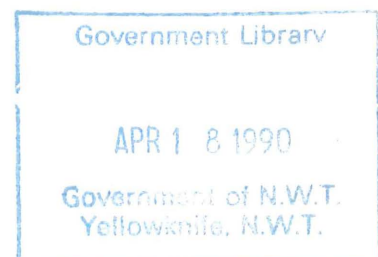


**PROPOSED ACT TO AMEND THE ENVIRONMENTAL
PROTECTION ACT**

THE PURPOSE OF THIS PROPOSED BILL IS TO AMEND THE ENVIRONMENTAL PROTECTION ACT TO MAKE THE ACT BINDING ON THE GOVERNMENT OF THE NORTHWEST TERRITORIES; TO HAVE THE CHIEF ENVIRONMENTAL PROTECTION OFFICER APPOINTED BY THE MINISTER RATHER THAN THE COMMISSIONER; TO CLARIFY THE PROVISIONS DEALING WITH THE DISCHARGE OF CONTAMINANTS; TO ADD A REQUIREMENT TO REPORT DISCHARGES OF CONTAMINANTS; TO INCREASE THE MAXIMUM PUNISHMENT FOR CONTRAVENTION OF THE ACT; TO EXPAND THE KINDS OF ORDERS THAT THE COURT MAY MAKE; TO PROVIDE THAT DIRECTORS OF A CORPORATION MAY BE HELD PERSONALLY LIABLE FOR OFFENCES COMMITTED BY THE CORPORATION; AND TO PROVIDE FOR A DEFENCE OF DUE DILIGENCE.

THIS BILL IS TABLED FOR INFORMATION PURPOSES ONLY.





AN ACT TO AMEND THE ENVIRONMENTAL PROTECTION ACT

LOI MODIFIANT LA LOI SUR LA PROTECTION DE L'ENVIRONNEMENT (AN ACT TO AMEND THE ENVIRONMENTAL PROTECTION ACT)

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

Le commissaire des Territoires du Nord-Ouest, sur l'avis et avec le consentement de l'Assemblée législative, édicte :

1. The *Environmental Protection Act* is amended by this Act.

1. La présente loi modifie la *Environmental Protection Act* (Loi sur la protection de l'environnement).

2. Section 2 is amended by

2. L'article 2 de la version anglaise est modifié par :

(a) repealing paragraph (b) and substituting the following:

a) abrogation de l'alinéa b) et substitution de ce qui suit :

"contaminant"

(b) "contaminant" means any noise or substance that, if discharged into the environment,

«(b) "contaminant" means any noise or substance that, if discharged into the environment,

"contaminant"

(i) endangers the health, safety or welfare of persons,

(i) endangers the health, safety or welfare of persons,

(ii) interferes or is likely to interfere with normal enjoyment of life or property,

(ii) interferes or is likely to interfere with normal enjoyment of life or property,

(iii) endangers the health of animal life, or

(iii) endangers the health of animal life, or

(iv) causes or is likely to cause damage to plant life or to property;"

(iv) causes or is likely to cause damage to plant life or to property;»

(b) adding the following after paragraph (b):

b) insertion après l'alinéa b), de ce qui suit :

"court"

(b.1) "court" means a justice of the peace, the Territorial Court of the Northwest Territories or the Supreme Court of the Northwest Territories;"

«(b.1) "court" means a justice of the peace, the Territorial Court of the Northwest Territories or the Supreme Court of the Northwest Territories;»

"court"

(c) adding the following paragraph after paragraph (c):

c) insertion, après l'alinéa c), de ce qui suit :

"endanger"

(c.1) "endanger" includes contributing to the endangerment of, or likely to endanger;"

«(c.1) "endanger" includes contributing to the endangerment of, or likely to endanger;»

"endanger"

(d) repealing paragraph (d) and substituting the following:

d) abrogation de l'alinéa d) et substitution de ce qui suit :

"environment"

(d) "environment" means the components of the Earth and includes

«(d) "environment" means the components of the Earth and includes

"environment"

(i) air, land and water,

(i) air, land and water,

EXPLANATORY NOTES

NOTES EXPLICATIVES

Clause 2

Article 2

Paragraph 2(b) now reads:

Texte actuel de l'alinéa 2b) :

- (b) "~~contaminant~~" means any solid, liquid, gas, odour, heat, "~~contaminant~~" sound, vibration or combination of any of them the discharge of which into the environment may
- (i) cause or contribute to the impairment of the quality of the environment, or
 - (ii) adversely affect the health, safety or comfort of any person;

Paragraph 2(b.1) is new.

L'alinéa 2(b.1) est nouveau.

Paragraph 2(c.1) is new.

L'alinéa 2(c.1) est nouveau.

Paragraph 2(d) now reads:

Texte actuel de l'alinéa 2d).

- (d) "environment" means the air, water, ice, snow and land of "environment" the Territories and all animal and plant life therein;

	(ii) all layers of the atmosphere, (iii) all organic and inorganic matter and living organisms, and (iv) the interacting natural systems that include components referred to in subparagraphs (i) to (iii);";	(ii) all layers of the atmosphere, (iii) all organic and inorganic matter and living organisms, and (iv) the interacting natural systems that include components referred to in subparagraphs (i) to (iii);»;	
	(e) changing the period at the end of paragraph (f) to a semicolon and adding "and" after the semicolon; and (f) adding the following paragraph after paragraph (f):	e) changement du point à la fin de l'alinéa f) par un point-virgule et adjonction du mot «and» après le point-virgule, f) adjonction, après l'alinéa f), de ce qui suit :	5 10
"substance"	(g) "substance" means any solid, liquid, gas, odour or organism or combination of any of them."	«(g) "substance" means any solid, liquid, gas, odour or organism or combination of any of them.».	"substance" 20
	3. The following section is added after the heading "Application of Act" and before section 3:	3. La disposition qui suit est insérée, après l'intertitre «Application of Act» dans la version anglaise et avant l'article 3 :	25
"Binding on Government"	2.1. This Act and the regulations bind the Government of the Northwest Territories."	«2.1. This Act and the regulations bind the Government of the Northwest Territories.».	Binding on Government 30
	4. Subsection 4(1) is amended by striking out "Commissioner" and substituting "Minister".	4. Le paragraphe 4(1) de la version anglaise est modifié par suppression du mot «Commissioner» et substitution du mot «Minister».	35
	5. Sections 6 and 7 are repealed and the following substituted:	5. Les articles 6 et 7 de la version anglaise sont abrogés et remplacés par ce qui suit :	40
"Discharge of contaminants"	6. (1) Subject to subsection (3), no person shall discharge a contaminant into the environment.	«6. (1) Subject to subsection (3), no person shall discharge a contaminant into the environment.	Discharge of contaminants 45
Idem	(2) Subject to subsection (3), no person responsible for a source of a contaminant shall permit the discharge of the contaminant from the source into the environment.	(2) Subject to subsection (3), no person responsible for a source of a contaminant shall permit the discharge of the contaminant from the source into the environment.	Idem 50
Exception	(3) Subsections (1) and (2) do not apply where the person who discharged the contaminant or permitted the discharge of the contaminant establishes that (a) the discharge is authorized by this Act or the regulations or by an order issued under this Act or the regulations; (b) the contaminant has been used solely for domestic purposes and was discharged from a residence; (c) the contaminant was discharged from the exhaust system of a	(3) Subsections (1) and (2) do not apply where the person who discharged the contaminant or permitted the discharge of the contaminant establishes that (a) the discharge is authorized by this Act or the regulations or by an order issued under this Act or the regulations; (b) the contaminant has been used solely for domestic purposes and was discharged from a residence; (c) the contaminant was discharged from the exhaust system of a	Exception 55

Paragraph 2(f) now reads:

Texte actuel de l'alinéa 2f) :

(f) "regulations" means regulations made pursuant to this ^{Act} ~~Ordinance~~ ~~1973(3rd), c.2.s.2; 1985(1), c.4, s.7.~~

Paragraph 2(g) is new.

L'alinéa 2g) est nouveau.

Clause 3

Article 3

Section 2.1 is new.

L'article 2.1 est nouveau.

Clause 4

Article 4

Subsection 4(1) now reads:

Texte actuel du paragraphe 4(1) :

Chief
Environmental
Protection
Officer

4. (1) The Commissioner shall appoint a Chief Environmental Protection Officer who shall administer and enforce the provisions of this ~~Ordinance~~ and the regulations.

Clause 5

Article 5

Section 6 now reads:

Texte actuel de l'article 6 :

Contaminants

6. (1) No person shall discharge or permit the discharge of any contaminant into the environment that

- (a) causes or contributes or is likely to cause or contribute to substantial impairment of the quality of the environment; or
- (b) adversely affects or is likely to adversely affect the health, safety or comfort of any person.

Where no
offence

(2) Notwithstanding subsection (1) no offence is committed where the level of discharge of contaminants into the environment does not exceed the level of discharge that is established by regulation. 1973(3rd), c.2.s.6.

- vehicle;
- (d) the discharge of the contaminant resulted from the burning of leaves, foliage, wood, crops or stubble for domestic or agricultural purposes;
- (e) the discharge of the contaminant resulted from burning for land clearing or land grading;
- (f) the discharge of the contaminant resulted from a fire set by a public official for habitat management or silviculture purposes;
- (g) the contaminant was discharged for the purposes of combatting a forest fire;
- (h) the contaminant is a soil particle or grit released in the course of agriculture or horticulture; or
- (i) the contaminant is a pesticide classified and labelled as "domestic" under the *Pest Control Products Regulations* (Canada).

- vehicle;
- (d) the discharge of the contaminant resulted from the burning of leaves, foliage, wood, crops or stubble for domestic or agricultural purposes;
- (e) the discharge of the contaminant resulted from burning for land clearing or land grading;
- (f) the discharge of the contaminant resulted from a fire set by a public official for habitat management or silviculture purposes;
- (g) the contaminant was discharged for the purposes of combatting a forest fire;
- (h) the contaminant is a soil particle or grit released in the course of agriculture or horticulture; or
- (i) the contaminant is a pesticide classified and labelled as "domestic" under the *Pest Control Products Regulations* (Canada).

Environmental
emergency

6.1. Where a discharge of a contaminant into the environment in contravention of this Act or the regulations occurs or a reasonable likelihood of such a discharge exists, every person causing or contributing to the discharge or increasing the likelihood of a discharge, and the owner or the person in control of the contaminant immediately before its discharge or likely discharge, shall immediately

- (a) subject to any regulations, report the discharge or likely discharge to the person or office designated by the regulations;
- (b) take all reasonable emergency measures consistent with public safety to prevent or eliminate any danger to life, health, property or the environment that results or may reasonably be expected to result from the discharge or likely discharge; and
- (c) make a reasonable effort to notify every member of the public who may be adversely affected by the discharge or likely discharge.

Environ-
mental
emergency

6.1. Where a discharge of a contaminant into the environment in contravention of this Act or the regulations occurs or a reasonable likelihood of such a discharge exists, every person causing or contributing to the discharge or increasing the likelihood of a discharge, and the owner or the person in control of the contaminant immediately before its discharge or likely discharge, shall immediately

- (a) subject to any regulations, report the discharge or likely discharge to the person or office designated by the regulations;
- (b) take all reasonable emergency measures consistent with public safety to prevent or eliminate any danger to life, health, property or the environment that results or may reasonably be expected to result from the discharge or likely discharge; and
- (c) make a reasonable effort to notify every member of the public who may be adversely affected by the discharge or likely discharge.

Section 6.1 is new.

L'article 6.1 est nouveau.

Order of
inspector

7. (1) Where an inspector believes on reasonable grounds that a discharge of a contaminant in contravention of this Act or the regulations has occurred or is occurring, the inspector may issue an order requiring any person causing or contributing to the discharge or the owner or the person in charge of the contaminant

- (a) to stop the discharge immediately or by a day named in the order; or
- (b) to reduce the discharge to a specified level immediately or by a day named in the order.

Idem

(2) Where an inspector believes on reasonable grounds that a discharge of a contaminant in contravention of this Act or the regulations is reasonably likely to occur, the inspector may issue an order requiring any person increasing the likelihood of a discharge or the owner or person in charge of the contaminant to take the preventive measures that the inspector considers necessary.

Effect of
order

(3) The issue of an order under this section does not preclude the prosecution of an offence under paragraph 12(1)(a)."

6. Subsection 12(1) is amended by striking out the words following paragraph (b) and substituting the following:

"is guilty of an offence and is liable on summary conviction

- (c) for a first offence, to a fine not exceeding \$300,000 or to imprisonment for a term not exceeding six months, or to both, and
- (d) for each subsequent offence, to a fine not exceeding \$1,000,000 or to imprisonment for a term of less than two years, or to both."

7. Subsection 12(2) is amended by striking out the words following paragraph (b) and substituting the following:

"is guilty of an offence and liable on summary conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding six months, or to both."

Order of
inspector

7. (1) Where an inspector believes on reasonable grounds that a discharge of a contaminant in contravention of this Act or the regulations has occurred or is occurring, the inspector may issue an order requiring any person causing or contributing to the discharge or the owner or the person in charge of the contaminant

- (a) to stop the discharge immediately or by a day named in the order; or
- (b) to reduce the discharge to a specified level immediately or by a day named in the order.

Idem

(2) Where an inspector believes on reasonable grounds that a discharge of a contaminant in contravention of this Act or the regulations is reasonably likely to occur, the inspector may issue an order requiring any person increasing the likelihood of a discharge or the owner or person in charge of the contaminant to take the preventive measures that the inspector considers necessary.

Effect of
order

«(3)The issue of an order under this section does not preclude the prosecution of an offence under paragraph 12(1)(a).».

6. Le paragraphe 12(1) de la version anglaise est modifié par suppression des mots après l'alinéa b) et substitution de ce qui suit :

«is guilty of an offence and is liable on summary conviction

- (c) for a first offence, to a fine not exceeding \$300,000 or to imprisonment for a term not exceeding six months, or to both, and
- (d) for each subsequent offence, to a fine not exceeding \$1,000,000 or to imprisonment for a term of less than two years, or to both.».

7. Le paragraphe 12(2) de la version anglaise est modifié par suppression des mots après l'alinéa b) et substitution de ce qui suit :

«is guilty of an offence and liable on summary conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding six months, or to both.».

Section 7 now reads:

Texte actuel de l'article 7 :

7. Where any person discharges or permits the discharge of any contaminant into the environment, an inspector may order such person Order to stop or reduce discharge

- (a) to stop any further such discharge immediately; or
- (b) to stop the discharge, or reduce the discharge to a specified level, by a day named in the order. 1973(3rd),c.2,s.7.

Clause 6

Article 6

Subsection 12(1) now reads:

Texte actuel du paragraphe 12(1) :

Offences and penalties

12. (1) Any person who

- (a) contravenes the provisions of section 6, or
- (b) fails to comply with an order given under section 7 or subsection 8(1),

is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or both.

Clause 7

Article 7

Subsection 12(2) now reads:

Texte actuel du paragraphe 12(2) :

- (2) Any person who fails to comply with the terms of idem
- (a) an order given under section 5, or
 - (b) a notice given under subsection 11(1),

is guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months or both. 1973 (3rd),c.2,s.12.

8. The following sections are added after section 12:

"Offence
and punishment

12.1. Every person who contravenes a provision of this Act or the regulations, other than a provision referred to in section 12, is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding six months, or to both.

Orders of
court

12.2. Where a person has been convicted of an offence under this Act, in addition to any punishment that may be imposed under this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order with one or more of the following terms:

- (a) prohibiting the person from doing any act or engaging in any activity that may result in the continuation or repetition of the offence;
- (b) directing the person to take any action that the court considers appropriate to remedy any harm to the environment that results or may result from the act or omission that constituted the offence;
- (c) directing the person to take any action that the court considers appropriate to avoid any harm to the environment that may result from the act or omission that constituted the offence;
- (d) directing the person to publish, in the manner determined by the court, the facts relating to the conviction;
- (e) directing the person to notify, at his own cost and in a specified manner, any person aggrieved or affected by the person's conduct of the facts relating to the conviction;
- (f) directing the person to post a bond or pay an amount of money into court that will ensure compliance with any order made under this section;
- (g) directing the person to submit to the Minister, on application by the Minister made within three years after the date of conviction, the information with respect to such activities of the person that were the subject of the offence as the court considers appropriate and just in the circumstances; and

8. Ce qui suit est inséré après l'article 12 de la version anglaise :

Offence
and
punishment

«12.1. Every person who contravenes a provision of this Act or the regulations, other than a provision referred to in section 12, is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding six months, or to both.

Orders of
justice

12.2. Where a person has been convicted of an offence under this Act, in addition to any punishment that may be imposed under this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order with one or more of the following terms:

- (a) prohibiting the person from doing any act or engaging in any activity that may result in the continuation or repetition of the offence;
- (b) directing the person to take any action that the court considers appropriate to remedy any harm to the environment that results or may result from the act or omission that constituted the offence;
- (c) directing the person to take any action that the court considers appropriate to avoid any harm to the environment that may result from the act or omission that constituted the offence;
- (d) directing the person to publish, in the manner determined by the court, the facts relating to the conviction;
- (e) directing the person to notify, at his own cost and in a specified manner, any person aggrieved or affected by the person's conduct of the facts relating to the conviction;
- (f) directing the person to post a bond or pay an amount of money into court that will ensure compliance with any order made under this section;
- (g) directing the person to submit to the Minister, on application by the Minister made within three years after the date of conviction, the information with respect to such activities of the person that were the subject of the offence as the court considers appropriate and just in the circumstances; and

Clause 8

Sections 12.1 to 12.4 are new.

Article 8

Les articles 12.1 à 12.4 sont nouveaux.

(h) requiring the offender to comply with any other reasonable conditions that the court considers appropriate and just in the circumstances for securing the offender's good conduct and for preventing the offender from repeating the offence or committing other offences under this Act.

(h) requiring the offender to comply with any other reasonable conditions that the court considers appropriate and just in the circumstances for securing the offender's good conduct and for preventing the offender from repeating the offence or committing other offences under this Act.

Variation of order

12.3. (1) Subject to subsection (2), where a court makes an order under section 12.2, on application by the prosecutor or the person who is the subject of the order, the court may require that person to appear before the court and, after hearing the person and the prosecutor, the court may, if in the opinion of the court it is desirable as a result of a change in the circumstances of the person since the order was made,

- (a) make changes in the order or the conditions specified in the order or extend the period for which the order is to remain in force for a period, not exceeding one year, that the court considers desirable; or
- (b) decrease the period for which the order is to remain in force or relieve the offender, either absolutely or partially or for a period that the court considers desirable, from having to comply with any condition that is specified in the order.

12.3. (1) Subject to subsection (2), where a court makes an order under section 12.2, on application by the prosecutor or the person who is the subject of the order, the court may require that person to appear before the court and, after hearing the person and the prosecutor, the court may, if in the opinion of the court it is desirable as a result of a change in the circumstances of the person since the order was made,

- (a) make changes in the order or the conditions specified in the order or extend the period for which the order is to remain in force for a period, not exceeding one year, that the court considers desirable; or
- (b) decrease the period for which the order is to remain in force or relieve the offender, either absolutely or partially or for a period that the court considers desirable, from having to comply with any condition that is specified in the order.

Variation of order

Notice

(2) Before making an order under subsection (1), the court may direct that notice be given to the persons whom the court considers to be interested persons and the court may hear any such person.

(2) Before making an order under subsection (1), the court may direct that notice be given to the persons whom the court considers to be interested persons and the court may hear any such person.

Notice

Limitation

(3) Where an application made under subsection (1) in respect of a person has been heard by the court, no other application under that subsection may be made with respect to that person except with leave of the court.

(3) Where an application made under subsection (1) in respect of a person has been heard by the court, no other application under that subsection may be made with respect to that person except with leave of the court.

Limitation

Offence and punishment

12.4. Every person who contravenes or fails to comply with an order made under section 12.2 is guilty of an offence and is liable on summary conviction

- (a) for a first offence, to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding six months, or to both; or
- (b) for each subsequent offence, to a fine not exceeding \$1,000,000 or to

12.4. Every person who contravenes or fails to comply with an order made under section 12.2 is guilty of an offence and is liable on summary conviction

- (a) for a first offence, to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding six months, or to both; or
- (b) for each subsequent offence, to a

Offence and punishment

imprisonment for a term of less than two years, or to both."

fine not exceeding \$1,000,000 or to imprisonment for a term of less than two years, or to both.».

9. The following sections are added after section 14:

9. Ce qui suit est inséré après l'article 16 de la version anglaise :

"Liability of directors

14.1. (1) Where a corporation commits an offence under this Act or the regulations, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and is guilty of the offence.

«14.1. (1) Where a corporation commits an offence under this Act or the regulations, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and is guilty of the offence.

Liability of directors

Idem

(2) An officer, director or agent of a corporation is liable to conviction under this section whether or not the corporation has been prosecuted for or convicted of the offence.

(2) An officer, director or agent of a corporation is liable to conviction under this section whether or not the corporation has been prosecuted for or convicted of the offence.

Idem

Defence

14.2. No person shall be found guilty of an offence under this Act or the regulations if the person establishes that he exercised all due diligence to prevent its commission."

14.2. No person shall be found guilty of an offence under this Act or the regulations if the person establishes that he exercised all due diligence to prevent its commission.».

Defence

10. The following section is added after section 16:

10. L'article qui suit est inséré après l'article 16 de la version anglaise :

"Proof of facts

16.1. An order, certificate or notice purporting to be signed by the Minister or the Chief Environmental Protection Officer, or a certified copy of the order, certificate or notice, is admissible in evidence in an action, prosecution or other proceeding and, in the absence of any evidence to the contrary, the document is conclusive proof of the facts set out in it without proof of the signature or of the official character of the person appearing to have signed it."

«16.1. An order, certificate or notice purporting to be signed by the Minister or the Chief Environmental Protection Officer, or a certified copy of the order, certificate or notice, is admissible in evidence in an action, prosecution or other proceeding and, in the absence of any evidence to the contrary, the document is conclusive proof of the facts set out in it without proof of the signature or of the official character of the person appearing to have signed it.».

Proof of facts

11. Section 18 is amended by

- (a) striking out "and" at the end of paragraph (c); and
- (b) adding the following paragraphs after paragraph (c):

- "(c.1) authorizing the discharge of contaminants;
- (c.2) respecting the reporting of discharges of contaminants or the likely discharge of contaminants;
- (c.3) prescribing any matter that may be prescribed by this Act; and"

11. L'article 18 de la version anglaise est modifié par :

- a) suppression à la fin de l'alinéa c) du mot «and»;
- b) insertion, après l'alinéa c), de ce qui suit :

- «(c.1) authorizing the discharge of contaminants;
- (c.2) respecting the reporting of discharges of contaminants or the likely discharge of contaminants;
- (c.3) prescribing any matter that may be prescribed by this Act; and».

Clause 9

Sections 14.1 and 14.2 are new.

Article 9

Les articles 14.1 et 14.2 sont nouveaux.

Clause 10

Section 16.1 is new.

Article 10

L'article 16.1 est nouveau.

Clause 11

Paragraph 18(c) now reads:

Article 11

Texte actuel de l'alinéa 18c) :

(c) the material and equipment required to be on hand to alleviate the effect of any discharge of contaminants; and

Paragraphs 18(c.1) to (c.3) are new.

Les alinéas 18c.1) à c.3) sont nouveaux.

12. This Act or any portion of this Act shall come into force on a day or days to be fixed by order of the Commissioner.

12. La présente loi ou telle de ses dispositions entre en vigueur à la date ou aux dates fixées par décret du commissaire.