

March 15, 2017

CONSULTATION DRAFT

Water Act

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

PART I

INTERPRETATION, PURPOSE AND APPLICATION

1. In this Act,

Definitions

- (a) “adverse effect” means an effect that impairs or damages water resources, or that may negatively affect related aspects of human or animal health or an aquatic ecosystem; adverse effect
- (b) “analyst” means a person appointed as an analyst pursuant to the *Environmental Protection Act* R.S.P.E.I. 1988, Cap. E-9; analyst
- (c) “approval” means, unless the context indicates otherwise, an approval given under this Act or the regulations that is valid and current, including, without limiting the generality of the foregoing, approval
- (i) a license,
 - (ii) a certificate of approval,
 - (iii) a certificate of qualification,
 - (iv) a certificate of registration,
 - (v) a consent,
 - (vi) a permit or an endorsement on a permit,
 - (vii) a variance,
 - (viii) an exemption, and
 - (ix) a permission;
- (d) “aquatic ecosystem” means the components of the environment related to, living in or located in or on, water or the beds, banks or shores of a water body, including, without limiting the generality of the foregoing, aquatic ecosystem
- (i) all organic and inorganic matter, and
 - (ii) all living organisms and their habitat;
- (e) “contaminant” includes any solid, liquid, gas, waste, odour, vibration, radiation or sound, or a combination of them, contaminant
- (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,
- (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;

Department	(f) “Department” means the Department of Communities, Land and Environment;
discharge	(g) “discharge” includes any drainage, deposit, release, spill, leak or emission;
domestic purpose	(h) “domestic purpose”, with respect to water, means the use of water for household purposes including drinking water, food preparation and sanitation, and to meet other basic household requirements;
emergency field order	(i) “emergency field order” means an order issued pursuant to section 22;
environment	(j) “environment” includes <ul style="list-style-type: none"> (i) air, land and water, (ii) plant and animal, including human, life, and any feature, part, component, resource or element thereof;
environment officer	(k) “environment officer” means an environment officer designated or appointed as an environment officer pursuant to the <i>Environmental Protection Act</i> , and includes persons who are environment officers by reason of subsection 6(5) of the <i>Environmental Protection Act</i> ;
environmental flow needs	(l) “environmental flow needs” means the volume and timing of water flow in a watercourse required for the proper functioning of the aquatic ecosystem of the watercourse;
fire suppression purpose	(m) “fire suppression purpose”, with respect to water, means the use or storage of water for the protection of life and property in the event of a fire;
geothermal purpose	(n) “geothermal purpose” means the use of groundwater or another fluid to transfer thermal energy to or from the ground, and includes both heating and cooling applications;
groundwater	(o) “groundwater” means water occurring below the surface of the ground;

- (p) “Island Regulatory and Appeals Commission” means the Island Regulatory and Appeals Commission established under section 2 of the *Island Regulatory and Appeals Commission Act* R.S.P.E.I. 1988, Cap. I-11; Island Regulatory and Appeals Commission
- (q) “Minister” means the Minister of Communities, Land and Environment; Minister
- (r) “motor vehicle” has the same meaning as in the *Environmental Protection Act*; motor vehicle
- (s) “municipal wastewater treatment system” means a wastewater treatment system owned by a municipality or operated by or on behalf of a municipality; municipal wastewater treatment system
- (t) “municipal water supply system” means a water supply system owned by a municipality or operated by or on behalf of a municipality; municipal water supply system
- (u) “municipality” has the same meaning as in the *Municipal Government Act* S.P.E.I. 2016, Cap. 44; municipality
- (v) “person responsible” means person responsible
- (i) the owner of the matter or thing that is or may be regulated or prohibited under this Act,
 - (ii) the registered owner or the occupier of real property on which the adverse effect or the activity, matter or thing that is or may be regulated or prohibited under this Act has occurred or may occur, or was or is located, as the case may be,
 - (iii) a previous owner of the matter or thing,
 - (iv) a person who has or has had care, management or control of the activity, matter or thing, including care, management and control during the development of the activity, matter or thing and care, management and control during the generation, manufacture, treatment, sale, handling, distribution, use, storage, disposal, transportation, display or method of application of the matter or thing, as the case may be,
 - (v) a successor, assignee, executor, administrator, receiver, receiver manager or trustee of a person referred to in subclauses (i) to (iv), or
 - (vi) a person who acts as the principal or agent of a person referred to in subclauses (i) to (v);
- (w) “plan for a water management area” means a plan developed in accordance with section 30, 32, 34 or 36, as applicable; plan for a water management area
- (x) “sewage” means any human waste emitted from a house or premises where people work, live or frequent, and includes wastewater from ablutions, culinary activities and laundering; sewage

sewage disposal system	(y) “sewage disposal system” includes any system or part of a system for disposing of sewage or wastewater not directly connected to a municipal or central sewage collection system approved under this Act or the regulations;
wastewater	(z) “wastewater” means sewage or commercial or industrial process water;
wastewater treatment system	(aa) “wastewater treatment system” means system for the collection, treatment and disposal of wastewater, but does not include a sewage disposal system;
water	(bb) “water” includes liquid and frozen water in a watercourse or wetland or that is groundwater;
water management area	(cc) “water management area” means an area designated under Part IV as <ul style="list-style-type: none"> (i) a water sustainability plan area, (ii) an aquatic ecosystem protection area, (iii) a municipal water supply area, or (iv) a well-field protection area;
water protection order	(dd) “water protection order” means a water protection order issued under section 21;
water resources	(ee) “water resources” means groundwater, water in watercourses, water in wetlands and water derived from groundwater sources, from watercourses and from wetlands;
water supply system	(ff) “water supply system” means a system for the collection, treatment, purification, storage, supply or distribution of water to <ul style="list-style-type: none"> (i) five or more households, or (ii) a public building or place of assembly;
water use	(gg) “water use” means the use of water for domestic purposes, fire suppression purposes, geothermal purposes or other purposes specified to be water use purposes by the regulations;
watercourse	(hh) “watercourse” means an area which has a sediment bed and may or may not contain water, and without limiting the generality of the foregoing, includes 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 body, and water therein, and any part thereof, up to and including the watercourse boundary;
watershed	(ii) “watershed” means the area drained by, or contributing to, a watercourse;
well	(jj) “well” means an artificial opening in the ground <ul style="list-style-type: none"> (i) from which water is obtained,

- (ii) made for the purpose of exploring for or obtaining water, or
- (iii) made for geothermal purposes;

(kk) “wetland” means an area that contains hydric soil and aquatic or water-tolerant vegetation, and may or may not contain water, and includes

- (i) any water in the area and everything up to and including the wetland boundary, and
- (ii) without limiting the generality of the foregoing, any area identified in the Prince Edward Island Wetland Inventory as open water, deep marsh, shallow marsh, salt marsh, seasonally flooded flats, brackish marsh, a shrub swamp, a wooded swamp, a bog or a meadow.

2. The purpose of this Act is to support and promote the management, protection and enhancement of the province’s water resources, in recognition that

- (a) the Government has a guardianship role to play in ensuring that the quality, quantity, allocation, conservation and protection of water is managed in the interests of a common good that benefits and accommodates all living things in the province, and their supporting ecosystems;
- (b) access for everyone to a sufficient quantity and safe quality of reasonably affordable and accessible water for personal and domestic uses, and to basic sanitation that is safe and hygienic, is essential for an adequate standard of living;
- (c) water is a renewable but finite resource, the withdrawal and use of which should be subject to a transparent evaluation and approval process to ensure its long term sustainability and availability;
- (d) every person in the province has a duty to prevent, minimize and repair harm that the person may cause to water resources or the ecosystems supported by water resources;
- (e) where there is a threat of serious or irreparable damage to water resources, the lack of scientific certainty should not be used as a reason for postponing measures to prevent degradation of water resources,

and with the following goals:

- (f) that present and future generations shall have sufficient, safe, acceptable, physically accessible and affordable water for domestic purposes;
- (g) that access to and use of water be sustainable and not harm water quality, water security or the ecosystems that support water quality and water security;
- (h) that the public be involved in and kept informed about the state of the water resources, including by access to Government reports

and information concerning water resources, and public consultation by the Government;

(i) that decisions with respect to water management be made by applying consistent, science-based assessment processes, and decisions with respect to water allocation take into account seasonal conditions, climate change and the need to protect the long-term availability of groundwater, the security of aquatic ecosystems and the integrity of wetlands.

Control of water
resources vested in
Crown

3. The control of water resources in the province is declared to be, and to have always been, vested in the Her Majesty in right of the province, and no right to use, divert or withdraw water from the water resources can be, has been or ever could have been, acquired by prescription.

PART II

AUTHORITY AND ADMINISTRATION

Powers of Minister

4. The Minister may take the actions that the Minister considers necessary in order to manage, protect or enhance the province's water resources, including

- (a) investigating and inquiring into or about any activity, matter or thing that causes, appears to be the cause of, or may cause, contamination of water or an adverse effect;
- (b) coordinating the work and efforts of public departments, boards, commissions, agencies and interest groups in the province respecting the management of water resources;
- (c) preparing and publishing policies, strategies, objectives and standards with respect to the management, protection and enhancement of the water resources;
- (d) planning, designing, constructing, operating and maintaining facilities for the purposes of this Act;
- (e) monitoring and exercising control over
 - (i) the quantity, quality, use and protection of the water resources in the province, and
 - (ii) the allocation of the use of water;
- (f) entering into agreements for the purposes of this Act;
- (g) delegating functions assigned to the Minister under this Act or the regulations; and
- (h) performing the other functions that may be assigned to the Minister by the Lieutenant Governor in Council.

Function of
environment
officers

5. The function of an environment officer under this Act is to enforce and administer the requirements of this Act and the regulations as the Minister may authorize.

Approvals

6. (1) No person shall commence an activity, matter or thing for which an approval is required unless the person holds the required approval.

(2) Except as permitted by this Act or the regulations, no person shall continue an activity for which an approval is required unless the person holds the required approval. *Idem*

(3) Subsections (1) and (2) do not prohibit the commencement or continuation of work that, in the opinion of the Minister or according to an order or the regulations, is work that is required or permitted to enable a proponent to comply with Part III. Exception

(4) The Minister may require an applicant for an approval to submit any additional information that the Minister considers necessary. Applications, additional information

(5) Where the Minister considers an application incomplete, the application shall not be processed until the information required is submitted. Incomplete application

(6) It is a condition of an approval that Conditions of approvals

- (a) all material facts in respect of the application have been disclosed;
- (b) the facts, representations and other information contained in the application are true, accurate and complete; and
- (c) that the applicant for and holder of the approval shall permit and facilitate access to and inspection of any activity, matter or thing authorized by the approval.

(7) Where an approval is refused, the Minister shall provide reasons within the time limits prescribed by the regulations. Reasons for refusal

7. (1) Where the Minister is of the opinion that a proposed activity, matter or thing should not proceed because it is not in the public interest having regard to the purpose of this Act, the Minister may, at any time, with the approval of the Lieutenant Governor in Council, decide that no approval shall be issued in respect of the proposed activity, matter or thing, if notice is given to the proponent, together with reasons. Decision that no approval to be issued for proposed activity

(2) When deciding, pursuant to subsection (1), whether a proposed activity, matter or thing should not proceed, the Minister and the Lieutenant Governor in Council shall take into consideration such matters as whether the proposed activity, matter or thing contravenes a policy of the Government or the Department, whether the location of the proposed activity, matter or thing is unacceptable and whether adverse effects from the proposed activity, matter or thing are unacceptable. Considerations

8. The Minister may by order direct that an approval to withdraw water for commercial purposes, industrial purposes or recreational purposes Order that approval not be given for water withdrawal for certain purposes

shall not be given if, in the opinion of the Minister, the withdrawal would interfere with

- (a) the availability of water for domestic purposes; or
- (b) the maintenance of sufficient water flow in a watercourse for environmental flow needs.

Order respecting approvals for water withdrawals in certain watershed

9. The Minister may by order direct that approvals to withdraw water from a watershed for the full amount of water that may be available according to the regulations shall not be given, in order to hold water in reserve for use in the future.

Changes to approvals

10. (1) The Minister may, as the Minister considers necessary, amend, suspend, revoke, impose terms and conditions on or alter any terms and conditions of any approval issued under this Act.

Reasons required

(2) The Minister shall provide reasons for a decision referred to in subsection (1).

Grounds for refusal, revocation, etc.

11. Grounds for refusing, amending, suspending, revoking, imposing terms or conditions on, or altering terms or conditions of, an approval include, but are not limited to,

- (a) current or prior non-compliance by the applicant or approval holder with this Act or the regulations, with any order or direction issued under this Act or the regulations or with any term or condition of an approval;
- (b) current or prior non-compliance by the applicant or approval holder with the *Environmental Protection Act* or the regulations made under that Act, with any order or direction issued under that Act or those regulations or with any term or condition of an authorization given under that Act or those regulations;
- (c) discovery of relevant information not disclosed or not available at the time the approval was issued;
- (d) information being received that the activity, matter or thing to which the approval relates is affecting water resources in a way not anticipated, which may include an effect on the use of water resources by other persons;
- (e) discovery of an adverse effect that is, or is apparently, being caused by or exacerbated by the activity, matter or thing to which the approval relates;
- (f) that due to natural conditions, the availability of water for domestic purposes is threatened; and
- (g) that water withdrawals in a watershed or portion of a watershed may be exceed limits on water withdrawals established under this Act or the regulations.

Transfers of approvals

12. (1) Except as permitted by the regulations, an approval is not transferrable.

(2) Where an application to transfer an approval is refused, the Minister shall, within the time limit prescribed by the regulations, notify the applicant of the refusal and the reasons for the refusal.

Reasons for refusal

13. An approval holder shall, without delay, submit to the Minister any new and relevant information respecting any adverse effect that actually results or may potentially result from the activity, matter or thing to which the approval relates that comes to the attention of the approval holder after the issuance of the approval.

New information required from approval holder

14. The Minister may by order, as the Minister considers necessary, amend, suspend, revoke, impose terms and conditions on or alter any terms and conditions of any order of an environment officer or of the Minister, issued under this Act.

Changes to orders

15. (1) The Minister may, in addition to any other remedy provided by law, apply to the Supreme Court for an injunction to restrain any contravention of this Act or the regulations, 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.

Idem

16. (1) The Minister shall establish a program to monitor the province's water resources for the purposes of tracking the quantity or quality of water resources, so that

Program to monitor water resources

- (a) trends can be detected and assessed on a province-wide and regional basis; and
- (b) the effectiveness of legislation, policies and other initiatives in managing, protecting or enhancing water resources can be assessed.

(2) The Minister may establish a program to monitor the province's water resources for the purposes of

Idem

- (a) assessing the presence and extent of contaminants in water resources;
- (b) evaluating the state of aquatic ecosystems; and
- (c) developing a deeper understanding of different components of groundwater and aquatic ecosystems.

17. (1) The Minister shall table in the Legislative Assembly, once each calendar year, a report on the status of the province's water resources for the previous 12-month period.

Annual report to Legislative Assembly

(2) The Minister shall table in the Legislative Assembly, at least once every five years, a report on the status of the province's water resources that includes a description of the trends observed with respect to the

Longer term report to Legislative Assembly

water resources and an assessment of the adequacy of existing legislation, policies and other initiatives to manage, protect or enhance the province's water resources.

Public information **18.** (1) Subject to the *Freedom of Information and Protection of Privacy Act* R.S.P.E.I. 1988, Cap. F.-15.01, information in the control of the Department is accessible to the public.

Registry of information (2) The Minister shall establish and maintain a registry, accessible to the public, to contain

- (a) information about approvals;
- (b) information respecting the compliance of approval holders with the requirements of this Act and the regulations;
- (c) copies of reports tabled under section 17; and
- (d) any other information or documents considered appropriate by the Minister or prescribed by the regulations.

Organization of and access to registry (3) The registry shall be organized, kept and accessed in the manner and form that the Minister determines.

On-line option (4) For greater certainty, the Minister may make information referred to in subsection (1), and the registry established under subsection (2), available to the public electronically on-line, including through the Internet.

PART III

PROTECTION OF WATER

Discharge of contaminants **19.** Except as permitted by this Act or the regulations, the *Pesticides Control Act* R.S.P.E.I. 1988, Cap. P-4, or the *Environmental Protection Act*, no person shall

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

directly or indirectly, a contaminant into groundwater, a watercourse or a wetland.

Notice and remedial measures **20.** (1) Every person who, without permission referred to in section 19, discharges, or causes or permits to be discharged, directly or indirectly, a contaminant into groundwater, a watercourse or a wetland, or who owns or has control of a contaminant that is discharged, directly or indirectly, into groundwater, a watercourse or a wetland, shall

- (a) immediately notify the Department; and
- (b) take the action that the Minister may direct
 - (i) to investigate and define the extent, nature and impact of the contaminant, and

(ii) to repair or remedy the damage to or restore the groundwater, watercourse or wetland or to confine or contain the effects of the contaminant.

(2) Where any person fails to take action as directed by the Minister pursuant to subsection (1), and where the discharge of a contaminant is creating or may create an adverse effect, the Minister may make application to the Supreme Court for an injunction requiring that person to carry out that action.

Injunction

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

Water protection orders

(a) that

(i) a contaminant has been, is being or is going to be discharged, directly or indirectly, into groundwater, a watercourse or a wetland,

(ii) an act or omission of a person is or may be a contravention of this Act or the regulations,

(iii) an act or omission of a person is creating or may create an adverse effect,

(iv) an activity is occurring or has occurred in contravention of this Act or the regulations, or

(v) an activity, matter or thing is creating or may create an adverse effect; and

(b) that it is necessary or advisable for the protection of the water resources or the prevention or control of an adverse effect,

the Minister or the environment officer, as the case may be, may issue an water protection order to

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

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

(e) the person whose act or omission is or may be a contravention of this Act or the regulations;

(f) the person whose act or omission is creating or may create an adverse effect;

(g) the person in charge or apparently in charge of the activity that constitutes a contravention;

(h) the person in charge or apparently in charge of the activity, matter or thing that is creating or may create an adverse effect;

(i) the registered owner of the property on which the contravention, act, omission or activity is occurring or has occurred or the adverse effect is being or was created; or

(j) more than one of the persons referred to in clauses (c) to (i).

Terms, conditions and requirements

(2) A water protection order issued pursuant to subsection (1) may specify terms and conditions, including time limits, and may require the person to whom it is directed, at the person's own cost, if any, to

- (a) meet with a representative of the Department and other persons for the purposes specified by the order;
- (b) permit inspection;
- (c) permit testing and sampling;
- (d) carry out inspections, testing and sampling, including professional hydrogeological or engineering investigations, to determine the extent and effects of the contaminant, act, omission, activity, matter or thing;
- (e) cease an activity specified in the order either permanently or for a period of time, as specified in the order;
- (f) clean up, repair and restore the area affected by the contaminant, act, omission, activity, matter or thing to the extent indicated in the order or, otherwise, to the satisfaction of the Minister;
- (g) take specified action to prevent or avoid an adverse effect;
- (h) submit a written report with respect to the person's activities pursuant to clauses (d), (f) and (g); or
- (i) do any or all of those things specified in clauses (a) to (h) either without delay or as of the future date specified in the order.

Order to bind successors and assignees

(3) A water protection order issued pursuant to subsection (1) shall run with the land and shall be binding upon any successor or assignee of the person to whom it is directed.

Emergency field orders

22. Where an environment officer believes, on reasonable and probable grounds, that an activity is occurring or has occurred in contravention of this Act or the regulations or is creating or has created an adverse effect, and time is of the essence to take remedial action to protect water resources, the officer may issue an emergency field order, in the form approved by the Minister, to the person committing or apparently committing the contravention or in charge or apparently in charge of the activity, or to the registered owner of the property on which the activity is occurring or has occurred, to cease the activity and commence remedial measures as directed.

Orders not precluded by compliance with standards, etc.

23. For the avoidance of doubt, the standards and objectives established by this Act and the regulations are minimum standards and objectives and nothing contained in this Act or the regulations, nor compliance with this Act or the regulations and the standards or objectives incorporated in either, nor compliance with the terms and conditions of any approval, precludes the issuance of an emergency field order or a water protection order, if the Minister or the environment officer, as the case may be, believes, on reasonable and probable grounds, that an adverse effect has been or may be created.

PART IV

WATER MANAGEMENT AREAS

Division 1 - General

- 24.** (1) Where, in the opinion of the Minister, it is in public interest to have special conditions apply to the management or use of water resources, or to activities, matters or things that may affect water resources, within one or more geographic areas of the province, the Minister may, in accordance with this Part, recommend to the Lieutenant Governor in Council that the Lieutenant Governor in Council make regulations to designate the area as a water management area, using one of the following designations: Recommendation for designation of water management area
- (a) water sustainability plan area;
 - (b) aquatic ecosystem protection area;
 - (c) municipal water supply area;
 - (d) well-field protection area.
- (2) In assessing whether or not to recommend an area for designation as a water management area and what regulations should apply within the area, the Minister Preliminary requirements
- (a) may seek public input and the input of individuals with technical expertise in relevant fields; and
 - (b) shall ensure that the requirements for assessment, consultation and notice and any other processes and procedures prescribed by this Part and the regulations have been followed before a recommendation is made.
- (3) The Minister shall not make a recommendation for a designation under this Part until regulations under clauses 73(q), (r) and (s) are made *Idem*
- (a) respecting the requirements for assessment, consultation and notice and any other processes and procedures to be followed before a recommendation for the designation of a water management area is made;
 - (b) respecting the process to apply for exemptions from the application of some or all of the provisions of regulations made with respect to a designated area; and
 - (c) respecting requirements for notice after a designation of a water management area is made,
- and a plan for the water management area is developed in accordance with section 30, 32, 34 or 36, as applicable.
- 25.** When recommending the designation of a water management area, the Minister shall Content of recommendation

- (a) describe the geographic extent of the area being recommended for designation; and
- (b) make recommendations for regulations that relate to the designation.

Registry

26. (1) The Minister shall establish and maintain a registry, accessible by the public, to contain information about water management areas.

Organization of and access to registry

(2) The registry shall be organized, kept and accessed in the manner and form that the Minister determines.

On-line option

(3) For greater certainty, the Minister may make the registry available to the public electronically on-line, including through the Internet.

Status to be monitored, assessed

27. The Minister shall monitor and assess the status of a water management area at regular intervals, and at least every five years or as specified in the regulations that relate to the designation of the water management area.

Recommendation for change by Minister

28. Where the Minister considers it advisable to do so, taking into account the plan for a water management area, and the conditions in the area, the Minister may recommend that the Lieutenant Governor in Council

- (a) revoke the designation and any regulations that relate to the designation of the water management area;
- (b) alter the boundaries of the water management area; or
- (c) amend any regulations that relate to the designation of the water management area.

No injurious affection

29. Land is not injuriously affected by reason only that

- (a) all or any part of the land is designated as water management area or is adjacent to land that is designated as a water management area;
- (b) regulations that relate to the designation of a water management area, or an exemption given pursuant to those regulations, impose prohibitions, conditions, limitations or other requirements in relation to all or any part of the land; or
- (c) the land is adjacent to land that is subject to regulations or an exemption referred to in clause (b),

and no compensation shall be paid to the owner of the land or any person having an interest in the land by reason only that the land or any part of it is land as described in clause (a), (b) or (c).

Division 2 - Water Sustainability Plan Areas

30. (1) The Minister may, by order, establish a process by which a water sustainability plan is to be developed for the purposes of preventing or addressing threats to

- (a) the quality of water resources;
- (b) the quantity of water resources;
- (c) the environmental flow needs of a watercourse; or
- (d) the health of aquatic ecosystems,

in a watershed, an assemblage of watersheds or a part of a watershed.

(2) An order referred to in subsection (1)

- (a) may designate a representative of the Government or another person as the person responsible for preparing the plan;
- (b) may establish terms of reference and timelines for the development of the plan;
- (c) may establish one or more technical advisory committees to advise with respect to the development of the plan; and
- (d) shall specify the requirements
 - (i) for consultation with stakeholders or other persons who may potentially be affected by the provisions of the plan,
 - (ii) for consultation with or notification of residents within the area to which the plan may apply, and
 - (iii) for the content of the plan.

31. Where a water sustainability plan is considered satisfactory by the Minister, the Minister may recommend that the Lieutenant Governor in Council make regulations pursuant to section 73

- (a) to designate the geographic area identified in the plan as a water sustainability plan area;
- (b) to regulate, limit or prohibit activities, matters or things that contribute or may contribute to the degradation of water quality, negatively affect or may negatively affect water quantity or are creating or may create an adverse effect, in the designated area; and
- (c) to establish the process by which the plan is to be implemented.

Division 3 - Aquatic Ecosystem Protection Areas

32. (1) The Minister may, by order, establish a process by which an aquatic ecosystem protection plan is to be developed for the purpose of protecting a watershed, an assemblage of watersheds or a part of a watershed that contains a provincially significant aquatic ecosystem.

(2) An aquatic ecosystem is provincially significant if, in the opinion of the Minister, it

- (a) contains significant populations of rare, endangered or uncommon aquatic species;

- (b) constitutes significant habitat for rare, endangered or uncommon aquatic species;
- (c) contains unusual aquatic features;
- (d) contains exceptionally high populations of common aquatic species;
- (e) exhibits exceptional biological diversity; or
- (f) contains a significant amount of undisturbed aquatic habitat.

Content of order

- (3) An order referred to in subsection (1)
 - (a) may designate a representative of the Government or another person to be responsible for preparing the plan;
 - (b) may establish terms of reference and timelines for the development of the plan;
 - (c) may establish one or more technical advisory committees to advise with respect to the development of the plan; and
 - (d) shall specify the requirements for
 - (i) consultation with stakeholders or other persons who may potentially be affected by the provisions of the plan,
 - (ii) consultation with or notification of residents within the area to which the plan may apply, and
 - (iii) the content of the plan.

Recommendation
by Minister

- 33.** (1) Where an aquatic ecosystem protection plan is considered satisfactory by the Minister, the Minister may recommend that the Lieutenant Governor in Council make regulations pursuant to section 73
 - (a) to designate the geographic area identified by the Minister as an aquatic ecosystem protection area;
 - (b) to regulate, limit or prohibit activities, matters or things that contribute or may contribute to the degradation of water quality, negatively affect or may negatively affect water quantity or are creating or may create an adverse effect, in the area;
 - (c) respecting the withdrawal or use of water in the designated area, including recommending prohibitions, conditions or limits on water withdrawals or water withdrawal approvals that are more stringent than would otherwise apply; and
 - (d) to establish the process by which the plan is to be implemented.

Water for fire
suppression or
domestic purposes
not to be affected by
regulations

- (2) Regulations referred to subsection (1) shall not apply to restrict water withdrawals for fire suppression purposes or from wells for domestic purposes that would otherwise be permitted under this Act or the regulations.

Division 4 - Municipal Water Supply Areas

34. (1) The Minister may, by order, establish a process by which a municipal water supply plan is to be developed for the purpose of planning for the long term security of water supplies for a municipal water supply system from a watershed, an assemblage of watersheds or a portion of a watershed.

Order re
development of
municipal water
supply plan

(2) An order referred to in subsection (1)

Content of order

- (a) may designate a representative of the Government or another person to be responsible for preparing the plan;
- (b) may establish terms of reference and timelines for the development of the plan;
- (c) may establish one or more technical advisory committees to advise with respect to the development of the plan; and
- (d) shall specify the requirements for
 - (i) consultation with stakeholders or other persons who may potentially be affected by the provisions of the plan,
 - (ii) consultation with or notification of residents within the area to which the plan may apply, and
 - (iii) the content of the plan.

35. Where a municipal water supply plan is considered satisfactory by the Minister, the Minister may recommend that Lieutenant Governor in Council make regulations pursuant to section 73

Recommendation
by Minister

- (a) to designate the geographic area identified by the Minister as a municipal water supply area;
- (b) respecting the amount of water that may be withdrawn in the designated area for municipal water supply systems, including recommending an amount that may exceed limits on water withdrawals or water withdrawal approvals that would otherwise apply; and
- (c) to establish the process by which the plan for the designated area is to be implemented.

Division 5 - Well-Field Protection Areas

36. (1) The Minister may, by order, establish a process by which a well-field protection plan is to be developed for the purpose of preserving and protecting the quality of groundwater within the capture zone of wells that supply water for a municipal water supply system.

Order re
development of
well-field protection
plan

(2) An order referred to in subsection (1)

Content of order

- (a) may designate a representative of the Government or another person to be responsible for preparing the plan;
- (b) may establish terms of reference and timelines for the development of the plan;

- (c) may establish one or more technical advisory committees to advise with respect to the development of the plan; and
- (d) shall specify the requirements for
 - (i) consultation with stakeholders or other persons who may potentially be affected by the provisions of the plan,
 - (ii) consultation with or notification of residents within the area to which the plan may apply, and
 - (iii) the content of the plan.

Recommendation
by Minister

- 37.** Where a well-field protection plan is satisfactory to the Minister, the Minister may recommend that the Lieutenant Governor in Council make regulations pursuant to section 73
- (a) to designate a geographic area identified by the Minister as a well-field protection area;
 - (b) to regulate, limit or prohibit activities, matters or things that contribute or may contribute to the degradation of the quality of groundwater within the designated area; and
 - (c) to establish the process by which the well-field protection plan for the area is to be implemented.

PART V

WATER WITHDRAWALS AND WASTEWATER DISCHARGES

Water withdrawals

- 38.** No person shall withdraw water from a well, watercourse or wetland in contravention of this Act or the regulations.

Daily rate

- 39.** Except as permitted by the regulations, no person shall, on any day, withdraw water from a well, watercourse or wetland at a rate that exceeds 25 cubic metres per day.

Water removals

- 40.** (1) No person shall withdraw, store, use or transport water from a well, watercourse or wetland for the purpose of removal from the province.

Idem

- (2) Subsection (1) applies whether the water is withdrawn from its original source or another source, including from a water supply system, and whether the water is in its natural state or is treated, flavoured or carbonated water.

Exceptions

- (3) Subsection (1) does not apply to water that is removed
- (a) 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;
 - (b) in a vehicle, vessel 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
- (c) with the written permission of the Minister, to meet short-term safety, security or humanitarian needs.

41. Except as permitted by the regulations, no person shall discharge, or cause or permit the discharge of, wastewater.

Wastewater discharges

PART VI

WATER SUPPLY AND WASTEWATER SYSTEMS

Division 1 - Water Supply Systems and Wastewater Treatment Systems

42. (1) Except as permitted by the regulations, no person shall undertake the establishment of a water supply system or wastewater treatment system or modify any existing water supply system or wastewater treatment system.

Approval required

(2) Where it appears to the Minister that any person has contravened subsection (1), the Minister may order an investigation of the contravention and may order the person to take the action that the Minister considers necessary.

Investigation and remedial action

43. A person responsible for a water supply system or wastewater treatment system shall operate and maintain the system in accordance with the regulations.

Operation

44. Where the Minister finds that it necessary that a public utility within the meaning of the *Water and Sewerage Act* R.S.P.E.I. 1988, Cap. W-2, locate a portion of a water supply system or wastewater treatment plant 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 the terms and conditions and subject to the payment of the compensation, if any, that the Minister considers appropriate, that the public utility

Order re locating system on private property

(a) is entitled to enter upon the private property and locate any portion of the system there; and

(b) have access to the property and portion of the system located there at all times for repairing, operating or maintaining the system.

45. (1) Where the Minister is satisfied that it is necessary for the purpose of protecting water resources or preventing an adverse effect, the Minister may, by order,

Minister may order or prohibit system to be used

(a) require that an area be served by a water supply system or wastewater treatment system; or

(b) prohibit the construction of wells or sewage disposal systems.

Idem

(2) An order under subsection (1), shall be directed to a person responsible for the activity, matter or thing that is causing or likely to cause the threat to water resources or the adverse effect or to the registered owner of property that is affected by the order, as applicable.

Water and
wastewater
corporations

46. (1) The Lieutenant Governor in Council may, by order, create a body corporate to acquire, construct, establish, alter, extend, control, manage, maintain or operate a water supply system or wastewater treatment system, 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) exempt the corporation and any works operated by it in whole or in part from the provisions of the *Water and Sewerage Act*.

Powers of
corporation

- (2) A corporation constituted under subsection (1) may
- (a) perform any function authorized by the Lieutenant Governor in Council; and
 - (b) prescribe the remuneration of its members.

Powers of
corporation or
province

- (3) A corporation constituted under subsection (1), or the province, may
- (a) acquire water supply systems and wastewater treatment systems;
 - (b) construct, establish, alter, extend, control, manage and operate water supply systems and wastewater treatment systems;
 - (c) provide water to a government, municipality or person;
 - (d) receive, treat or dispose of wastewater for a government, municipality or person;
 - (e) make agreements with respect to the operation of a water supply system or wastewater treatment system;
 - (f) acquire, alienate, hold or dispose of real or personal property;
 - (g) engage and pay personnel;
 - (h) assess, charge and collect fees for services to a government, municipality or person; and
 - (i) operate a water supply system or wastewater treatment system on behalf of a government, municipality or person.

Power to levy rates

(4) A corporation constituted under subsection (1) or the province, as the case may be, may levy rates in respect of water and sewerage services being provided.

Maximum frontage
upon which rate
may be levied

(5) Rates may be levied pursuant to subsection (4) 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 500 feet if the parcel qualifies for a farm assessment under the *Real Property Assessment Act* R.S.P.E.I. 1988, Cap. R-4.

(6) Rates levied pursuant to subsection (4) 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

(7) For the purposes of this Act, a person along whose land run water or sewer mains shall be deemed to receive service notwithstanding that the water or sewer mains are not physically connected by lateral lines to any residence, building or other structure situated upon the land of the person.

Service deemed to be received

(8) The power vested in the Island Regulatory and Appeals Commission to set water and sewer rates is not affected by this section except if otherwise provided under clause (1)(d).

Commission's powers

(9) For greater certainty, Environmental Industrial Services Inc., a body corporate created under section 18 of the *Environmental Protection Act*, is continued as if created under this section, and the *Civil Service Act* R.S.P.E.I. 1988, Cap C-8, does not apply and has never applied to Environmental Industrial Services Inc.

Environmental Industrial Services Inc.

Division 2 - Wells

47. Except as permitted by the regulations, no person shall undertake the drilling, construction, reconstruction or decommissioning of a well.

Wells

48. A person responsible for a well that is constructed for geothermal purposes, whether or not the well is used to withdraw water, shall not cause or permit the well to operate contrary to the regulations.

Well for geothermal purposes

49. A person responsible for a well shall not
(a) cause or permit the well to be abandoned; or
(b) permit the well to be in a state of abandonment,
unless the well is decommissioned in accordance with the regulations.

Abandonment

Division 3 - Sewage Disposal Systems

50. Except as permitted by the regulations, no person shall undertake the installation, reconstruction, modification or decommissioning of a sewage disposal system.

Sewage disposal systems

51. A person responsible for a sewage disposal system shall not
(a) cause or permit the sewage disposal system to be abandoned; or

Abandonment

(b) permit the sewage disposal system to be in a state of abandonment,
unless the system is decommissioned in accordance with the regulations.

PART VII

GENERAL, APPEALS, OFFENCES AND PENALTIES

Division 1 - General

Research results	52. (1) Where in the course of fulfilling its mandate, a Government department has conducted, collaborated on the conducting of or funded research or an assessment of data respecting some aspect of the province's water resources, the results of this research or assessment shall be accessible to the public.
Assessment of water source	(2) Where an applicant for an approval to withdraw water from a water source has been required to conduct an assessment or characterization of the water source, and submit a report of the assessment or characterization to the Department, the information provided to the Department that pertains specifically to the characteristics of the water source shall be accessible to the public.
Enforcement	53. This Act and the regulations may be enforced by the Minister or an environment officer.
Reasonable assistance required	54. Any person to whom a request is made by the Minister or an environment officer under this Act or the regulations shall provide all reasonable assistance to enable the Minister or the officer to carry out his or her functions under this Act or the regulations, and shall furnish the Minister or the officer with all information reasonably required to administer or enforce this Act or the regulations.
Powers of environment officers and peace officers	55. (1) For the purposes of investigating threats to groundwater, watercourses or wetlands, managing, protecting or enhancing water resources, preventing the creation of adverse effects, investigating adverse effects or otherwise administering or ensuring compliance with this Act or the regulations, an environment officer or peace officer may <ul style="list-style-type: none"> (a) subject to subsections (2), (3) and (4), at any reasonable time, enter and inspect any place in which the officer believes on reasonable grounds there is a contaminant or any other activity, matter or thing to which this Act or the regulations apply or may apply; (b) examine any contaminant or suspected contaminant, or any other matter or thing to which this Act or the regulations apply or may apply, and take samples of it;

- (c) require any person to produce for inspection or copying, in whole or in part, any record or other document that the officer believes on reasonable grounds contains any information relevant to the administration of this Act or the regulations;
- (d) require any person to produce for inspection any approval with respect to an activity, matter or thing required under this Act or the regulations;
- (e) conduct any tests or analyses or take any measurements; and
- (f) provide the results of any tests, analyses or measurements to the Minister of the Crown that has the responsibility for the protection of public health.

(2) An environment officer or 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

(3) 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 (1) 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 officer or peace officer named in the warrant to enter the dwelling-place, subject to any conditions that may be specified in the warrant.

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

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

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

(6) 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 Warrant

(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

(7) The environment officer or peace officer who executes a warrant may exercise the powers described in subsection (6) 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 officer believes on reasonable grounds an offence under this Act or regulations has been committed; or

(b) that the officer believes on reasonable grounds will afford evidence in respect of the commission of an offence under this Act.

Execution of warrant

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

When warrant not necessary

(9) An environment officer or peace officer may exercise any of the powers referred to in subsections (6) and (7) 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

(10) An environment officer or peace 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 person having possession, care or control of it at the time of its seizure of the reason for the seizure.

Storage, removal etc.

56. (1) An environment officer or peace officer who seizes and detains a thing under this Act or the regulations or any person designated by the 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 a water protection order be issued under this Act directing the 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 the order.

Detention

(2) Subject to subsection (3), a thing that is seized and detained under this Act shall not be detained after

(a) a determination by an environment officer or peace 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 180 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.

(3) Where the Minister believes on reasonable and probable grounds that a thing is a threat to water resources or may create an adverse effect, or where proceedings mentioned in subsection (2) are instituted within the time provided in that subsection, and at the final conclusion of the proceedings the court orders the forfeiture of the thing that was seized and detained, the Minister may dispose of the thing as the Minister sees fit.

Disposal of
forfeited things

(4) Where subsection (3) does not apply, the thing shall be returned to the 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

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

Samples,
disposition of

57. (1) Information obtained by any person acting under the authority of this Act or the regulations may be disclosed, collected, compiled and used for the purposes of administering and enforcing the *Environmental Protection Act* and regulations made pursuant to that Act and the *Pesticides Control Act* and regulations made pursuant to the Act, including in any legal proceeding or prosecution pursuant to that Act or those regulations.

Disclosure of
information
obtained under this
Act for purposes of
*Environmental
Protection Act* or
*Pesticides Control
Act*

(2) Information obtained by a person acting under the authority of the *Environmental Protection Act* or regulations made pursuant to that Act or the *Pesticides Control Act* or regulations made pursuant to that Act may be disclosed, collected, compiled and used for the purposes of administering and enforcing this Act and the regulations, including in any legal proceeding or prosecution pursuant to this Act or the regulations.

Disclosure of
information
obtained under
*Environmental
Protection Act* or
*Pesticides Control
Act* for purposes of
this Act

58. (1) A certificate of an analyst stating that the analyst has analyzed or examined a sample submitted by an environment officer or other person authorized to do so by the Minister and stating the results of the analysis or examination, is admissible in evidence in any legal proceeding or prosecution pursuant to this Act or the regulations or pursuant to the *Environmental Protection Act* or regulations made pursuant to that Act, without proof of the signature or official character of the person

Certificate of
analyst

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

(2) 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.

Delegation

59. The Minister may delegate to any Minister of the Crown in right of the province, to an environment officer or to an officer or employee of the Department any power conferred on the Minister under this Act or the regulations, and the Minister, officer or employee to whom the power is delegated may then exercise the power subject to any terms and conditions that the Minister prescribes.

Responsibility for
work

60. (1) A person to whom an approval is issued shall be deemed to have accepted responsibility for all work done pursuant to the approval.

Effect of approval

(2) The issuing of an approval does not exempt the person to whom it is issued from the provisions of any Act of the Legislature or regulations made pursuant to the Act, or any Act of the Parliament of Canada or regulations made pursuant to the Act.

Exemption from
liability

61. (1) Her Majesty in right of the province, the Minister and any employee or officer of the Crown are not liable for any loss or damage caused or occasioned by

- (a) an activity, matter or thing for which an approval was issued;
- (b) the refusal, amendment, suspension or revocation of an approval; or
- (c) the attachment of terms or conditions to, or the alteration of any terms or conditions of, an approval.

No action lies

(2) No action or other proceeding for damages lies or shall be instituted against

- (a) Her Majesty in right of the province;
- (b) the Minister or any person acting for the Minister pursuant to a delegation of power;
- (c) an environment officer or peace officer; or
- (d) any person lawfully assisting or acting under the direction of any person referred to in clauses (b) and (c),

for anything done in good faith in the performance or intended performance of any duty or in the exercise or intended exercise of any power under this Act or the regulations, or for any neglect or default in the performance or exercise in good faith of the duty or power.

Exemption from
personal liability

(3) The Minister, environment officers, employees, officers and agents of the Crown and 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 exercise or intended exercise of any power or authority under this Act or the regulations.

62. (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 issued a direction; and
- (b) the person to whom the order or direction is given has failed to comply with it,

Remedial action
authorized by court

the Minister may apply to the Supreme Court for an order authorizing the Minister to take the remedial action 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.

Order for costs of
remediation

63. (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 issued a direction;
- (b) the person to whom the order or 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 adverse effects,

Immediate action
required, order or
direction

the Minister may take the remedial action the Minister considers appropriate 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.

Order for costs

64. (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 adverse effects, the Minister may take the remedial action the Minister considers appropriate 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.

Order for costs of
remediation

Filed order has
effect as judgment

65. An order for cost of remediation under subsection 62(2), 63(2) or 64(2) may be filed with the Registrar of the Court of Appeal and the Supreme Court at any time 30 days after it is issued and, when so filed, the order is of the same force and effect as if it were a judgment.

Orders - service

66. (1) No person to whom an order or direction is issued pursuant to this Act or the regulations is required to comply with the order or direction until the order or direction has been served on the person.

When order sufficiently served

(2) Any order or direction issued pursuant to this Act or the regulations is deemed to be sufficiently served

(a) upon a copy being personally served on the person to whom it is directed;

(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;

(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

(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.

Service on corporation

(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.

Order for substituted service

(4) Where it is impractical for any reason to serve an order or direction 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 the steps to be taken to bring the matter to the attention of the person to be served.

Evidence

(5) Any order or direction issued pursuant to this Act or the regulations shall be *prima facie* proof in proceedings in any court not only that the order or direction was legally made, but also that every administrative prerequisite necessary to enable the making of the order or direction was done and satisfied, and no further proof than the mere production of the original order or a copy of it certified by the Minister or the Minister's authorized representative, is necessary.

Division 2 - Appeals

Appeals respecting orders

67. (1) A person

(a) to whom an emergency field order or water protection order is issued by the Minister or an environment officer; or

(b) who has a right under the regulations to appeal an order issued to the person, may, within 21 days from the date the order is served on the person, appeal the order by serving a notice of appeal on the Island Regulatory and Appeals Commission.

(2) A notice of appeal served on the Commission under this section shall be in writing, on a form approved by the Commission, and shall state the grounds for the appeal, the relief sought and the name and address of the person making the appeal. Notice

(3) The service of a written notice of appeal under this section does not operate as a stay of, and shall not in any way affect, the order that is the subject matter of the appeal. Idem

(4) In any appeal under this section, the Commission shall serve notice upon the person making the appeal and the Minister of the date, time and place at which the appeal will be heard. Notice of hearing

(5) Where a notice is served by the Commission under subsection (4), the notice may be served personally, or Idem
(a) where the notice is served on the Minister, by mailing the notice to the business address of the Minister; or
(b) where the notice is served on a person making the appeal, by mailing the notice to the address on the person's notice of appeal.

(6) Where service referred to in subsection (5) is made by mail, the service shall be deemed to be made on the fifth day after the date of mailing, unless the person on whom service is being made establishes that the person, acting in good faith, through the absence, accident, illness or other cause beyond the person's control, did not receive the notice until a later date. Deemed service

68. (1) The Island Regulatory and Appeals Commission shall, when hearing an appeal, determine its own procedure, subject to adherence to the rules of natural justice. Procedure

(2) The Commission shall hear and decide an appeal and shall issue an order giving effect to its disposition. Order

(3) The Commission may vary, confirm or rescind the order or decision being appealed. Idem

(4) The Commission shall give written reasons for its decision and shall provide a certified copy of its decision or order to the person making the appeal and to the Minister. Reasons for decision

Report of
contravention

69. (1) Any person who reasonably believes that a contravention of this Act or the regulations has occurred, or may occur, may report the circumstances leading to that belief to the Minister or an environment officer.

Idem

(2) A person may make a report under subsection (1) even if
 (a) it requires the disclosure of personal information; or
 (b) the information on which the person's belief is based is proprietary information or confidential information.

No action lies

(3) No action or other proceeding may be brought against a person for providing information in good faith under this section.

Adverse
employment action
prohibited

(4) No employer shall take adverse employment action against an employee because that person provided information in good faith under this section.

Harassment
prohibited

(5) No person shall interfere with, take or direct reprisal against or harass a person who provides information under this section.

Division 3 - Offences and Penalties

False information

70. No person shall knowingly give false information in any application, return or statement made to the Minister, an environment officer, an officer or employee of the Department or any other person lawfully acting under the authority of this Act or the regulations, in respect of any matter under this Act or the regulations.

Obstruction

71. No person shall obstruct or attempt to obstruct any person lawfully acting under the authority of this Act or the regulations.

Penalty

72. (1) Subject to subsection (2), any person who contravenes or fails to comply with

- (a) any provision of this Act or the regulations; or
- (b) any term, condition or provision of any order made under this Act or the regulations, any direction from the Minister made under this Act or the regulations or any approval,

is guilty of an offence and if no penalty is otherwise specifically provided in this Act or the regulations, is liable on summary conviction to a fine of not less than \$1,000 or more than \$10,000, or to imprisonment for 90 days, or to both, and to pay the restitution as the judge thinks fit to any person aggrieved or affected by the contravention or failure to comply.

Idem

(2) Any corporation that contravenes or fails to comply with
 (a) any provision of this Act or the regulations; or

(b) any term, condition or provision of any order made under this Act or the regulations, any direction from the Minister made under this Act or the regulations or any approval,
is guilty of an offence and if no penalty is otherwise specifically provided in this Act or the regulations, is liable on summary conviction to a fine of not less than \$10,000 or more than \$100,000, or its directors to imprisonment for 90 days, or to both, and to pay the restitution as the judge thinks fit to any person aggrieved or affected by the contravention or failure to comply.

(3) 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 (2) is guilty of an offence and is liable, in respect of the commission of an offence by the corporation under subsection (2), to any penalty set out in subsection (1).

Personal liability of
corporate officers
for offence of
corporation

(4) Where a contravention of or failure to comply with any provision of this Act or the regulations, or of an order, direction or approval, continues for more than one day, the offender is guilty of a separate offence for each day that the contravention or failure to comply continues.

Continuing offence

(5) For the purposes of subsection (2), Her Majesty in right of the province or in right of Canada is deemed to be a corporation.

Prosecution of
Crown

PART VIII

REGULATIONS

73. (1) The Lieutenant Governor in Council may make the regulations as the Lieutenant Governor in Council considers necessary or advisable for the purposes of this Act, and without limiting the generality of the foregoing, may make regulations,

Regulations

(a) regulating, limiting or prohibiting an activity, matter or thing for the purpose of managing, protecting or enhancing water resources or preventing or limiting adverse effects, including regulations requiring monitoring of the activity, matter or thing, or of the use of the matter or thing, and governing the design, construction, maintenance, operation or use of the matter or thing;

(b) respecting activities, matters or things in respect of which approvals are required;

(c) respecting approvals, including, without limiting the generality of the foregoing, regulations with respect to

(i) which activities, matters or things require an approval, and the type of approval,

(ii) the process for applying for an approval,

- (iii) the issuance, refusal, review, renewal, expiration, amendment, transfer, suspension, reinstatement or revocation of an approval,
 - (iv) grounds for granting an exemption,
 - (v) grounds for refusal of an approval,
 - (vi) time limits with respect to the issuance or refusal of an approval,
 - (vii) the qualifications or other requirements for, or the circumstances, standards or objectives applicable with respect to, any decision referred to in subclause (iii), and
 - (viii) the imposition of terms and conditions on an approval, and the alteration of or requirements for compliance with terms and conditions;
- (d) authorizing the Minister to impose requirements, terms or conditions on an applicant for, or the holder of, an approval;
- (e) respecting transfers of approvals, including, without limiting the generality of the foregoing,
- (i) the process for applying for permission to transfer an approval,
 - (ii) the issuance or refusal of permission to transfer an approval, and the process to transfer an approval,
 - (iii) time limits with respect to the issuance or refusal of permission to transfer an approval or to the transfer of an approval, and
 - (iv) the imposition of terms and conditions on permission to transfer an approval or on any approval issued a result of a transfer;
- (f) respecting occupations, activities, matters or things in respect of which certificates of qualifications are required, and respecting qualification requirements;
- (g) establishing fees and the manner of payment with respect to anything done or required to be done pursuant to this Act or the regulations, including with respect to
- (i) access to information in the control of the Department,
 - (ii) the provision or filing of any information, documents, notifications, returns or reports,
 - (iii) the application for, or processing, issuance, renewal or reinstatement of an approval,
 - (iv) the application for, or processing or issuance of a transfer of an approval,
 - (v) any inspection or investigation,
 - (vi) any other services or material provided,
 - (vii) effluent discharge levels, and
 - (viii) any other matter respecting the administration of this Act;

- (h) establishing standards or objectives, and designating the activities, matters or things to which standards or objectives apply;
- (i) requiring the submission of records to the Minister, and providing for the inspection of records by the Minister;
- (j) authorizing the establishment of registries, accessible by the public, for the purposes of this Act, and respecting information to be included in a registry established pursuant to this Act or the regulations;
- (k) respecting access to information in the control of the Department;
- (l) respecting the discharge of contaminants;
- (m) regulating, limiting or prohibiting the discharge of contaminants or other products or substances that may result in an adverse effect;
- (n) regulating, limiting or prohibiting the collection, sale, purchase, storage, use, treatment, distribution or disposal of contaminants;
- (o) respecting systems or processes to abate, manage, dispose of or control contaminants or other causes of adverse effects, and related requirements, including requirements for the design, installation, construction, modification, maintenance and operation of the systems or processes;
- (p) respecting assessment and rehabilitation criteria of contaminant releases pursuant to subclause 20(1)(b)(ii);
- (q) respecting the requirements for assessment, consultation and notice and any other processes and procedures to be followed before a recommendation for the designation of a water management area is made;
- (r) respecting the process to apply for an exemption from the application of some or all of the provisions of regulations made with respect to a designated area;
- (s) respecting requirements for notice after a designation of a water management area is made;
- (t) designating a geographic area as a water management area, indicating the type of water management area being designated and including a plan of the designated area or a description of the designated area that contains sufficient detail for persons having an interest in property that may be included in the designated area to recognize the property;
- (u) establishing the process by which a plan for a water management area is to be implemented, which may include designating a department, government, municipality, person or organization responsible for
 - (i) overseeing the implementation of the plan,
 - (ii) reporting to the Minister on the status of the plan and of water resources within the area, and

- (iii) other duties as the Lieutenant Governor in Council or the Minister may direct;
- (v) respecting the matters that the Lieutenant Governor in Council considers necessary or advisable to carry out the intent of the Minister's recommendations with respect to regulations related to the designation of a water management area, the plan for a water management area and Part IV;
- (w) respecting the withdrawal or use of water from any natural or artificial water source, including any water supply system, including, without limiting the generality of the foregoing, regulations
 - (i) regulating, limiting or prohibiting activities involving the withdrawal or use of water,
 - (ii) respecting the establishment of limits on the amount of water available for water withdrawals, and
 - (iii) respecting the establishment of limits or prohibitions on water withdrawal approvals based on priorities of water uses, proposed or actual water uses or other factors;
- (x) regulating water quality with respect to water from any natural or artificial source, including any water supply system, including, without limiting the generality of the foregoing, regulations
 - (i) respecting the establishment of water quality standards or objectives,
 - (ii) directing or providing for quality monitoring, and
 - (iii) regulating the storage and handling of water;
- (y) respecting wastewater discharges and related requirements, including, without limiting the generality of the foregoing, regulations respecting wastewater discharge standards or objectives;
- (z) respecting water supply systems, including, without limiting the generality of the foregoing, requirements for the design, construction, modification and operation of water supply systems;
- (aa) respecting wastewater treatment systems, including, without limiting the generality of the foregoing, requirements for the design, construction, modification and operation of wastewater treatment systems;
- (bb) respecting wells, including, without limiting the generality of the foregoing, requirements for the installation, drilling, construction, reconstruction, decommissioning and abandonment of wells and the operation of wells installed for geothermal purposes;
- (cc) respecting sewage disposal systems and related requirements, including, without limiting the generality of the foregoing, requirements for the construction, modification, maintenance, repair, decommissioning and abandonment of sewage disposal systems;
- (dd) respecting plumbing systems, plumbing standards and related requirements;

- (ee) respecting the conducting of tests, and the taking of samples, photographs and measurements of water or other liquid, soil, vegetation or other matter or thing by an environment officer for the purpose of ensuring compliance with this Act and the regulations;
- (ff) respecting the methods of analyzing samples and prescribing the equipment or apparatus or structures to be used for taking samples;
- (gg) requiring any person to produce for inspection, on the request of an environment officer, any records or other documents concerning matters relevant to ensuring compliance with this Act and the regulations;
- (hh) requiring any person to produce for inspection, on the request of an environment officer, any required approval;
- (ii) respecting the stopping of motor vehicles by an environment officer for the purposes of enforcing this Act and the regulations;
- (jj) respecting the appeal of an order made under the regulations, or of a decision made under the regulations to refuse, revoke or amend an approval, including providing that the order or decision continues in effect pending the determination of the appeal;
- (kk) prohibiting any person from violating or contravening any provision of the regulations or any term or condition of an approval issued under the regulations;
- (ll) prescribing the fine or range of fines that a person is liable to, on summary conviction, if the person is found guilty of an offence for contravening or failing to obey a provision of the regulations;
- (mm) establishing that any officer, director or agent of a corporation who directs, authorizes, assents to, acquiesces in or participates in, the commission of an offence by the corporation is guilty of an offence;
- (nn) respecting the burden of proof on a defendant, in any prosecution of an offence under this Act or the regulations, upon the prosecution establishing a *prima facie* case, or upon a defendant,
 - (i) to prove due diligence, or
 - (ii) to prove that any exception, exemption, proviso, excuse or qualification provided for or recognized in this Act or the regulations operates in favour of the defendant;
- (oo) establishing factors which may be taken into account, in any prosecution of an offence under this Act or the regulations, to determine whether a defendant exercised due diligence;
- (pp) deeming, for the purposes of a prosecution of an offence under this Act or the regulations, the registered owner of the property on which any activity, matter or thing is or was carried on or used in contravention of this Act or the regulations to have caused or permitted the activity, matter or thing unless the registered owner establishes, on the balance of probabilities, that the registered owner

did not do so, and respecting the onus or burden of proof of the registered owner to do so;

(qq) delegating decisions to, and conferring discretion on, the Minister with respect to matters dealt with in clauses (c), (e) to (j) and (w) to (ff);

(rr) respecting the delegation of the Minister's powers by the Minister;

(ss) prescribing or specifying anything required or permitted by this Act to be, or referred to in this Act as being, prescribed or specified by the regulations, and for which a specific power is not otherwise provided in this Act;

(tt) defining words, phrases or terms that are used in this Act or the regulations and that are not defined in this Act, or further clarifying words, phrases or terms defined in this Act;

(uu) generally, respecting any matter that the Lieutenant Governor in Council considers necessary or advisable to effectively carry out the intent and purposes of this Act.

Adoption of codes,
etc.

(2) A regulation made under this Act may adopt by reference, in whole or in part, with the changes that the Lieutenant Governor in Council considers necessary, any code, policy, guideline, document, protocol, standard, regulations or other rule made by a government or a recognized technical organization, as it reads on a prescribed day or as it is amended from time to time.

Application of
regulations

(3) A regulation made under this Act may be of general application within the province or a water management area, or may apply to

(a) a portion of the province, a portion of a water management area or another class of areas;

(b) an approval or a class of approvals;

(c) a place or a class of places;

(d) an applicant, approval holder or other person, or a class of applicants, approval holders or other persons;

(e) a water use or a class of water uses; or

(f) an activity, matter or thing or a class of activities, matters or things,

as the Lieutenant Governor in Council determines, including, without limiting the generality of the foregoing, different regulations respecting exemptions, prohibition, controls and limits, and different regulations with respect to different portions of the province, water management areas, portions of water management areas or other areas, and with respect to approvals, places, persons, water uses, activities, matters and things, and different classes of areas, approvals, places, persons, water uses, activities, matters and things.

Transitional matters

(4) The Lieutenant Governor in Council may make regulations respecting any matter that the Lieutenant Governor in Council considers necessary or advisable for the purposes of providing for the transition of matters from the *Environmental Protection Act* to this Act and more effectively bringing this Act into operation.

PART IX

TRANSITIONAL PROVISIONS

74. (1) In this section, “authorization” means a license, permit, endorsement on a permit, certificate, approval for a management plan, exemption, variance or other authorization given under the *Environmental Protection Act*. Definition,
authorization

(2) On the coming into force of this section, an order issued under the *Environmental Protection Act* before the coming into force of this section, with respect to a matter for which an order may now be issued under this Act, is continued in accordance with the law as it existed immediately before the coming into force of this section. Orders

(3) On the coming into force of this section, an investigation commenced under the *Environmental Protection Act* but not concluded on the coming into force of this section, with respect to a matter that may now be investigated under this Act, shall be continued in accordance with the law as it existed immediately before the coming into force of this section. Investigations

(4) Where, on the coming into force of this section, a right of appeal existed under the *Environmental Protection Act* with respect to a matter that may now be dealt with under this Act, the right to appeal is continued in accordance with the law as it existed immediately before the coming into force of this section. Rights of appeal

(5) Subject to subsection (6), on the coming into force of this section, an authorization that is valid and in force under the *Environmental Protection Act* immediately before the coming into force of this section, with respect to an activity, matter or thing, including an undertaking within the meaning of that Act, that is or may now be regulated or prohibited under this Act, is continued in accordance with the law as it existed immediately before the coming into force of this section until the authorization expires or until the expiry of five years, whichever occurs first. Valid authorizations
under
*Environmental
Protection Act*

(6) An authorization referred to in subsection (5) may be varied or cancelled in accordance with this Act at the request of the holder of the authorization, or amended, suspended or revoked in accordance with this *Idem*

Act if the activity, matter or thing to which the authorization relates has caused or is causing an adverse effect.

No authorization
required

(7) On the coming into force of this section, an activity, matter or thing that commenced prior to the coming into force of this section, for which an approval is required under this Act, but for which an authorization was not required before the coming into force of this section, may continue as if an approval for the activity, matter or thing has been issued, until the expiry of five years.

Authorization
required

(8) For greater certainty, subsection (7) does not apply to permit an activity, matter or thing for which an approval is required under this Act, and for which an authorization was required but not obtained before the coming into force of this section, to continue as if an approval for the activity, matter or thing has been issued.

Inspection

(9) A person responsible for an activity, matter or thing referred to in subsection (6), (7) or (8) shall facilitate access to and inspection of the activity, matter or thing for purposes of this Act.

No action lies

(10) No action or other proceeding for damages lies or shall be instituted against Her Majesty in right of the province by reason of anything in this section.

PART X

CONSEQUENTIAL AMENDMENTS

PART XI

COMMENCEMENT

Commencement

This Act comes into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council.