

CONSOLIDATION OF ENVIRONMENTAL RIGHTS ACT
R.S.N.W.T. 1988,c.83(Supp.)

(Current to: November 10, 2010)

AS AMENDED BY:

S.Nu. 2010,c.4,s.21

s.21 in force March 23, 2010

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Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

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GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

Citation of Acts

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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SCHEDULE

ENVIRONMENTAL RIGHTS ACT

WHEREAS the people of the Northwest Territories possess a unique sense of their relationship to the land, the rich, vast diversity of which has shaped their values and experience; and

WHEREAS it is fitting that this relationship be recognized by the Legislative Assembly of the Northwest Territories in an enactment whereby rights in respect of the environment are established and means for protection of the environment are given to all persons; and

WHEREAS the people of the Northwest Territories have the right to a healthy environment and a right to protect the integrity, biological diversity and productivity of the ecosystems in the Northwest Territories;

THEREFORE, the Commissioner of the Northwest Territories, by and with the advice and consent of the Legislative Assembly, enacts as follows:

INTERPRETATION

Definitions

1. In this Act,

"contaminant" means any solid, liquid, gas, odour, heat, sound or vibration, or any combination of them, the release of which into the environment

- (a) causes or contributes to the impairment of the quality of the environment,
- (b) causes injury or damage to plant or animal life,
- (c) causes harm or material discomfort to any person, or adversely affects or impairs the health or safety of any person, or
- (d) renders the environment unfit for use by any plant or animal life or by any person; (*contaminant*)

"environment" means the components of the Earth within Nunavut and includes

- (a) all air, land, water, snow and ice,
- (b) all layers of the atmosphere,
- (c) all organic and inorganic matter and living organisms, and
- (d) the interacting natural systems that include components referred to in paragraphs (a) to (c); (*environnement*)

"public trust" means the collective interest of the people of Nunavut in the quality of the environment and the protection of the environment for future generations; (*bien public*)

"release" includes, but not so as to limit the meaning, any pumping, spreading, discharging, spraying, injecting, inoculating, abandoning, depositing, spilling, leaking, seeping, pouring, emitting, emptying, throwing, dumping, placing and exhausting or any combination of them, whether intentional or accidental. (*rejet*)
S.Nu. 2010,c.4,s.21(2).

APPLICATION

Application

2. (1) This Act applies to the whole of Nunavut.

Exception

(2) This Act does not apply to any person who is authorized under an Act of the Parliament of Canada to do those things which, but for such Act, are in contravention of this Act.

Paramountcy

(3) Where there is a conflict between the terms of this Act and the terms of any other enactment, this Act shall prevail to the extent of the conflict.

Government bound by Act

(4) This Act binds the Government of Nunavut. S.Nu. 2010,c.4,s.21(2).

ACCESS TO INFORMATION

Access to information

3. (1) Every person has the right to obtain from any minister of the Government of Nunavut any information in the possession of, under the control of or otherwise available to the minister concerning the quantity, quality or concentration of any contaminant released or likely to be released, into the environment.

Access to licence

(2) A minister referred to in subsection (1) shall permit any person who applies to examine any licence, permit, approval, order or notice and any data or information in respect of any such document and, on payment of a fee that reasonably defrays the cost of reproduction, the person shall be provided with a copy of the document, data or information.

Access to report

(3) A minister referred to in subsection (1) shall permit any person who applies to examine any report or memorandum, and any data or information in respect of any report or memorandum, concerning any test, observation, inspection or analysis relating to the release or the likely release, of a contaminant into the environment and, on payment of a fee that reasonably defrays the cost of reproduction, the person shall be provided with a copy of the report, memorandum, data or information.

Refusal

(4) Despite subsections (1), (2) and (3), a minister may refuse an application under this section if, in the reasonable opinion of the minister, providing the information would

- (a) be detrimental to the security of Nunavut or Canada;
- (b) reveal trade secrets or prejudice commercial competition;
- (c) constitute an unwarranted invasion of personal privacy;
- (d) prejudice the administration of justice; or
- (e) be improper for reasons of public policy.

Notice

(5) Where a minister refuses an application under this section, the minister must cause a notice of the refusal to be sent to the person who made the application and the notice shall set out the reasons for the refusal.

Application to judge

(6) Where the minister refuses to provide information under subsection (4), the person who made the application may apply to a judge of the Nunavut Court of Justice, within 30 days after receiving notice of the refusal, for an order directing that the information be provided and, upon completion of a hearing on the matter, the judge may make such order as the judge considers appropriate in the circumstances.

Statement of particulars

(7) The minister, in a proceeding commenced under subsection (6), may file a statement of particulars in a sealed envelope with the judge in support of the refusal of the minister.

Order

(8) At any stage of the proceedings the judge may order that the statement of particulars be disclosed in whole or in part to the other party or be otherwise dealt with as the judge determines proper.

Onus

(9) In a proceeding commenced under subsection (6), the onus of establishing that the information should not be provided is on the minister. S.Nu. 2010,c.4,s.21(2).

INVESTIGATIONS

Investigations

4. (1) This section applies whether or not it is alleged that an offence has been committed pursuant to any Act listed in the Schedule.

Application

(2) Any two persons resident in Nunavut who are not less than 19 years of age and who are of the opinion that a contaminant has been released into the environment, is

being released into the environment, or is likely to be released into the environment, may apply to the Minister for an investigation of the release or the likely release.

Declaration

(3) An application for an investigation must be accompanied by a declaration, duly sworn or affirmed

- (a) stating the names and addresses of the applicants;
- (b) stating the nature of the release or the likely release, and the name of each person alleged to have been involved in the release or the likely release; and
- (c) containing a concise statement of the observations of witnesses and all available documentation supporting the allegations of the applicants.

Acknowledgement

(4) On receipt of an application under subsection (2), the Minister shall acknowledge in writing receipt of the application and investigate all matters that the Minister considers necessary for a determination of the facts relating to the application.

Progress report

(5) Within 90 days after receiving an application under subsection (2), the Minister shall report in writing to the applicant on the progress of the investigation and the action, if any, that the Minister has taken or proposes to take.

Discontinuance of investigation

(6) The Minister may discontinue an investigation where the Minister is of the opinion that the release or the likely release does not constitute a threat to the environment.

Discontinuance report

(7) When an investigation is discontinued, the Minister shall within 90 days of the discontinuance of the investigation

- (a) prepare a written report describing the information obtained during the investigation and the findings which led to the conclusion that the release or likely release does not constitute a threat to the environment; and
 - (b) send a copy of the report to the applicants and to any person whose conduct has been investigated.
- S.Nu. 2010,c.4,s.21(2).

PROSECUTION OF STATUTORY OFFENCES

Standing to prosecute statutory offences

5. (1) Any resident of Nunavut who, on reasonable grounds, believes that an offence has been committed under an Act listed in the Schedule may lay an information in writing and under oath before a justice.

Defrayal of costs

(2) Where a resident who lays an information under subsection (1) conducts the prosecution on that information, the court may order that a portion of any monetary penalty imposed as a result of the prosecution be paid to the person conducting the prosecution to reimburse that person for costs and expenses incurred by that person in the conduct of the prosecution.

Government employees excluded

(3) Subsections (1) and (2) do not apply in respect of persons who are employed by the Government of Nunavut to enforce the provisions of the Acts listed in the Schedule. S.Nu. 2010,c.4,s.21(2).

RIGHT TO PROTECT ENVIRONMENT

Right to protect

6. (1) Every person resident in Nunavut has the right to protect the environment and the public trust from the release of contaminants by commencing an action in the Nunavut Court of Justice against any person releasing any contaminant into the environment.

Standing

(2) No person is prohibited from commencing an action under subsection (1) by reason only that he or she is unable to show

- (a) any greater or different right, harm or interest than any other person; or
- (b) any pecuniary or proprietary right or interest in the subject matter of the proceeding.

Relief

(3) The Nunavut Court of Justice, in respect of an action commenced under subsection (1), may

- (a) grant an interim or permanent injunction in respect of any activity of the defendant;
- (b) order the defendant to remedy any damage caused by his or her release of the contaminant into the environment;
- (c) order the defendant to pay an amount by way of satisfaction or compensation for loss or damage resulting from the release to
 - (i) any person having an interest in property that is adversely affected by the release of the contaminant into the environment, and
 - (ii) the Minister; and
- (d) make any other order that it considers appropriate.

Special purpose fund

(4) Any money received by the Minister pursuant to an order under paragraph (3)(c) must be deposited in an account in the Consolidated Revenue Fund and disbursed for the following special purposes:

- (a) the repair of any damages caused by the release of the contaminant; or
- (b) where action is not practicable under paragraph (a), the enhancement or improvement of the environment.

Defence

(5) It is a complete defence to any action commenced by any person under subsection (1) that

- (a) the release of the contaminant
 - (i) is and will remain entirely restricted to lands owned by the defendant or to lands in respect of which the owner has expressly authorized the defendant to release the contaminant, or
 - (ii) does not and will not materially impair the quality of the environment; or
- (b) the defendant's activity is in compliance with a standard established or an approval given under an enactment.
S.Nu. 2010,c.4,s.21(2).

PROTECTION OF INFORMANTS**Protection of informants**

7. (1) No person shall dismiss or threaten to dismiss an employee, discipline or suspend an employee, impose any penalty on an employee or intimidate or coerce an employee because the employee

- (a) has reported or proposes to report to the appropriate authority any release or any likely release, of a contaminant to the environment;
- (b) has made or proposes to make an application under subsection 3(2), (3) or (6);
- (c) has made or proposes to make an application under subsection 4(2);
- (d) has commenced or proposes to commence to prosecute an offence under subsection 5(1); or
- (e) has commenced or proposes to commence an action under subsection 6(1).

Improper purpose

(2) Subsection (1) does not apply in respect of any employee who proceeds or proposes to proceed in a manner described in paragraphs (a) to (e) primarily for the purpose of intimidating, coercing or embarrassing his or her employer or any other person or for any other improper purpose.

Penalty

(3) Every person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 90 days or to both.

Remedy

(4) Where an employer is convicted of an offence under subsection (1), the judge may, in addition to prescribing a penalty provided for under subsection (3), order what action the employer shall take or what the employer shall refrain from doing and such order may include the reinstatement and employment of the employee with compensation for loss of wages and other benefits to be assessed against the employer.

ANNUAL REPORT

Annual report

8. The Minister, as soon as possible after the end of each year, shall prepare and cause to be tabled before the Legislative Assembly a report describing

- (a) all applications for information made under subsection 3(2) or (3),
- (b) all applications for orders under subsection 3(6),
- (c) all applications for investigations made under subsection 4(2),
- (d) all prosecutions commenced under subsection 5(1),
- (e) all actions commenced under subsection 6(1),
- (f) the disposition of any moneys received under subparagraph 6(3)(c)(ii), and
- (g) all convictions under subsection 7(3),

that the Minister is aware of for that year in sufficient detail so as to provide a reader of the report with an understanding of all such applications, prosecutions, actions and convictions.

PRESERVATION OF REMEDIES

Remedies preserved

9. Nothing in this Act shall be construed so as to repeal, remove or reduce any existing remedy available at law to any person.

SCHEDULE

(Sections 4 and 5)

Environmental Protection Act

Forest Protection Act

Pesticides Act

Public Health Act

Territorial Parks Act

Transportation of Dangerous Goods Act

Wildlife Act