feeding areas within 90 metres of a watercourse boundary or a wetland boundary;

No discharge into
watercourse,
wetland

(2) An owner of an intensive livestock operation shall ensure that no livestock waste or liquid runoff containing livestock waste is discharged from the operation, or the land on which the operation is located, into any watercourse or wetland.

Containment of
livestock waste

(3) The owner of an intensive livestock operation shall ensure that livestock waste or liquid runoff containing livestock waste is prevented from entering a watercourse or wetland by

(a) the construction of an earthen berm;

(b) the construction of a physical barrier; or

(b) diversion of the livestock waste or surface water runoff containing livestock waste into a self-contained water-tight holding facility.

(4) Where the slope of the land of an existing intensive livestock operation within 20 metres of the watercourse boundary or wetland boundary is 9% or less, the owner of the intensive livestock operation shall establish and maintain a buffer zone at least 20 metres wide between all buildings, manure storage facilities, exercise yards, and concentrated feeding areas associated with that intensive livestock operation and the nearest watercourse boundary or wetland boundary.

20 metre buffer zone

(5) Where the slope of the land of an existing intensive livestock operation within 30 metres of the watercourse boundary or wetland boundary is greater than 9%, the owner of the intensive livestock operation shall establish and maintain a buffer zone at least 30 metres wide between all buildings, manure storage facilities, exercise yards and concentrated feeding areas associated with that intensive livestock operation and the nearest watercourse boundary or wetland boundary.

30 metre buffer zone

(6) Notwithstanding subsections (4) and (5), where existing buildings, waste storage facilities, or other permanent infrastructure associated with an intensive livestock operation are not a direct source of contamination to a watercourse or wetland and are situated so that it is not reasonably possible to establish and maintain the required buffer zone, the Minister may reduce or waive the requirements of subsections (4) and (5).

Exception

(7) Subject to subsection (8), no person shall plant an agricultural crop in a buffer zone.

Prohibition

(8) Perennial grasses, or perennial grasses and legumes, may be planted in a buffer zone required to be established and maintained under this section where

Exception; forage crops

- (a) no fall tillage is undertaken; and
- (b) renewal of perennial grasses, or perennial grasses and legumes,, through the use of an under seeded cereal crop or by means of frost seeding, will not occur more frequently than one year in five.

(9) Regeneration of trees and shrubs within the buffer zones required to be established and maintained under this section, through natural or artificial means, is permitted.

Regeneration; trees and shrubs

(10) Repealed by 2002,c.5,s.6.

Application

(11) This section does not apply in respect of an intensive livestock operation located on land adjacent to a landlocked pond or to a perimeter coastline. 2001,c.34,s.4; 2002,c.5,s.5,6.

Exception

Forested riparian zone	11.3 (1) Every owner of forested land shall, in accordance with the requirements of this section, establish and maintain forested riparian zones on all forested land owned by that person that is adjacent to a watercourse or wetland.
Exception	(2) This section does not apply in respect of forested land adjacent to a landlocked pond or to a perimeter coastline.
Location	(2.1) Forested riparian zones shall be established and maintained on the strip of forested land on the upland side of, and immediately adjacent to, a watercourse boundary or a wetland boundary.
Measurement	(3) For the purposes of this section, forested riparian zones shall be measured landward from a watercourse boundary or wetland boundary.
Prohibition	(4) Subject to section 11.5, no person shall convert forested riparian zones to any use other than forest production.
Construction of highway and access roads	(4.1) Notwithstanding subsection (4), the construction of highways and access roads to stream crossings, including all associated runout ditches and sediment ponds that are otherwise permitted under section 10, is allowed if <ul style="list-style-type: none"> (a) the construction is authorized by a permit from the Minister; and (b) the length of disturbed area in the riparian zone along the stream is kept to the minimum required to ensure compliance with the safety and design standards applicable to the construction.
Requirements	(5) Forested riparian zones shall be at least <ul style="list-style-type: none"> (a) 20 metres in width where the slope within 20 metres of the watercourse or wetland boundary is 9% or less; and (b) 30 metres in width where the slope within 30 metres of the watercourse or wetland boundary is greater than 9%.
Prohibition	(6) Within a forested riparian zone no person shall <ul style="list-style-type: none"> (a) apply pesticides using the broadcast method or for non-silvicultural purposes; (b) construct road ditches or road ditch run outs within 15 metres of a watercourse or wetland boundary; (c) expose barren soil except as permitted in accordance with this Act or for site preparation for planting trees or shrubs; or (d) except as permitted by subsection (4.1), operate, or permit to be operated, heavy equipment in a forested riparian zone within 10 metres of the watercourse or wetland boundary. 1999,c.24,s.5; 2001,c.34,s.5; 2001,c.5,s.1; 2002,c.5,s.7,8.
Cutting or removing trees	11.4 (1) Within a forested riparian zone no person shall cut or remove, within a ten-year period, more than one-third of the live trees having a

stem diameter, measured at or less than 20 centimetres above ground level, of

- (a) between 10 and 30 centimetres, or
- (b) 30 centimetres or greater.

(2) Every person who cuts or removes trees within a forested riparian zone shall ensure that the trees are cut or removed by means of a selection harvest. Selection harvest

(3) Subsections (1) and (2) shall be applied on a property or parcel basis as identified with a parcel identification number in the provincial property mapping records. Parcel identification number

(4) The first ten-year period shall commence on the date of the first cut or selection harvest following the coming into force of this section. Commencement

(5) A person may cut or remove trees in excess of the restrictions in subsection (1) or (2) with the written permission of the Minister. Exception

(6) The Minister may, on application, give the written permission referred to in subsection (5), where Permission to exceed restrictions

- (a) the Minister is satisfied that
 - (i) the trees located on a property within the forested riparian zone lack wind stability, or
 - (ii) sound silvicultural reasons exist for cutting or removing trees in the forested riparian zone; and
- (b) the person wishing to cut or remove the trees has submitted a riparian zone treatment plan that is satisfactory to the Minister. 1999,c.24,s.5; 2001,c.34,s.6; 2002,c.5,s.9.

11.5 (1) The Minister may issue a permit to an applicant for the conversion of the use of a property located in a forested riparian zone to residential use on such terms and conditions as the Minister considers necessary. Permit

(2) An applicant for a permit under subsection (1) shall apply on the form approved by the Minister and include the following with the application: Application

- (a) a map drawn to scale showing the location of
 - (i) the property to be converted, including its dimensions,
 - (ii) sensitive environmental features including wetlands, watercourses, sand dunes, and other such features, and
 - (iii) proposed buildings, water and septic services, driveways and any other disturbances of the riparian zone;
- (b) a description of the proposed construction methods;
- (c) a copy of the subdivision lot approval dated prior to January 1, 1999; and

(d) such other information as the Minister may require.

Permit (3) Notwithstanding section 11.4, a person who holds a permit issued under this section may convert the use of a property located in a forested riparian zone to residential use in accordance with this section and with the terms and conditions of the permit.

Expiry (4) A permit expires on the date shown in the permit.

Prohibition (5) A person who holds a permit under this section shall ensure that
 (a) at least 15 metres of the forested riparian zone that is located adjacent to the watercourse boundary or wetland boundary remains undisturbed; and
 (b) no part of the forested riparian zone is disturbed until the owner holds the necessary building permit and sewage disposal system permit. 2002,c.5,s.10.

WELLS

Wells **12.** Except in accordance with the regulations, no person shall
 (a) engage in the business of drilling wells;
 (b) undertake the construction of a well; or
 (c) undertake any operation incidental to the reconstruction or abandonment of a well. 1988, c.19, s.12.

BULK WATER REMOVAL

Water transfer or removal **12.1** (1) No person shall drill for, extract, take or use groundwater for the purpose of transfer or removal from the province.

Idem (2) No person shall extract, remove or withdraw water from any water basin, watercourse or other surface water body in the province for the purpose of transfer or removal from the province.

Exceptions (3) Subsections (1) and (2) do not apply to water
 (a) that is to be used for drinking water purposes and is packaged in Prince Edward Island in containers having a capacity of not more than 25 litres; or
 (b) that is removed in the ordinary course of carrying water in a vehicle, vessel or aircraft for use by persons or animals while they are being transported in it.

Idem (4) Subsections (1) and (2) do not apply to water
 (a) that is removed in a vessel, vehicle or aircraft and is necessary for
 (i) the ordinary operation of the vehicle, vessel or aircraft, or

- (ii) the transport of food or products in the vehicle, vessel or aircraft; or
 (b) that is removed, with the written permission of the Minister, to meet short-term safety, security or humanitarian needs. 2001,c.34,s.7.

WASTE TREATMENT AND WATER SUPPLY SYSTEMS

13. (1) No person shall undertake the establishment of a waste treatment system or water supply system, or shall change any existing system, without first obtaining written approval from the Minister. Approval required

(2) An application for approval pursuant to subsection (1) shall be supported by the plans and specifications of the waste treatment system or water supply system and the work to be undertaken, and such other information as the Minister may require. Plans and detailed information

(3) Where it appears to the Minister that any person has contravened subsection (1), the Minister may order an investigation of the violation and may order the person to take such action as the Minister considers necessary. 1988,c.19,s.13. Investigation and remedial action

14. (1) Where the Minister is satisfied that for the purpose of protecting the environment or environmental health it is necessary to do so he may, by order, require that an area be served by a water supply system or waste treatment system. Minister may order system

(2) An order under subsection (1), shall be directed to the person causing or likely to cause the hazard to the environment or environmental health. 1988,c.19,s.14. Idem

15. Repealed by 1992,c.21,s.5. Alterations

16. Waste treatment and water supply systems shall at all times be maintained and operated in such manner and with such facilities as the Minister may direct. 1988,c.19,s.16. Maintenance

17. When the Minister finds it necessary that any public utility locate any portion of a waste treatment system or water supply system on private property and that no agreement can be reached with the owner, the Minister may order, subject to the approval of the Lieutenant Governor in Council, on such terms and conditions and subject to the payment of such compensation, if any, as may seem just, that the public utility have leave to enter upon the private property and there locate any portion of a system and have access thereto at all times for repairing, operating or maintaining the same. 1988,c.19,s.17. Entry on private property

- Water and sewerage corporations **18.** (1) The Lieutenant Governor in Council may, by order, create a body to acquire, construct, establish, alter, extend, control, manage, maintain, or operate any waste treatment system, waste management system or water supply system, and may constitute a body so created a body corporate for the purposes of the Act and may
- (a) prescribe its name, composition and functions;
 - (b) prescribe the manner of appointment of its members and their terms of office;
 - (c) prescribe the functions of the corporation; and
 - (d) subject to section 18.1, exempt the corporation and any works operated by it in whole or in part from the provisions of the *Island Regulatory and Appeals Commission Act* R.S.P.E.I. 1988, Cap. I-11, and the *Water and Sewerage Act* R.S.P.E.I. 1988, Cap. W-2.
- Powers (2) A corporation constituted under subsection (1), or the Minister, may
- (a) acquire, construct, establish, alter, extend, control, manage, and operate waste treatment systems, waste management systems and water supply systems;
 - (b) provide and supply water to a municipality or person;
 - (c) receive, treat, or dispose of sewage for a municipality or person;
 - (d) make agreements with a municipality or person with respect to the operation of a waste treatment system or water supply system, or the reception, treatment and disposal of sewage;
 - (e) acquire, alienate, hold, dispose of real or personal property;
 - (f) engage and pay personnel;
 - (g) subject to section 18.1, assess, charge, and collect fees for services to a municipality or person;
 - (h) operate a waste treatment system or water supply system on behalf of government, municipality or person;
 - (i) perform any function authorized by the Lieutenant Governor in Council;
 - (j) prescribe the remuneration of its members;
 - (k) establish a system for the collection, transportation, separation, treatment or disposal of waste.
- Power to levy rates (3) A corporation constituted under subsection (1) may levy rates in respect of water and sewerage services and for the collection, transportation, separation, treatment and disposal of waste.
- Maximum frontage upon which rate may be levied (4) Rates may be levied by a corporation constituted under subsection (1) for water or sewerage services by means of frontage charges and where rates are so levied, the maximum frontage of any parcel of land in respect of which rates may be levied is five hundred feet if the parcel

qualifies for a farm assessment under the *Real Property Assessment Act* R.S.P.E.I. 1988, Cap. R-4.

(5) Rates levied pursuant to subsection (3) constitute a lien on the real property on which the rate is levied until payment is made and that lien has priority over every claim, privilege or encumbrance of every person, except the Crown against that property.

Lien

(6) For the purposes of this Act, a person along whose lands run sewer or water mains shall be deemed to receive service notwithstanding that such sewer or water mains are not physically connected by lateral lines to any residence, building or other structure situate upon the said lands of such person. 1988,c.19,s.18; 1989,c.9,s.2; 1991,c.10,s.6; 1991,c.18,s.22; 1995,c.11.s.3; 2005,c.34,s.1.

Service deemed to be received

18.1 (1) In this section

Definitions

(a) “Commission” means the Island Regulatory and Appeals Commission established under the *Island Regulatory and Appeals Commission Act*;

Commission

(b) “Corporation” means the Island Waste Management Corporation established by an order made under section 18;

Corporation

(c) “current rate” means a rate that is charged, on the day before this section comes into force, by the Corporation for a service it provides;

current rate

(d) “service” means a service respecting the collection, transportation, separation, treatment and disposal of waste.

service

(2) When the Corporation wishes to vary the rates for any existing services, or to establish rates for any new services, the Corporation shall submit for the review and approval of the Commission

Submission of rates for review and approval

(a) a schedule of the proposed rates together with a description of the services to which they relate and any conditions or terms of service that are to apply in respect of those rates;

(b) a submission justifying or explaining the proposed rates; and

(c) such other information concerning the proposed rates and the financial affairs of the Corporation as the Commission may require.

(3) On receipt of a submission by the Corporation made in accordance with subsection (2), the Commission

Review by Commission

(a) shall cause notice of the submission to be published that invites written submissions from the public; and

(b) after allowing such time as the Commission considers appropriate

for public submissions to be made, shall review the submission of the Corporation and any written submissions of the public that the Commission has received.

Decision of
Commission

(4) After reviewing the submissions referred to in subsection (3), the Commission may, subject to subsection (9),

- (a) approve the rates proposed by the Corporation;
- (b) determine and fix new rates; or
- (c) refuse the rates proposed and confirm the existing rates.

Decision in 60 days

(5) The Commission shall make a decision under subsection (5) not later than 60 days from the date of the submission by the Corporation under subsection (2).

Rates chargeable

(6) Subject to subsection (7), the rates that are approved, determined and fixed or confirmed by the Commissioner under this section are the lawful rates of the Corporation until altered or modified under this section.

Current rates

(7) The current rates of the Corporation are the lawful rates of the Corporation until altered under this section.

Lawful rates

(8) The Corporation shall not charge, and shall not be entitled to collect with respect to the provision of a service, any rate other than one that is a lawful rate as determined by or under this section.

Corporation entitled
to recover costs

(9) When making a decision in respect of a submission by the Corporation, the Commission shall allow the Corporation to earn, annually or within such other period as the Commission considers appropriate, such return from its rates for each type of service the Corporation provides as the Commission considers is just and reasonable to recover the costs incurred by the Corporation to provide that type of service.

Earnings

(10) The Commission may allow the Corporation to earn, in addition to the return required by subsection (8), such amount as the Commission considers appropriate in respect of the operation of the Corporation.
2005,c.34,s.1

Saving

19. The power vested in the Island Regulatory and Appeals Commission to set sewer and water rates is not affected by this Act except where otherwise provided under clause 18(1)(d). 1988,c.19,s.19;1991,c.18,s.22.

DISCHARGE OF CONTAMINANTS

20. Except as permitted by the *Pesticides Control Act* R.S.P.E.I. 1988, P-4, the regulations or with the written permission of the Minister no person shall

Spills

- (a) discharge, or cause or permit to be discharged;
- (b) being the owner or person having control of a contaminant, discharge or cause or permit to be discharged,

a contaminant into the environment. 1992,c.21,s.6;2001,c.34,s.8.

21. (1) Every person who, without permission under section 20, discharges, or causes or permits to be discharged, a contaminant into the environment, or who owns or has control of a contaminant which is discharged into the environment shall

Notice and remedial measures

- (a) immediately notify the Department; and
- (b) take such action as the Minister may direct
 - (i) to investigate and define the extent, nature and impact of the contaminant,
 - (ii) to repair, restore and remedy the environment or to confine or contain the effects of the contaminant.

(2) Where any person fails to take such action as is directed by the Minister pursuant to subsection (1), and where the discharge of a contaminant into the environment has caused, is causing or may cause a threat to the environment or environmental health, the Minister may make application to the Supreme Court for an injunction requiring that person to carry out that action. 1992,c.21,s.7.

Injunction

CONTAMINATED SITES

21.1 (1) The Minister shall establish a contaminated sites registry.

Contaminated sites registry

(2) The Minister

Access to registry, fees

- (a) shall provide for access by the public to information in the registry; and
- (b) may impose fees, in accordance with the regulations, for providing access to or supplying information from the registry.

(3) Subject to this section, where, after considering the evidence, standards and criteria that the Minister considers relevant, and all regulations made under clause 25(1)(w), the Minister is of the opinion that an area of the environment is a contaminated site, the Minister may designate that area of the environment as a contaminated site.

Designation of contaminated sites

(4) The Minister shall cause areas of the environment designated as contaminated sites to be entered into the contaminated sites registry.

Entry of contaminated sites in registry

- Notice of designation (5) The Minister shall, before designating an area of the environment as a contaminated site,
- (a) give notice, in writing, to the registered owner, and to any occupier, of the area of the Minister's intention to designate the area as a contaminated site; and
 - (b) provide a reasonable opportunity for the registered owner, and to any occupier, of the area, to comment on the Minister's intention to designate the area of the environment as a contaminated site.
- Postponement of designation (6) The Minister may postpone a designation under subsection (3) in respect of an area of the environment if
- (a) the registered owner, or any occupier, of the area enters into an agreement with the Department, satisfactory to the Minister, for the repair, restoration and remediation of the area; and
 - (b) the registered owner, or any occupier, of the area, as the case may be, complies, to the Minister's satisfaction, with the agreement.
- Notice of designation (7) The Minister shall, after designating an area of the environment as a contaminated site under subsection (3), give written notice of the designation, together with reasons for the designation, to the registered owner, and to any occupier, of the area.
- Alteration of contaminated sites (8) After an area of the environment has been designated as a contaminated site, the registered owner, or any occupier, of the contaminated site shall not alter the contaminated site unless the registered owner, or occupier, of the contaminated site, as the case may be, first obtains the written authorization of the Minister to do so.
- Requirement for further research, etc. (9) The Minister may, on written application, issue a written authorization referred to in subsection (8) and may require any person who makes the application to provide any information, research, or study the Minister considers necessary to assess the application.
- Orders relating to contaminated sites (10) A copy of an order issued under this Act in respect of an area of the environment that is designated as a contaminated site shall be placed in the contaminated sites registry.
- Cancellation of designation (11) Where the Minister is of the opinion that the area of the environment is no longer a contaminated site, the Minister shall
- (a) cancel the designation of a contaminated site made under subsection (3); and
 - (b) cause the removal of the designation from the contaminated sites registry. 2004,c.30,s.2.

SAND DUNES AND BEACHES

- 22.** (1) No person shall, without written permission of the Minister,
- (a) operate a motor vehicle on a beach or a sand dune;
 - (b) carry out any activity that will or may
 - (i) interfere with the natural supply or movement of sand to or within a beach or a sand dune,
 - (ii) alter, remove, or destroy natural stabilizing features, including vegetation, of a beach or a sand dune.
- (2) Clause (1)(a) does not apply to the operation of a motor vehicle on a beach for the conduct of activities related to the legal harvesting of a fishery resource or the legal removal of beach material. 1991,c.10,s.7.
- 23.** Repealed by 1991,c.10,s.8.

Operation of motor vehicles

Activities related to moss harvesting etc. excepted

Idem

LITTERING

- 24.** No person shall deposit litter
- (a) upon any land not approved by the Minister for this purpose; or
 - (b) into or upon any watercourse or wetland. 1988, c.19, s.24; 2001,c.34,s.9.

Litter

REGULATIONS

- 25.** (1) The Lieutenant Governor in Council may make regulations for the enhancement and protection of the environment, and in particular,
- (a) respecting environmental impact assessments and ensuring specific opportunity for public involvement in the screening and assessment of undertakings;
 - (b) establishing environmental quality standards for part or all of the province;
 - (c) respecting the procedures to be followed with regard to applications for licenses or permits required under the Act or the regulations and the issuance, refusal, revocation and suspension of licenses or permits and respecting appeals;
 - (d) respecting the fees that are payable in respect of
 - (i) an application for a license or permit,
 - (ii) an inspection,
 - (iii) waste management,
 - (iv) a record search,
 - (v) the review of an environmental impact statement, and
 - (vi) such other matters or services provided under the Act of the regulations.

Regulations

- (e) respecting the design, location, configuration, construction, adaption, alteration, operation, maintenance and installation of undertakings;
- (f) respecting plumbing standards, prescribing the use and application of the plumbing standards, and requiring a person to obtain a permit before plumbing is installed or altered;
- (g) respecting the design, construction, adaption, alteration, operation, maintenance and installation of systems, processes or works to abate, manage, dispose of or control contaminants, waste or other environmental damage, and those systems, processes or works may include waste management sites, waste treatment systems and incinerators;
- (h) respecting the method of collection, treatment, distribution and disposal of contaminants;
- (i) prescribing limits, terms and conditions on the release of contaminants and the prohibition of release of contaminants from any undertaking;
- (j) regulating or prohibiting the use of any product, container, including beverage containers, or other substance that may adversely affect the environment;
- (k) respecting wells and attachments thereto and the licensing of well drillers;
- (l) regulating, controlling, prohibiting, directing, or providing for the withdrawal, use, quality, quality monitoring, storage and handling of water from any natural or artificial source including any water supply system;
- (l.1) requiring delineation of well-head protection areas and respecting the implementation of controls on activity within the well-head protection area which may include the restriction and prohibition of any activity in the area;
- (m) regulating, controlling, prohibiting, or providing for alteration of any kind of the natural features of any watercourse, beach, sand dune or wetland, including draining, diverting, dredging, infilling, excavating or removing of soil, mud, sand, gravel, rubbish or other material of any kind;
- (n) requiring an environmental permit for the construction or operation of certain undertakings, and the issuance or withdrawal of the permits;
- (o) respecting the methods of analyzing samples and prescribing the equipment or apparatus or structures to be used for taking samples;
- (p) respecting chemical or petroleum storage tank systems;
- (q) regulating the disposal of litter;
- (r) prescribing forms;
- (s) respecting wastewater emissions;

- (t) respecting emissions into the air;
- (u) respecting excavation pits;
- (v) controlling, restricting or prohibiting any act for the purpose of abating noise or controlling noise levels;
- (w) respecting the standards and criteria to be used for the purpose of designating an area of the environment as a contaminated site;
- (x) respecting agreements made under subsection 21.1(6) for the repair, restoration and remediation of contaminated sites pursuant to subsection 21.1(3);
- (y) respecting the contaminated sites registry and its operation, including the location and hours of the offices of the Registry;
- (z) respecting assessment and rehabilitation criteria of contaminated sites and contaminant releases pursuant to subclause 21(1)(b)(ii);
- (aa) for the purposes of subsection 21.1(8), defining the word “alter”, or describing the actions pertaining to, or the uses of, an area of the environment designated as a contaminated site that constitute an alteration of that area; and
- (bb) respecting the cancellation and removal of a designation of a contaminated site from the contaminated sites registry.

(2) A regulation made under subsection (1) may adopt by reference in whole or in part, with such changes as the Minister considers necessary, any code or standard, or any regulation made by any other government in Canada or recognized technical organization, and may require compliance with any code, standard or regulation so adopted. 1988,c.19, s.25;1992,c.21,s.8; 2004,c.30,s.3; 2004,c.4,s.2. Adoption of codes

GENERAL

26. No person shall knowingly give false information in any application, return, or statement made to the Minister, an environment officer, or any employee of the Department, in respect of any matter under this Act or the regulations. 1988,c.19,s.26. False information

27. (1) This Act and the regulations may be enforced by Enforcement

- (a) the Minister;
- (b) an environment officer;
- (c) any officer or member of the Prince Edward Island Provincial Police, as defined in the *Police Act* R.S.P.E.I. 1988, Cap. P-11;
- (d) any officer or member of the Royal Canadian Mounted Police;
- (e) a game officer appointed under the *Fish and Game Protection Act* R.S.P.E.I. 1988, Cap. F-12;
- (f) a fisheries officer designated under the *Fisheries Act* (Canada) R.S.C. 1985, Chap. F-14.

Obstruction	(2) No person shall obstruct or attempt to obstruct any person lawfully carrying out the enforcement of this Act or the regulations. 1991,c.10,s.9.
Revocation, terms and conditions	<p>28. The Minister may, as the Minister considers necessary,</p> <p>(a) revoke an order, license, certificate, approval, permit, permission or other authorization issued under this Act;</p> <p>(b) impose terms and conditions on any authorization referred to in clause (a); and</p> <p>(c) alter any terms and conditions of any such authorization. 2002,c.5,s.11.</p>
Orders - service	<p>29. (1) No person to whom an order is directed pursuant to this Act or the regulations is required to comply with the order until the order has been served on the person.</p>
When order sufficiently served	<p>(2) Any order issued pursuant to this Act or the regulations is deemed to be sufficiently served</p> <p>(a) upon a copy being personally served on the person to whom it is directed;</p> <p>(b) upon a copy being sent by facsimile or by other electronic means to the person to whom it is directed and an acknowledgement of receipt being received;</p> <p>(c) five days after a copy is sent by mail addressed to the person to whom it is directed at the last known address for that person; or</p> <p>(d) in the case of a registered owner of real property, five days after a copy is sent by mail to the address for the registered owner shown on the last revised assessment roll.</p>
Service of director or officer of corporation	<p>(3) Where the person to be served is a corporation, service on a director, officer or recognized agent of the corporation in accordance with subsection (2) is deemed to be service on the corporation for the purposes of this Act.</p>
Order for substituted service	<p>(4) Where it is impractical for any reason to serve an order in a manner referred to prescribed in subsection (2), an ex parte application may be made to a judge of the Supreme Court who may make an order for substituted service providing for such steps to be taken to bring the matter to the attention of the person to be served.</p>
Evidence	<p>(5) Any order issued pursuant to this Act or the regulations shall be <i>prima facie</i> proof in proceedings in any court not only that the order was legally made, but also that every administrative prerequisite necessary to enable the making of the order was done and satisfied, and no further proof than the mere production of the original order or a copy thereof certified by the Minister or his authorized representative, is necessary. 1988,c.19,s.29; 2005,c.32,s.4.</p>

30. The Minister, environment officers, or any other persons acting under the authority of this Act or the regulations are not personally liable for any loss or damage suffered by any person by reason of anything in good faith done or omitted to be done in the purported exercise of any powers given by this Act or the regulations. 1988,c.19,s.30. Liability of officers

31. (1) In addition to any other remedy provided by law, any contravention or violation of this Act or the regulations may be restrained by injunction at the instance of the Minister upon application to the Supreme Court, and the court shall grant the injunction upon being satisfied that the granting of the injunction is advisable to ensure compliance with this Act or the regulations. Injunction

(2) An injunction granted pursuant to subsection (1) may be prohibitive or mandatory in nature, and where mandatory, may require the taking of action to clean or restore the environment. 1988, c.19, s.31. Form

32. (1) Any natural person who contravenes or violates Penalty

- (a) any provision of this Act or the regulations; or
- (b) any term, condition or provision of any order, license, certificate, approval, permit, permission or other authorization issued under this Act or the regulations,

is guilty of an offence and is liable on summary conviction to a fine of not less than \$200 or more than \$10,000, or to imprisonment for 90 days, or to both, and to pay such restitution as the judge thinks fit to any person aggrieved or affected by the contravention or violation.

(2) Notwithstanding subsection (1), any natural person who Idem contravenes or violates

- (a) any provision of sections 11.1 to 11.5 of this Act; or
- (b) any term, condition or provision of any permit, permission or other authorization issued under any of these sections,

is guilty of an offence and is liable on summary conviction to a fine of not less than \$3,000 or more than \$10,000, and to pay such restitution as the judge thinks fit to any person aggrieved or affected by the contravention or violation.

(3) Any corporation which contravenes or violates Idem

- (a) any provision of this Act or the regulations; or
- (b) any term, condition or provision of any order, license, certificate, approval, permit, permission or other authorization issued under this Act or the regulations,

is guilty of an offence and is liable on summary conviction to a fine of not less than \$1,000 or more than \$50,000, or its directors to imprisonment for 90 days, or to both, and to pay such restitution as the

judge thinks fit to any person aggrieved or affected by the contravention or violation.

Idem

(4) Notwithstanding subsection (3), any corporation which contravenes or violates

(a) any provision of sections 11.1 to 11.5 of this Act; or

(b) any term, condition or provision of any permit, permission or other authorization issued under any of these sections,

is guilty of an offence and is liable on summary conviction to a fine of not less than \$10,000 or more than \$50,000, and to pay such restitution as the judge thinks fit to any person aggrieved or affected by the contravention or violation.

Personal liability of corporate officers

(5) Any officer, director or agent of a corporation who directs, authorizes, assents to, acquiesces in, or participates in, the commission of an offence by that corporation under subsection (3) or (4) is guilty of an offence and

(a) is liable, in respect of the commission of an offence by the corporation under subsection (3), to any penalty set out in subsection (1); and

(b) is liable, in respect of the commission of an offence by the corporation under subsection (4), to any penalty set out in subsection (2).

Continuing offence

(6) Where a contravention or violation of any provision of the Act or the regulations continues for more than one day, the offender is guilty of a separate offence for each day that the contravention or violation continues.

Limitation period

(7) Proceedings with respect to an offence under this Act or the regulations may be instituted at any time within two years after the time when the subject matter of the proceedings arose.

Prosecution of Crown

(8) For the purposes of subsections (3) and (4), Her Majesty in right of the province or in right of Canada is deemed to be a corporation.. 1991,c.10,s.10; 1994,c.16,s.1; 2002,c.5,s.12.

Remedial action authorized by court

33. (1) Where

(a) pursuant to this Act or the regulations,

(i) the Minister or an environment officer has issued an order, or

(ii) the Minister has given a direction; and

(b) the person to whom the order is issued, or the direction is given, has failed to comply with it,

the Minister may apply to the Supreme Court for an order authorizing the Minister to take such remedial action as may be specified in the order.

(2) After taking remedial action under a court order pursuant to subsection (1), the Minister may issue an order for the costs of the remedial action against the person to whom the original order or direction was given. 1995,c.11,s.5; 2005,c.32,s.5.

Order for costs of remediation

34. (1) Where

- (a) pursuant to this Act or the regulations,
 - (i) the Minister or an environment officer has issued an order, or
 - (ii) the Minister has given a direction;
- (b) the person to whom the order is issued, or the direction is given, has failed to comply with it; and
- (c) the order or direction relates to a matter which in the opinion of the Minister requires immediate action to prevent further injury to the environment,

Immediate action required, order or direction

the Minister may take the appropriate remedial action to carry out the terms of the order or direction.

(2) After taking remedial action under subsection (1) the Minister may issue an order for the costs of the remedial action against the person to whom the original order or direction was given. 1995,c.11,s.5; 2005,c.32,s.6.

Order for costs

35. (1) Where contamination or damage of any kind is caused by failure of any person to comply with the provisions of this Act or regulations and where the contamination or damage relates to a matter which in the opinion of the Minister requires immediate action to prevent further injury to the environment, the Minister may take the appropriate remedial action to clean up the contamination or damage.

Immediate action required, no order or direction

(2) After taking remedial action under subsection (1) the Minister may issue an order for the costs of the remedial action against the person who has caused the contamination or damage. 1995,c.11,s.5.

Order for costs

36. An order for cost of remediation under subsection 33(2), 34(2) or 35(2) may be filed with the Registrar of the Supreme Court at any time thirty days after it is issued and, when so filed, the order is of the same force and effect as if it were a judgment. 1995,c.11,s.5.

Filed order has effect as judgment

APPENDIX 2