
Fourth Session, Forty-second Parliament
1 Charles III, 2023
Legislative Assembly of British Columbia

BILL 29

**ENVIRONMENTAL MANAGEMENT
AMENDMENT ACT, 2023**

Honourable George Heyman
Minister of Environment and Climate Change Strategy

Explanatory Notes

CLAUSE 1: *[Environmental Management Act, section 18]*

- amends the authority to suspend a permit or approval;
- makes an amendment consequential to the repeal of section 20 of the Act by clause 2 of this Bill;
- clarifies the effect of a suspension of a permit or approval.

CLAUSE 2: *[Environmental Management Act, section 20]* repeals the authority to abandon a permit or approval issued under the Act.

BILL 29 – 2023

**ENVIRONMENTAL MANAGEMENT
AMENDMENT ACT, 2023**

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

- 1** *Section 18 of the Environmental Management Act, S.B.C. 2003, c. 53, is amended*
- (a) in subsection (1) by repealing paragraph (a) and substituting the following:**
- (a) suspend, for any period, the permit or approval or an authorization or requirement included in the permit or approval, or ,
- (b) by repealing subsection (4) and substituting the following:**
- (4) The authority conferred by subsection (1) may be exercised by a director
- (a) in any of the circumstances referred to in subsection (3) (a), (b), (g) and (h), and
- (b) in the circumstances referred to in subsection (3) (d) if the order referred to in that provision is made under section 91.82 [*decommissioning and closure plans*], section 91.83 [*decommissioning and closure of specified facility*] or 91.84 [*security in relation to decommissioning and closure*]. ,
- (c) in subsection (5) by adding “or” at the end of paragraph (b) (iii), by striking out “or” at the end of paragraph (b) (iv) and by repealing paragraph (b) (v), and**
- (d) by repealing subsection (6) and substituting the following:**
- (6) For certainty,
- (a) if an authorization included in a permit or approval is suspended, each requirement of the permit or approval remains in effect and may be amended under section 16 [*amendment of permits and approvals*], unless the requirement is also suspended, and
- (b) a permit or an approval that is suspended or cancelled is not a valid and subsisting permit or approval.
- 2** *Section 20 is repealed.*

CLAUSE 3: *[Environmental Management Act, Division 2.2 of Part 7]* adds Division 2.2 of Part 7, which does the following:

- enacts definitions for the Division;
- authorizes a director to order an owner or operator of a specified facility to provide information about operations and activities taking place at the facility, substances present at the facility and the financial conditions of the owner or operator;
- authorizes a director to order an owner or operator to prepare and submit a decommissioning and closure plan and to address deficiencies in the plan;
- authorizes a director to order an owner or operator to decommission and close a specified facility after operations at the facility have ceased;
- authorizes a director to require an owner or operator to provide security in relation to the decommissioning and closure obligations;
- authorizes the minister to issue a stop work order if a person fails to comply with orders of a director in relation to a decommissioning and closure plan;
- authorizes the government to enter an abandoned facility and carry out decommissioning and closure, and immunizes the government and its employees from liability in relation to that work;
- provides for the recovery by the government of costs incurred to decommission and close an abandoned facility.

3 *The following Division is added to Part 7:*

Division 2.2 – Decommissioning and Closure of Facilities

Definitions

91.8 In this Division:

“**abandoned facility**” means a specified facility determined under section 91.86 [*abandoned facilities – government authority to decommission and close*] to be an abandoned facility;

“**decommissioning and closure plan**” means a plan that is prepared and submitted under section 91.82 [*decommissioning and closure plans*];

“**owner**”, in relation to a specified facility, means

- (a) a person who is in possession, has the right of control, or occupies or controls the use of the facility, or
- (b) a person who has an estate or interest, legal or equitable, in the facility, but does not include a person excluded by regulation;

“**responsible person**”, in relation to a specified facility, means

- (a) an owner of the facility, or
 - (b) a person who is in control of or responsible for any operation located at the facility,
- but does not include a person excluded by regulation;

“**specified facility**” means a facility used for a prescribed industrial or commercial purpose or activity.

Requirement to provide information respecting operations at specified facility

91.81 (1) For the purposes of considering whether to make an order under section 91.82 [*decommissioning and closure plans*] or 91.84 [*security in relation to decommissioning and closure*], a director may, subject to the regulations, order a responsible person to provide to the director information referred to in subsection (2) of this section, whether or not

- (a) the industry, trade or business conducted at a specified facility is prescribed for the purposes of section 6 (2) [*waste disposal*], or
- (b) an activity or operation of the industry, trade or business is prescribed for the purposes of section 6 (3).

CLAUSE 3: *[Environmental Management Act, Division 2.2 of Part 7 – continued]*

- (2) An order under subsection (1) must be served on the responsible person to whom the order applies and may require the person to provide, at the person's own expense, information relating to
 - (a) the operations or activities taking place at the specified facility,
 - (b) substances used, stored, treated or introduced into the environment, or caused or allowed to be introduced into the environment, in the course of the operations or activities,
 - (c) the property, assets or things owned by the person,
 - (d) the financial or other circumstances of the person, including, without limitation, the liabilities, debts and obligations of the person, and
 - (e) the prescribed matters.
- (3) Information required by an order under this section must be provided in the manner and within the period specified in the order.

Decommissioning and closure plans

- 91.82** (1) Subject to the regulations, a director may make an order under subsection (2) in relation to a specified facility if the director considers it reasonable and necessary to lessen the risk that, after operations cease at the specified facility, there will remain at the facility substances or things that have the potential to do any of the following:
- (a) cause pollution;
 - (b) cause the land at the facility to become a contaminated site, within the meaning of section 39 (1) [*definitions and interpretation*];
 - (c) cause contamination, within the meaning of section 39 (1), to increase at the facility.
- (2) In the circumstances described in subsection (1), a director may order a responsible person to prepare and submit a decommissioning and closure plan for the specified facility.
 - (3) A person to whom an order under subsection (2) applies must
 - (a) prepare a decommissioning and closure plan that complies with the regulations, and
 - (b) submit the plan to the director within the period specified in the order.
 - (4) If the director considers that a decommissioning and closure plan submitted under subsection (3) is incomplete or otherwise fails to comply with the regulations, the director may, by order, require that the deficiencies in the plan be addressed and the plan be resubmitted under subsection (3).
 - (5) The powers given by this section may be exercised even though the introduction into the environment of a substance or thing that is addressed by a decommissioning and closure plan is not prohibited under this Act or is authorized under this Act.

CLAUSE 3: *[Environmental Management Act, Division 2.2 of Part 7 – continued]*

Decommissioning and closure of specified facility

91.83 If a director determines that operations have ceased at a specified facility and a decommissioning and closure plan for the facility has been submitted under section 91.82 [*decommissioning and closure plans*], the director may, subject to the regulations, order a responsible person

- (a) to decommission and close the specified facility in accordance with the regulations
 - (i) within the prescribed period, or
 - (ii) within a different period specified by the director, and
- (b) following the decommissioning and closure of the specified facility, to prepare and submit to the director a report, which complies with the regulations, respecting the decommissioning and closure.

Security in relation to decommissioning and closure

91.84 A director may, at any time after a decommissioning and closure plan for a specified facility is submitted under section 91.82 [*decommissioning and closure plans*], order a responsible person to give security in the amount and form and subject to conditions the director specifies, to ensure the performance of the obligation under section 91.83 (a) [*decommissioning and closure of specified facility*].

Minister's authority on failure to comply with director's order respecting decommissioning and closure

91.85 If the minister is satisfied on reasonable grounds that a person has failed to comply with an order under section 91.82 [*decommissioning and closure plans*] or 91.84 [*security in relation to decommissioning and closure*], the minister may, after notifying the person affected, make an order restricting, modifying or prohibiting the operations or activities at the specified facility for a period and in a manner specified in the order.

Abandoned facilities – government authority to decommission and close

- 91.86** (1) A director may determine in accordance with the regulations that a specified facility is an abandoned facility.
- (2) If a director determines that a specified facility is an abandoned facility and an order has been made under section 91.82 [*decommissioning and closure plans*] in relation to the abandoned facility, the director, an officer or any person directed to do so by the officer may
- (a) enter the abandoned facility, and
 - (b) carry out actions authorized by the regulations for the purpose of decommissioning and closing the abandoned facility.

CLAUSE 3: *[Environmental Management Act, Division 2.2 of Part 7 – continued]*

- (3) No legal proceeding for damages lies or may be commenced or maintained against the government, an employee of the government or a person acting on behalf of or under the direction of the government because of anything done or omitted
 - (a) in the performance or intended performance of any duty under subsection (2) in relation to an abandoned facility, or
 - (b) in the exercise or intended exercise of a power under subsection (2) in relation to an abandoned facility.
- (4) Subsection (3) does not apply to
 - (a) a person referred to in that subsection in relation to anything done or omitted by that person in bad faith, or
 - (b) a responsible person, whether or not the responsible person is acting under the direction of the government.

Cost recovery if government carries out decommissioning and closure

- 91.87** (1) In this section, “**accountable person**”, in relation to an abandoned facility, means any of the following:
- (a) an owner of the facility;
 - (b) a person who was a responsible person in relation to the facility immediately before operations ceased at the facility.
- (2) Subject to the regulations, if, in relation to an abandoned facility, the total amount of the costs incurred by the government under section 91.86 [*abandoned facilities – government authority to decommission and close*] exceeds the amount of security, if any, given under section 91.84 [*security in relation to decommissioning and closure*] and held by the government, the amount of the excess is a debt due to the government by an accountable person.
- (3) The costs referred to in subsection (2) include all of the government’s costs in relation to the decommissioning and closure, including, without limitation,
- (a) for any of the following:
 - (i) the use of government employees or contractors in the decommissioning and closure, including
 - (A) hourly rates, and
 - (B) expenses, including food, accommodation and mileage;
 - (ii) the use of government vehicles, including mileage;
 - (iii) the use of consulting and professional services;

CLAUSE 3: *[Environmental Management Act, Division 2.2 of Part 7 – continued]*

CLAUSE 4: *[Environmental Management Act, section 92]* enacts regulation-making powers in relation to decommissioning and closure, decommissioning and closure plans, the authority of a director to make orders in relation to decommissioning and closure plans, and the costs that can be recovered by the government for the decommissioning and closure of abandoned facilities.

- (iv) the use, maintenance and repair of government equipment;
 - (v) private goods and services contracted, hired, rented or purchased;
 - (vi) research and analytical services related to the decommissioning and closure, and
 - (b) a prescribed percentage of those costs the Lieutenant Governor in Council considers is sufficient to meet the government's administrative costs.
- (4) Each accountable person in relation to the abandoned facility is jointly and separately liable for the debt referred to in subsection (2).
 - (5) For the purpose of recovering all or part of the debt referred to in subsection (2), a director may file a certificate with a court that has jurisdiction, and, upon filing, the certificate has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the court with which it is filed against the person named, and in the amount set out, in that certificate.
 - (6) A certificate under subsection (5) may be in the prescribed form, must be signed by a director and must contain
 - (a) the name of the accountable person to whom the certificate relates,
 - (b) the address or location of the abandoned facility, and
 - (c) the amount of the debt to be recovered from the accountable person.
 - (7) A director may register a lien at the land title office against an abandoned facility for all or a portion of the debt referred to in subsection (2).
 - (8) A director may register a lien against the personal property of an accountable person for all or a portion of the debt referred to in subsection (2).
 - (9) On registration of a lien against the personal property of an accountable person under subsection (8), a lien is created on the present and after acquired personal property in which the person has a legal or equitable interest.

4 Section 92 (1) is amended by adding the following paragraphs:

- (e) respecting the authority of a director to make an order under section 91.82 (2) [*decommissioning and closure plans*], including, without limitation, imposing restrictions on that authority;
- (f) for the purposes of Division 2.2 [*Decommissioning and Closure of Facilities*], respecting the activities or level of activity that constitutes ceasing operations;

CLAUSE 4: *[Environmental Management Act, section 92 – continued]*

- (g) respecting the preparation of decommissioning and closure plans, including, without limitation,
 - (i) respecting the matters that must be addressed by, and the information that must be included in, a decommissioning and closure plan, including, without limitation,
 - (A) if the activities at a specified facility are authorized by a permit or approval, requiring the inclusion of information respecting the actions that are planned to meet each requirement of the permit or approval,
 - (B) requiring the inclusion of a summary of the actions proposed for the purpose of decommissioning and closing the specified facility,
 - (C) requiring the inclusion of site plans, and
 - (D) requiring the inclusion of information respecting the presence of substances capable of causing pollution,
 - (ii) respecting the form of a decommissioning and closure plan,
 - (iii) respecting the inclusion in a decommissioning and closure plan of the estimated costs of the proposed actions summarized in the plan,
 - (iv) establishing requirements for the certification of a decommissioning and closure plan or the certification of a part of a decommissioning and closure plan,
 - (v) establishing a process for consultation and cooperation by responsible persons, during the preparation of a decommissioning and closure plan, with Indigenous peoples whose rights or interests may be affected by the plan,
 - (vi) respecting consultation by responsible persons with local governments during the preparation of a decommissioning and closure plan,
 - (vii) requiring a decommissioning and closure plan to be accompanied by information about consultations or cooperation referred to in subparagraphs (v) or (vi), and
 - (viii) requiring a decommissioning and closure plan to provide for long term monitoring of the specified facility for which the plan is prepared;
- (h) respecting the reviewing and updating of decommissioning and closure plans, including, without limitation, specifying circumstances in which a responsible person must update a decommissioning and closure plan and submit the updated plan to the director;

CLAUSE 4: *[Environmental Management Act, section 92 – continued]*

- (i) requiring responsible persons to report to a director respecting changes or events in relation to the specified facility for which a decommissioning and closure plan has been submitted, including, without limitation, changes in ownership and changes in the operations at the facility;
- (j) for the purposes of section 91.83 [*decommissioning and closure of specified facility*], respecting
 - (i) the authority of a director to make an order under section 91.83 (a) or (b), and
 - (ii) the decommissioning and closure of specified facilities, including, without limitation, specifying
 - (A) the actions that must be taken to decommission specified facilities and carry out reclamation, remediation or restoration of the land at specified facilities, and
 - (B) the standard of clean up that must be achieved;
- (k) respecting the costs referred to in section 91.87 (2) [*cost recovery if government carries out decommissioning and closure*].

Commencement

- 5 This Act comes into force by regulation of the Lieutenant Governor in Council.