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INTEGRATED PEST MANAGEMENT ACT

[SBC 2003] CHAPTER 58

Assented to October 23, 2003

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Part 1 — Interpretation

Definitions

1 In this Act:

"administrator" means the administrator appointed under section 9
[administrator];

"adverse effect" means harm to humans, animals or the environment;

"animal" includes vertebrates and invertebrates, whether living or dead, but does not include humans;

"appeal board" means the Environmental Appeal Board continued under the *Environmental Management Act*;

"applicant" means

(a) a person applying for a licence, certificate or permit under this Act,
or

(b) a person who gives the administrator a pesticide use notice;

"certificate", except in sections 20 (5) and (6) *[seizure and prevention order]*, 25 *[recovery of administrative penalties]*, 29 *[time limit for prosecuting offence]* and 34 *[evidence]*, means a certificate issued under section 5 *[certificate for sale or use of pesticides by individuals]*;

"committee" means the Integrated Pest Management Committee under section 13 [*Integrated Pest Management Committee*];

"confirmation" means a confirmation under section 7 (3) [*use of pesticides in accordance with a pesticide use notice*];

"food" includes anything manufactured, sold or represented for use as food or drink for humans or animals, and also includes an ingredient that is mixed, or intended to be mixed, with food;

"inspector" means

- (a) a person designated under section 11 [*inspectors*] as an inspector for the purposes of this Act, or
- (b) a conservation officer as defined in section 1 (1) of the *Environmental Management Act*;

"integrated pest management" means a process for managing pest populations that includes the following elements:

- (a) planning and managing ecosystems to prevent organisms from becoming pests;
- (b) identifying pest problems and potential pest problems;
- (c) monitoring populations of pests and beneficial organisms, damage caused by pests and environmental conditions;
- (d) using injury thresholds in making treatment decisions;
- (e) suppressing pest populations to acceptable levels using strategies based on considerations of
 - (i) biological, physical, cultural, mechanical, behavioural and chemical controls in appropriate combinations, and
 - (ii) environmental and human health protection;
- (f) evaluating the effectiveness of pest management treatments;

"licence" means a licence issued under section 4 [*licence for sale or use of pesticides*];

"permit" means a permit issued under section 6 [*permit for use of pesticides*];

"pest" means an injurious, noxious or troublesome living organism, but does not include a virus, bacteria, fungus or internal parasite that exists on or in humans or animals;

"pest management plan" means a plan that describes

- (a) a program, for managing pest populations or reducing damage caused by pests, based on integrated pest management, and
- (b) the methods of handling, preparing, mixing, applying and otherwise using pesticides within the program;

"pesticide" means a micro-organism or material that is represented, sold, used or intended to be used to prevent, destroy, repel or mitigate a pest, and includes

- (a) a plant growth regulator, plant defoliator or plant desiccant,
- (b) a control product as defined in the *Pest Control Products Act* (Canada), and
- (c) a substance that is classified as a pesticide by regulation,

but does not include micro-organisms, materials, substances or control products excluded from this definition by regulation;

"pesticide use notice" means a notice provided under section 7 (2) [*use of pesticides in accordance with a pesticide use notice*];

"qualified monitor" means a person who has the prescribed qualifications;

"registered mail" includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available;

"sell" includes barter or distribute, offer, expose, advertise or possess for the purpose of selling;

"use", with respect to pesticides, includes mix, prepare or apply, and possess for the purpose of applying.

Act may be limited in an emergency

- 2 The Lieutenant Governor in Council may declare that an emergency exists and, if an emergency declaration is made, the Lieutenant Governor in Council may, for the period of time specified and subject to any terms or conditions the Lieutenant Governor in Council may consider appropriate,
 - (a) suspend or limit the application of this Act and the regulations,
 - (b) suspend a requirement of this Act,
 - (c) suspend the validity of a licence, permit, certificate or confirmation, and
 - (d) impose requirements in addition to this Act and the regulations.

Part 2 — Prohibitions and Authorizations of Pesticide Use and Sale

General prohibitions and restrictions

- 3 (1) Without limiting any other provision of this Act, a person must not
 - (a) use a pesticide that causes or is likely to cause, or use, handle, release, transport, store, dispose of or sell a pesticide in a manner that causes or is likely to cause, an unreasonable adverse effect,

- (b) use, handle, release, transport, store, dispose of or sell a pesticide other than in accordance with this Act and the regulations, or
- (c) subject to paragraph (b) and subsection (2), use, handle, transport, store or dispose of a pesticide in a manner that does not accord with the manner specified on the label of the pesticide container or in the manufacturer's instructions that accompany the pesticide.

(2) Without limiting any other provision of this Act or the regulations, a person must not use

- (a) a pesticide registered under the *Pest Control Products Act* (Canada) unless the pesticide is used for a purpose for which the pesticide was registered under that Act,
- (b) a pesticide not registered under the *Pest Control Products Act* (Canada), unless the pesticide is used in a manner and for a purpose expressly allowed under that Act, or
- (c) a fertilizer containing a pesticide, unless the pesticide-fertilizer mixture is used in a manner and for a purpose expressly allowed under the *Fertilizers Act* (Canada).

Licence for sale or use of pesticides

4 (1) Except as provided in the regulations, a person must not

- (a) sell or offer to sell a pesticide,
- (b) use a pesticide for a prescribed use,
- (c) provide or offer to provide any service respecting pesticides, or
- (d) purchase, directly or indirectly, a pesticide for the purpose of selling the pesticide or providing a service to any other person,

unless the person

- (e) holds the licence that is, under the regulations, required for that purpose, and
- (f) complies with the terms and conditions in or attached to that licence.

(2) A person may apply for a licence under this section by submitting to the administrator an application that

- (a) is in the form specified by the administrator for the purposes of this section,
- (b) contains the information prescribed by the administrator, and
- (c) is accompanied by the prescribed fee.

(3) The administrator may issue a licence to an applicant if satisfied that

- (a) the application complies with subsection (2),
- (b) the applicant meets the prescribed criteria, and

- (c) the applicant is not subject to a restriction imposed by the administrator under section 15 (2) [*suspension and revocation*] in respect of a licence.
- (4) The administrator may specify in a licence issued under subsection (3)
 - (a) the date on which the licence expires, and
 - (b) terms and conditions, that
 - (i) are not inconsistent with the terms and conditions prescribed by the administrator, and
 - (ii) the administrator considers appropriate in the circumstances.

Certificate for sale or use of pesticides by individuals

- 5 (1) An individual must not use a prescribed class of pesticide or a pesticide for a prescribed use unless the individual
- (a) holds the certificate that is, under the regulations, required for that purpose, and
 - (b) complies with the terms and conditions in or attached to that certificate.
- (2) A licensee who provides a service using a prescribed class of pesticides must ensure that a certified individual performs the duties in relation to the use that, under the regulations, must be performed by a certified individual.
- (3) A licensee who sells a prescribed class of pesticides must ensure that a certified individual performs the duties in relation to the sale that, under the regulations, must be performed by a certified individual.
- (4) An individual may apply for a certificate under this section by submitting to the administrator an application that
- (a) is in the form specified by the administrator for purposes of this section,
 - (b) contains the information prescribed by the administrator, and
 - (c) is accompanied by the prescribed fee.
- (5) The administrator may issue a certificate to an applicant if satisfied that
- (a) the application complies with subsection (4),
 - (b) the applicant meets the prescribed criteria, and
 - (c) the applicant is not subject to a restriction imposed by the administrator under section 15 (2) [*suspension and revocation*] in respect of a certificate.
- (6) The administrator may specify in a certificate issued under subsection (5)
- (a) the date on which the certificate expires, and
 - (b) terms and conditions that

- (i) are not inconsistent with the terms and conditions prescribed by the administrator, and
- (ii) the administrator considers appropriate in the circumstances.

Permit for use of pesticides

- 6 (1) A person must not use or authorize the use of a prescribed pesticide or class of pesticides or a pesticide for a prescribed use unless the person
- (a) holds the permit that is, under the regulations, required for that purpose, and
 - (b) complies with the terms and conditions in or attached to that permit.
- (2) A person may apply for a permit under this section by submitting to the administrator an application that
- (a) is in the form specified by the administrator for use under this section,
 - (b) contains the information prescribed by the administrator, and
 - (c) is accompanied by the prescribed fee.
- (3) The administrator may issue a permit to an applicant if satisfied that
- (a) the application complies with subsection (2),
 - (b) the applicant meets the prescribed criteria,
 - (c) the applicant is not subject to a restriction imposed by the administrator under section 15 (2) [*suspension and revocation*] in respect of a permit, and
 - (d) the pesticide use authorized by the permit will not cause an unreasonable adverse effect.
- (4) The administrator may specify in a permit issued under subsection (3)
- (a) the date the permit expires, and
 - (b) terms and conditions that
 - (i) are not inconsistent with the terms and conditions prescribed by the administrator, and
 - (ii) the administrator considers appropriate in the circumstances.

Use of pesticides in accordance with a pesticide use notice

- 7 (1) A person must not use or authorize the use of a prescribed pesticide or class of pesticides, or use a pesticide for a prescribed use, unless
- (a) a pest management plan has been prepared that complies with the regulations and is applicable to the pesticide use at the place specified in the pesticide use notice,
 - (b) a pesticide use notice under subsection (2) has been provided,

- (c) a confirmation under subsection (3) has been received, and
- (d) the person who uses the pesticide acts, in relation to all matters related to that pesticide use, strictly in accordance with the information provided in the pesticide use notice.

(2) For the purposes of subsection (1) (b), the person must provide to the administrator notice of the intended use of the pesticide that

- (a) is in the form specified by the administrator for the purposes of this section,
- (b) contains the information prescribed by the administrator,
- (c) contains the person's declaration that
 - (i) a pest management plan that complies with the administrator's regulations has been prepared, and
 - (ii) the person will ensure compliance with this Act and the regulations in the use of the pesticide, and
- (d) is accompanied by the prescribed fee.

(3) The administrator must confirm receipt of a pesticide use notice or an amended pesticide use notice if satisfied that

- (a) the notice complies with subsection (2),
- (b) the applicant meets the prescribed criteria, and
- (c) the applicant is not subject to a restriction imposed by the administrator under section 15 (4) [*suspension and revocation*].

(4) A confirmation under subsection (3) must specify the date the confirmation expires.

(5) Confirmation by the administrator of receipt of a pesticide use notice does not constitute acceptance or approval by the minister or the administrator of the pest management plan to which the notice relates.

(6) Subject to subsection (7), a person to whom a confirmation is provided under subsection (3) must

- (a) keep, for the period prescribed by the administrator, the pest management plan at the location identified in the pesticide use notice,
- (b) produce, without charge, the pest management plan to any person who requests it for inspection, and
- (c) provide a copy of the pest management plan
 - (i) to an inspector without charge, or
 - (ii) to any other person who requests it and who pays to the person who has the pest management plan a fee of not more than the prescribed amount.

(7) For the purposes of subsection (6), a pest management plan must be produced under subsection (6) (b) and a copy of a pest management plan must

be provided under subsection (6) (c)

- (a) at the location referred to in subsection (6) (a),
- (b) during normal business hours, and
- (c) within 48 hours after the request.

Minister's orders

8 (1) If the minister is satisfied that an unreasonable adverse effect has resulted or is likely to result from a pesticide use or the manner in which a pesticide is used, handled, released, transported, stored, disposed of or sold, the minister may do one or more of the following:

- (a) by order, restrict or prohibit the use, handling, release, transport, storage, disposal of or sale of the pesticide on the terms and conditions the minister considers appropriate;
- (b) order the seizure of
 - (i) food, equipment or an animal that is contaminated by a pesticide, or
 - (ii) anything the minister considers a danger to human or animal health or to the environment;
- (c) order that a thing seized under paragraph (b) be
 - (i) destroyed,
 - (ii) detained, or
 - (iii) treated in such a manner that the thing will not be a danger to human or animal health or to the environment.

(2) The powers given by this section may be exercised even though the use, manner of application, storage, sale, transport or disposal of the pesticide is authorized under this Act and despite the terms and conditions of any licence, certificate or permit.

Part 3 — Administration

Administrator

9 (1) An administrator must be appointed under the *Public Service Act* for the purposes of this Act.

(2) The administrator has the powers necessary and is responsible for the administration of this Act.

(3) Without limiting subsection (2), in addition to the powers and duties given or assigned to the administrator under this Act, the administrator may

- (a) refuse to issue a licence, certificate or permit,

- (a.1) on application by the holder, amend a licence, certificate or permit, or refuse to make the amendment,
- (a.2) on the administrator's own initiative, amend a licence, certificate or permit,
- (b) specify forms for use under this Act, and
- (c) perform other duties the minister requires.

(4) If a qualified monitor has provided reports that the administrator considers are inaccurate or incomplete, the administrator may require the qualified monitor to successfully complete specified courses before the person may perform the services of a qualified monitor under this Act.

Delegation of administrator's powers and duties

10 (1) The administrator may delegate in writing, subject to the terms and conditions the administrator considers necessary or advisable, any of the administrator's powers, duties or functions under this Act to any person, except the power to make regulations.

(2) If the administrator has made a delegation of a power, duty or function, a reference to the administrator in relation to that power, duty or function includes the delegate.

Inspectors

11 (1) The minister or the administrator may designate as an inspector

(a) for the purposes of this Act, a person employed by the government, or

(b) for a specific purpose under this Act, a person employed by the government, the government of Canada or a local government.

(2) Despite subsection (1), a conservation officer, as defined in section 1 of the *Environmental Management Act*, is an inspector for the purposes of this Act.

(3) On request of an inspector for purposes of auditing compliance with this Act and the regulations, any person who is subject to a requirement under this Act, without charge or unreasonable delay, must send to the inspector a copy of a pest management plan or any other record required to be kept under this Act.

Qualified monitors

12 (1) A person must not perform or offer to perform a function of a qualified monitor under this Act unless the person has the prescribed qualifications.

(2) If the administrator has imposed a requirement on a qualified monitor under section 9 (4) [*administrator*], the qualified monitor must not perform or offer to perform a function of a qualified monitor under this Act unless the person has satisfied the administrator's requirement.

Integrated Pest Management Committee

13 (1) The minister may appoint an Integrated Pest Management Committee consisting of

- (a) the administrator, who must be appointed chair,
- (b) a representative of a government ministry responsible for the administration of each of agriculture, environmental protection, forests and health, and
- (c) other persons the minister considers appropriate.

(2) A member of the appeal board is not eligible for membership on the committee,

(3) An appointment under subsection (1) must specify the term of the appointment.

(4) The committee must

- (a) review applications for permits and requirements for pesticide use, handling, release, transport, storage, disposal and sale, if they are referred to the committee by the administrator, and
- (b) perform other duties the minister requires.

Part 4 — Appeals to the Environmental Appeal Board

Appeals to Environmental Appeal Board

14 (1) For the purposes of this section, "**decision**" means any of the following:

- (a) making an order, other than an order under section 8 [*minister's orders*];
- (b) specifying terms and conditions, except terms and conditions prescribed by the administrator, in a licence, certificate or permit;
- (c) amending or refusing to issue, amend or renew a licence, certificate or permit;
- (d) revoking or suspending a licence, certificate, permit or confirmation;
- (e) restricting the eligibility of a holder of a licence, certificate, permit or pest management plan to apply for another licence, certificate or permit or to receive confirmation;
- (f) determining to impose an administrative penalty;
- (g) determining that the terms and conditions of an agreement under section 23 (4) [*administrative penalties*] have not been performed.

(2) A declaration, suspension or restriction under section 2 [*Act may be limited in emergency*] is not subject to appeal under this section.

- (3) A person may appeal a decision under this Act to the appeal board.
- (4) The time limit for commencing an appeal of a decision is 30 days after the date the decision being appealed is made.
- (5) An appeal must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the *Environmental Management Act*.
- (6) Subject to this Act, an appeal must be conducted in accordance with Division 1 [Environmental Appeal Board] of Part 8 of the *Environmental Management Act* and the regulations under that Part.
- (7) The appeal board may conduct an appeal by way of a new hearing.
- (8) On an appeal, the appeal board may
 - (a) send the matter back to the person who made the decision being appealed, with directions,
 - (b) confirm, reverse or vary the decision being appealed, or
 - (c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.
- (9) An appeal does not act as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.

Part 5 — Compliance

Suspension and revocation

- 15** (1) If the administrator considers that the holder of a licence, certificate or permit
- (a) has not been or is not complying with this Act, the regulations, an order under this Act or a term or condition of the licence, certificate or permit, or
 - (b) is using, handling, storing, transporting, disposing of or selling or has used, handled, stored, transported, disposed of or sold a pesticide in a manner that is likely to cause or has caused an unreasonable adverse effect,
- the administrator may, for the period the administrator considers appropriate,
- (c) revoke or suspend the licence, certificate or permit, or
 - (d) order the person holding the licence, certificate or permit to use or sell in a particular manner, or to refrain from using or selling, a particular pesticide.
- (2) If the administrator makes a revocation, suspension or order under subsection (1), the administrator may also restrict, for the period of time the administrator

considers appropriate, the eligibility of the holder of the licence, certificate or permit to apply for another licence, certificate or permit.

(3) The administrator may revoke or suspend a confirmation, or order the person holding the confirmation to refrain from using a pesticide, for the period the administrator considers appropriate, if the administrator considers that

(a) the holder of the confirmation has not been or is not complying with this Act, the regulations or an order under this Act or has not acted or is not acting, in relation to all matters related to the use of the pesticide, strictly in accordance with the pesticide use notice, or

(b) the holder of the confirmation is using, handling, storing, transporting or disposing of or has used, handled, stored, transported or disposed of a pesticide in a manner that is likely to cause or has caused an unreasonable adverse effect.

(4) If the administrator makes a revocation, suspension or order under subsection (3), the administrator may order that, for the period the administrator considers appropriate, the holder of the confirmation is not eligible to receive confirmation that another pesticide use notice has been received in relation to the same or another pest management plan.

Administrator's order — unreasonable adverse effect or contravention

16 (1) If the administrator believes on reasonable grounds that any of the following are required because a person's use, handling, release, transport, storage or disposal of a pesticide has caused or is likely to cause an unreasonable adverse effect, the administrator may order the person, at his or her own expense, to

(a) obtain specified services of a qualified monitor,

(b) assess, repair, clean or decontaminate any premises, equipment or site, and

(c) report to the administrator respecting the assessment, repair, cleanup or decontamination of the premises, equipment or site.

(2) The administrator may order any person to

(a) stop or refrain from using, handling, releasing, transporting, storing or disposing of, or

(b) use, handle, release, transport, store or dispose of in a particular manner,

a particular pesticide, if the administrator considers that this activity has caused or is likely to cause an unreasonable adverse effect.

(3) If the administrator believes on reasonable grounds that a person has contravened this Act or the regulations, the administrator may order the person to do anything the administrator is authorized to order a person to do under subsection (1) or (2), whether or not an unreasonable adverse effect has resulted.

Inspections

17 (1) For the purposes of ensuring compliance with this Act and the regulations, an inspector may enter land or premises, except premises or a part of premises occupied solely as a private residence, at any reasonable time if the inspector has reasonable grounds to believe that

- (a) a pesticide is located on or in the land or premises,
- (b) the land or premises is the site of an activity for which a licence, certificate, permit or confirmation is required, or
- (c) a container or equipment that is or may be used to contain, mix, store or apply a pesticide is located on the land or in the premises.

(2) An inspector who enters land or premises under subsection (1), with consent under section 18 (1) or with a warrant under section 18 (2) may do any of the following:

- (a) inspect, analyze, sample or test a pesticide or any equipment or container that the inspector believes has been, is being or may be used, to contain, prepare, mix or apply a pesticide;
- (b) investigate the manner in which a pesticide has been, is being or may be used, sold, stored, transported or disposed of;
- (c) inspect any place at which the inspector believes a pesticide has been, is being or may be used, sold, stored, transported or disposed of;
- (d) inspect records that the inspector believes relate to a pest management plan or the use, sale, storage, transportation or disposal of a pesticide;
- (e) inspect, analyze, sample or test anything that the inspector believes is contaminated by the use, sale, storage, transportation or disposal of a pesticide;
- (f) for the purposes of paragraphs (a) and (e), take away a sample of anything;
- (g) require that anything related to the use, manner of application, storage, sale, transport or disposal of a pesticide be operated, used or set in motion under conditions specified by the inspector;
- (h) use a computer system at the place that is being inspected to examine data related to the use, manner of application, storage, sale, transport or disposal of a pesticide contained in or available to the computer system;
- (i) record or copy any information related to the use, manner of application, storage, sale, transport or disposal of a pesticide by any method;
- (j) use a machine, a structure, material or equipment in the place that is being inspected as is necessary to carry out the inspection;
- (k) use copying equipment located at the place that is being inspected to make copies to take away;

- (I) take photographs or make audio or video records.
- (3) An inspector exercising authority under this section must produce proof of identity on the request of a person whose land or premises the inspector enters.
- (4) A person who is or was a director, receiver, receiver manager, officer, employee, banker, auditor or agent of a person who is the subject of an inspection under this section must, on the request of the inspector,
 - (a) produce, without charge or unreasonable delay, for examination by the inspector
 - (i) any licence, certificate, permit, pest management plan, confirmation or record of pesticide use or sale, and
 - (ii) any other record that touches on any matter relating to the use, handling, transporting, storage, disposal, purchase or sale of pesticides by the person who is the subject of the inspection, and
 - (b) provide the inspector with information relevant to the purposes of the inspection.

Inspection of private residence

- 18** (1) An inspector may exercise the powers under section 17 [*inspections*] in respect of premises used as a private residence only with the consent of the occupant or under the authority of a warrant under subsection (2) or another Act.
- (2) If satisfied by evidence on oath that access to premises, or a part of premises, used solely as a private residence is necessary for the purposes of this Act, a justice may issue a warrant authorizing a person named in the warrant to enter into the premises and conduct an inspection or take other action as authorized in the warrant.

Inspection of vehicles

- 19** (1) In this section, "**vehicle**" includes a motor vehicle as defined in the *Motor Vehicle Act* and a vessel.
- (2) For the purposes of ensuring compliance with this Act and the regulations, if an inspector has reasonable grounds to believe that a vehicle is being used to transport a pesticide, an inspector may
 - (a) require a person operating the vehicle to stop the vehicle and provide identification, and
 - (b) carry out an inspection of the vehicle.
- (3) When requested or signalled to do so by an inspector who is readily identifiable as a conservation officer, the operator of a motor vehicle must immediately
 - (a) stop the vehicle, and
 - (b) provide identification and the information that the inspector considers necessary to determine whether this Act and the regulations

are being complied with.

(4) For the purposes of carrying out an inspection under this section, an inspector may

(a) require that any compartment of the vehicle or any container in or on the vehicle be opened, and

(b) exercise any of the powers under section 17 (2) [*inspections*].

Seizure and prevention order

20 (1) If an inspector concludes in the course of an inspection under this Act that the inspector has reasonable grounds to believe that a person has contravened or is contravening this Act or the regulations, the inspector may

(a) order a person to do anything the inspector considers necessary to stop the contravention or prevent another contravention, and

(b) seize anything validly inspected by the inspector that the inspector believes on reasonable grounds

(i) was used or is being used in the contravention, or

(ii) will afford evidence of the contravention.

(2) Sections 23 (4) and 24 to 24.2 of the *Offence Act* apply in respect of anything seized under subsection (1) of this section and, for the purposes of section 23 (4) of the *Offence Act*, an inspector is deemed to be a peace officer.

(3) If, under section 24 (2) (a) of the *Offence Act*, a justice orders that something referred to in subsection (2) of this section be detained, despite section 24 (3) of the *Offence Act*, the thing may be detained for up to one year before an order under section 24 (5) of that Act, authorizing its continued detention, is required.

(4) Despite subsections (2) and (3),

(a) nothing seized under this Act may be returned unless, in the opinion of the administrator, any risk of an unreasonable adverse effect has been eliminated,

(b) if, in the opinion of the administrator, something seized under this Act must be destroyed or decontaminated in order to eliminate a risk of an unreasonable adverse effect, the administrator may order the thing to be decontaminated or destroyed and the cost of decontamination or destruction is a debt due to the government by the person from whom it was seized and may be recovered in accordance with subsection (5), and

(c) section 22 of this Act applies in respect of anything destroyed by order under paragraph (b).

(5) For the purpose of recovering a debt referred to in subsection (4) (b) the administrator may

(a) issue a certificate setting out the name of the person who is liable for the debt and the amount owing by that person, and

(b) file the certificate with a court that has jurisdiction.

(6) A certificate filed with a court under subsection (5) 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

(a) for the recovery of a debt of the amount set out in the certificate, and

(b) against the person named in the certificate.

(7) Sections 23 to 24.2 of the *Offence Act* and subsection (3) of this section do not apply in respect of anything ordered destroyed under subsection (4) (b) of this section.

(8) Sections 23 to 24.2 of the *Offence Act* do not apply in relation to anything taken in the course of an inspection under section 17, 18 or 19 of this Act unless subsection (1) of this section applies.

Duty of persons being inspected

21 (1) A person must not interfere with an inspector's rights of entry and inspection under this Part [*Compliance*].

(2) On the request of an inspector, a person on the land, premises or vehicle and who the inspector reasonably believes is involved in the use, activity or equipment being inspected must provide proof of identity.

No compensation

22 Compensation is not payable in respect of anything lawfully seized, detained, treated or destroyed under this Act.

Administrative penalties

23 (1) Subject to the regulations, if the administrator is satisfied on a balance of probabilities that a person has

(a) contravened a prescribed provision of this Act or the regulations,

(b) failed to comply with an order under this Act, or

(c) failed to comply with a requirement of a licence, certificate or permit issued, or a pesticide use notice given, under this Act,

the administrator may serve the person with a determination requiring the person to pay an administrative penalty in the amount specified in the determination.

(2) A determination under subsection (1) must be in the prescribed form and contain the prescribed information.

(3) A penalty imposed under this section must be paid within the prescribed time.

(4) Before the date an administrative penalty under this section is due, the administrator may, subject to the regulations, enter into an agreement with the person who is liable for the penalty.

- (5) An agreement under subsection (4) may provide, in accordance with the regulations, for the reduction or cancellation of the penalty subject to the terms and conditions the administrator considers necessary or desirable.
- (6) An agreement under subsection (4) must specify the time for performing the terms and conditions, and if the person fails to perform them by the date specified, the penalty specified in the notice under subsection (1) is due and payable on that date.
- (7) Neither the administrator's decision whether to enter into an agreement under subsection (4) nor the terms and conditions of such an agreement may be appealed under Part 4 [*Appeals to the Environmental Appeal Board*].
- (8) If the administrator issues an administrative penalty notice to a person in respect of a contravention or failure referred to in subsection (1), a prosecution for an offence under this Act in respect of the same contravention or failure may not be brought against the person.
- (9) If a corporation contravenes this Act or the regulations or fails to comply with an order or the terms of a licence, certificate or permit as described under subsection (1), an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the contravention or failure is also liable under this section, even though the corporation is liable for or pays an administrative penalty.

Effect of charging an offence

- 24** An administrative penalty under this Act may not be determined against a person in respect of an act or omission if the person has been charged with an offence under this Act in respect of the same act or omission.

Recovery of administrative penalties

- 25** (1) Subject to a decision of the appeal board cancelling a determination under section 23 (1) [*administrative penalties*], an administrative penalty under this Act may be recovered as a debt due to the government.
- (2) If a person fails to pay an administrative penalty as required under section 23 [*administrative penalties*], the administrator may file a certificate in 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.
- (3) A certificate under subsection (2) may be in the prescribed form, must be signed by the administrator and must contain
- (a) the name of the person who is liable for the penalty,
 - (b) the contravention or failure in relation to which the penalty is imposed, and
 - (c) the amount of the penalty.

Part 6 — General

Offences and penalties

26 (1) A person who does any of the following commits an offence:

(a) contravenes

(i) section 3 (1) (a), (b) or (c) or (2) (a), (b) or (c) [*general prohibitions and restrictions*],

(ii) section 4 (1) (a), (b), (c) or (d) [*licence for sale or use of pesticides*],

(iii) section 5 (1), (2) or (3) [*certificate for use or sale of pesticides by individuals*],

(iv) section 6 (1) [*permit for use of pesticides*],

(v) section 7 (1), (6) (a), (b) or (c) or (7) [*use of pesticides in accordance with a pesticide use notice*],

(vi) section 12 (1) or (2) [*qualified monitors*], or

(vii) section 21 (2) [*duty of persons being inspected*];

(b) intentionally obstructs, hinders or resists the exercise by the administrator, the appeal board, an inspector or another person of powers or duties under this Act;

(c) refuses or intentionally fails to comply with an order of the minister, the administrator, the appeal board or an inspector;

(d) obtains, in purported compliance with regulations requiring the services of a qualified monitor, the services of an individual who the person knows or ought to know is not a qualified monitor;

(e) intentionally makes a false statement to or misleads or attempts to mislead the administrator, the appeal board, an inspector or another person in the exercise of powers or duties under this Act;

(f) fails to comply with an order under section 31 [*additional sentencing orders*] or a variation under section 32 [*variation of section 31 orders*].

(2) An individual who is convicted of an offence under this Act is liable to a fine of not more than \$200 000 or to imprisonment for 6 months, or to both, and if convicted of a subsequent similar offence, to a fine of not more than \$400 000 or to imprisonment for 6 months, or to both.

(3) A corporation that is convicted of an offence under this Act is liable to a fine of not more than \$400 000, and if convicted of a subsequent similar offence, to a fine of not more than \$800 000.

Offence by a corporation

27 (1) If a corporation commits an offence under this Act, an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the offence commits the offence, whether or not the corporation is convicted.

(2) In a prosecution for an offence, it is sufficient proof of the offence to establish that the offence was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the accused's knowledge or consent or that the accused exercised all due diligence to prevent the commission of the offence.

Continuing offences

28 If a contravention under section 26 [*offences and penalties*] continues for more than one day, on conviction, the offender is liable to a separate penalty in the applicable amount under section 26, without notice and without a separate count being laid, for each day that the contravention occurs.

Time limit for prosecuting offence

29 (1) The time limit for laying an information for an offence under this Act is

- (a) 3 years after the date that the facts on which the information is based arose, or
- (b) if the minister issues a certificate described in subsection (2), 18 months after the date that the facts on which the information is based first came to the knowledge of the minister.

(2) A certificate purporting to have been issued by the minister, certifying the date that the facts on which the information is based first came to the knowledge of the minister,

- (a) is admissible without proof of the signature or official character of the person appearing to have signed the certificate, and
- (b) is proof of the certified matters.

Additional fine

30 (1) If a person is convicted of an offence under this Act and the court is satisfied that, as a result of the commission of the offence, the person acquired any monetary benefits or that monetary benefits accrued to the person, the court may order the person to pay a fine equal to the court's estimation of the amount of those monetary benefits.

(2) A fine under subsection (1) is in addition to and not in place of a fine under section 26 [*offences and penalties*].

Additional sentencing orders

31 (1) If a person is convicted of an offence under this Act, in addition to any punishment imposed, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing one or more of the following prohibitions, directions or requirements:

- (a) prohibiting the person from doing any act or engaging in any activity that may, in the opinion of the court, result in the continuation or repetition of the offence;
- (b) directing the person to take any action the court considers appropriate to remedy or avoid any harm to the environment that resulted or may result from the commission of the offence;
- (c) directing the person to pay the government an amount of money as compensation, in whole or in part, for the cost of any remedial or preventive action taken by or caused to be taken on behalf of the government as a result of the commission of the offence;
- (d) directing the person to perform community service;
- (e) directing the person to pay an amount of money the court considers appropriate to the trustee under Part 3 of the *Wildlife Act* for inclusion in the trust property, as that term is defined in section 118 of that Act;
- (f) directing the person to post a bond or pay into court an amount of money the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement under this section;
- (g) directing the person to submit to the minister, on application by the minister within 3 years after the date of the conviction, any information respecting the activities of the person that the court considers appropriate in the circumstances;
- (h) directing the person to publish, in any manner the court considers appropriate, the facts relating to the commission of the offence;
- (i) requiring the person to comply with any other conditions that the court considers appropriate to secure the person's good conduct and to prevent the person from repeating the offence or committing other offences under this Act.

(2) If a person fails to comply with an order referred to in subsection (1) (h), the minister may publish the facts relating to the commission of the offence and recover the costs of publication from the person.

(3) If

- (a) an order under this section or section 32 [*variation of section 31 orders*] directs a person to pay an amount of money as compensation or for any other purpose, or
- (b) the minister incurs publication costs under subsection (2) of this section,

the amount and any interest payable on that amount constitute a debt due to the government and may be recovered as such in any court of competent jurisdiction.

Variation of section 31 orders

32 (1) An application for variation of an order under section 31 [*additional sentencing orders*] may be made to the court that made the order by

(a) the Attorney General, or

(b) the person against whom the order under section 31 was made.

(2) Before hearing an application under subsection (1), the court may order the applicant to give notice of the application in accordance with the directions of the court.

(3) On an application under subsection (1), if the court considers variation to be appropriate because of a change in circumstances, the court may make an order doing one or more of the following:

(a) changing the original order or any conditions specified in it;

(b) relieving the person referred to in subsection (1) (b) absolutely or partially from compliance with all or part of the original order;

(c) reducing the period for which the original order is to remain in effect;

(d) extending the period for which the original order is to remain in effect, subject to the limit that this extension must not be longer than one year.

(4) If an application under subsection (1) has been heard by a court, no other application may be made in respect of the order under section 31 except with leave of the court.

Sections 4 and 5 of the *Offence Act*

33 Sections 4 and 5 of the *Offence Act* do not apply in respect of this Act or the regulations.

Evidence

34 (1) A certificate signed by an analyst designated by the minister, stating that the analyst has analyzed or examined a substance and stating the result of the analysis or examination, is admissible in evidence in a proceeding under this Act as proof of the facts stated in the certificate without proof of the signature or designation of the person signing the certificate.

(2) The minister may, in writing, designate analysts for the purposes of this section.

Service of notice

35 (1) Anything that under this Act must be given or served on a person may be given or served by registered mail sent to the last known address of the person.

(2) Any notice under this Act may be given by registered mail sent to the last known address of the person.

(3) A notice of appeal under the *Environmental Management Act* may be given in accordance with the regulations under that Act.

(4) Anything sent by registered mail for the purposes of this Act is deemed to be received by the person to whom it is addressed on the 14th day after deposit with Canada Post, unless the person received actual service before that day.

Regulations — general rules

36 (1) Regulations under this Act may be different for different classes of pesticides, pesticide sales or pesticide uses and in relation to different categories of licences, permits, certificates or confirmations.

(2) If a regulation under this Act may establish standards, the regulation may adopt by reference, in whole or in part and with any changes considered appropriate by the minister or the administrator, as applicable, a code, standard or rule

(a) set by a provincial, national, international or any other code or standard making body, or

(b) enacted as or under a law of another jurisdiction, including a foreign jurisdiction.

(3) A code, standard or rule referred to in subsection (2) may be adopted as amended from time to time.

Power to make regulations

37 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

(a) for the purposes of section 23 [*administrative penalties*],

(i) prescribing procedures for making a determination including, but not limited to,

(A) prescribing the form of and information to be contained in an administrative penalty notice,

(B) prescribing contraventions of this Act or the regulations in relation to which an administrative penalty notice may be sent and a determination made, and

(C) establishing procedures for providing a person on whom a notice of an administrative penalty has been served with an opportunity to make representations, which need not entail an oral hearing,

(ii) prescribing a schedule of administrative penalties that may be imposed and the matters that must be considered by the administrator in establishing a penalty in a particular case,

- (iii) authorizing administrative penalties to be imposed on a daily basis for continuing contraventions or failures,
 - (iv) prescribing time limits for paying administrative penalties,
 - (v) prescribing, in relation to a contravention or failure described in section 23 (1), whether a notice of an administrative penalty must be cancelled if the person on whom it was served demonstrates to the satisfaction of the administrator that the person exercised due diligence to prevent the specified contravention or failure,
 - (vi) respecting agreements, including prescribing terms and conditions that must be included, under section 23 (4),
 - (vii) prescribing a limitation period for imposing an administrative penalty and evidentiary matters in relation to that period,
 - (viii) prescribing methods of paying a monetary penalty,
 - (ix) prescribing the consequences of failing to pay an administrative penalty which may include, but are not limited to, imposing additional penalties,
 - (x) providing for the publication of an officer's determination to impose an administrative penalty, and
 - (xi) prescribing the form of a certificate under section 25 *[recovery of administrative penalties]*;
- (b) despite any other enactment, restricting the authority of a municipality or a regional district to make bylaws in relation to prescribed pesticide uses, which may include, but are not limited to, uses of pesticide
- (i) in the management of pests for purposes of protecting human health and the environment,
 - (ii) in the management of non-indigenous pests, and
 - (iii) on land used for agriculture, forestry, transportation, public utilities and pipelines.

Minister's regulations

38 (1) The minister may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the minister may make regulations as follows:

- (a) classifying substances as pesticides;
- (b) establishing classes of pesticides;
- (c) prescribing micro-organisms, materials, substances or control products as excluded from the definition of "pesticide", or as excluded from the definition of "pesticide" if used for a specified purpose or in a specified manner;

(d) prescribing, for the purposes of section 4 [*licence for sale or use of pesticides*], exceptions for section 4 (1) (a), (c) and (d) and uses for section 4 (1) (b);

(e) prescribing classes of pesticides for the purposes of section 5 (1), (2) or (3) [*certificate for sale or use of pesticides by individuals*], uses for the purposes of sections 5 (1), 6 (1) [*permit for use of pesticides*] and 7 (1) [*use of pesticides in accordance with a pesticide use notice*] and pesticides for the purposes of sections 6 (1) and 7 (1);

(f) prescribing the circumstances in which a licensee must engage the services of a certified person;

(g) prescribing criteria for the purposes of sections 4 (3) (b), 5 (5) (b), 6 (3) (b) and 7 (3) (b);

(h) prescribing requirements that a person or class of persons who apply for a licence, certificate, permit or confirmation be bonded under the *Bonding Act* or hold public liability insurance against personal injury and property damage

(i) subject to terms and conditions, and

(ii) in the amount

that may be specified in the regulations;

(i) prescribing requirements for the use, containment, transport, storage or sale of a pesticide;

(j) prescribing requirements for applicants to provide for public consultations that must be conducted in relation to a proposed use of a pesticide;

(k) prescribing requirements for records and reports that must be prepared or kept about the public consultations required by regulations under paragraph (j);

(l) prescribing requirements for public notification in relation to a proposed use of a pesticide, including, without limitation, requirements for any person to provide for public notification;

(m) prescribing requirements for records to be maintained by a person or class of persons who use, store, transport, sell or dispose of a pesticide;

(n) prescribing requirements for monitoring and assessment of pesticides, pesticide residues and site conditions in relation to uses or proposed uses of pesticides;

(o) respecting qualified monitors, including without limitation,

(i) prescribing the qualifications, skills and level of knowledge a person must have to act as a qualified monitor, and

(ii) prescribing circumstances in which or criteria for determining when a person must engage the services of a qualified monitor at

the person's own expense;

(p) prescribing requirements for the disposal of pesticides and of equipment or containers that have been used to store or use pesticides;

(q) requiring persons who hold licences to sell pesticides to participate in a program for the management of residual pesticides and, in relation to this,

(i) establishing requirements for a program,

(ii) designating a program for the management of residual pesticides that is established under another enactment, and

(iii) prohibiting persons from selling pesticides unless they comply with the regulations relating to the program;

(r) prescribing fees that must accompany applications for licences, certificates and permits and pesticide use notices, or amendments to any of them, and the fees may be different depending on the category or duration of the licence, certificate, permit or confirmation;

(s) prescribing fees for any services provided by the government under or in relation to this Act;

(t) prescribing the maximum amount of a fee that may be charged to any person for a copy of a pest management plan;

(u) exempting persons or pesticides or classes of persons or pesticides from any requirement under the regulations;

(v) providing that the contravention of a regulation constitutes an offence;

(w) establishing penalties for offences under the regulations up to \$200 000 or \$200 000 for each day that an offence continues;

(x) defining a word or expression used but not defined in this Act for the purposes of this Act and regulations.

(3) A regulation under this section may delegate to the administrator those powers and functions that the minister considers desirable.

(4) In the event of a conflict between a regulation of the administrator and a regulation of the minister, the regulation of the minister prevails.

Administrator's regulations

39 The administrator may make regulations as follows:

(a) assigning pesticides to classes established under section 38 (2) (b) [*minister's regulations*];

(b) prescribing categories of licences, certificates, permits and confirmations for pesticides, pesticide sales and pesticide use and establishing the circumstances in which a particular category is required;

- (c) prescribing terms and conditions for licences, certificates and permits and for categories of licences, certificates and permits;
- (d) establishing standards for training and examinations that must be successfully completed for a person to meet the criteria prescribed by the minister for a certificate;
- (e) prescribing the information required for the purposes of sections 4 (2) (b) [*licence for sale or use of pesticides*], 5 (4) (b) [*certificate for sale or use of pesticides by individuals*], 6 (2) (b) [*permit for use of pesticides*] and 7 (2) (b) [*use of pesticides in accordance with a pesticide use notice*];
- (f) establishing standards for the protection of the environment and human health for the use of pesticides which may be different for different industries and activities;
- (g) establishing standards for the following in respect of pesticides, pesticide containers or pesticide equipment:
 - (i) storage;
 - (ii) transport;
 - (iii) disposal;
- (h) respecting the sale of pesticides, including
 - (i) prescribing the manner in which and period for which records respecting pesticide sales must be maintained, and
 - (ii) prescribing the conditions that a person who holds a licence must satisfy for the sale of a pesticide, including, without limitation, prescribing duties for the purposes of section 5 (3);
- (i) respecting pest management plans, including, without limitation,
 - (i) requiring that a pest management plan be prepared in accordance with the principles of integrated pest management and prescribing the information that must be included in the plan,
 - (ii) prescribing the information that must be provided in a pesticide use notice,
 - (iii) prescribing the manner in which a pesticide use notice must be provided, and
 - (iv) prescribing the period for the purpose of section 7 (6) (a) [*use of pesticides in accordance with a pesticide use notice*];
- (j) respecting public consultation, including
 - (i) prescribing the manner and extent of consultation required,
 - (ii) prescribing the records and reports respecting consultations copies of which must be provided to the administrator, and
 - (iii) prescribing the period for which records and reports referred to in subparagraph (ii) must be maintained and made available for inspection to persons specified in the regulations;

- (k) prescribing the manner in which public notification is to be given, including public notification about a proposed pesticide use in and around multiple residence buildings;
- (l) respecting the use of pesticides, including
 - (i) prescribing the manner in and period for which records respecting pesticide use must be maintained, and
 - (ii) prescribing the conditions that a person who holds a licence must satisfy for the use of a pesticide, including, without limitation, prescribing duties for the purposes of section 5 (2) [*certificate for sale or use of pesticides by individuals*];
- (m) prescribing the standards for assessment, monitoring and reporting services that a qualified monitor must provide in relation to a pesticide use under a licence or permit or in accordance with a pesticide use notice.

Part 7 — Transitional and Consequential Provisions

Transition from *Pesticide Control Act*

- 40** (1) A licence or a certificate issued under the *Pesticide Control Act* that is valid and subsisting on the date this Act comes into force is deemed to have been issued under and in accordance with this Act.
- (2) Despite the repeal of the *Pesticide Control Act*, that Act and the regulations under it, as they read on the day before the date this Act comes into force, continue to apply in respect of a permit issued or a pest management plan approved under that Act that is valid and subsisting on the date this Act comes into force, until the permit or plan expires, is withdrawn or is revoked.
- (3) The administrator may designate a person who may exercise the powers of the administrator under the *Pesticide Control Act* in relation to amending, suspending or revoking a permit or an approved pest management plan to which subsection (2) applies.
- (4) The administrator may waive requirements of this Act or the regulations or impose different requirements for a confirmation for a person who applied for approval of a pest management plan before the date this Act comes into force if the administrator or assistant administrator is satisfied that the activities already performed for the purpose of obtaining an approval substantially satisfy the requirements for obtaining a confirmation.
- (5) Subsection (2) ceases to apply in respect of a valid and subsisting pest management plan approved under the *Pesticide Control Act* if the holder provides a pesticide use notice in respect of the plan and the administrator confirms the notice.

Transitional regulations

- 41** (1) The Lieutenant Governor in Council may make regulations the Lieutenant Governor in Council considers necessary or advisable for the orderly transition from the application of the *Pesticide Control Act* to its replacement by this Act.
- (2) Unless earlier repealed, a regulation under this section is repealed 2 years after the regulation is enacted.

Consequential Amendments and Repeal

[Note: See Table of Legislative Changes for the status of sections 42 to 46.]

Section(s)	Affected Act
42	<i>Farm Practices Protection (Right to Farm) Act</i>
43	<i>Forest Practices Code of British Columbia Act</i>
44	<i>Hydro and Power Authority Act</i>
45	<i>Pesticide Control Act</i>

Amendments to this Act

Section(s)	Affected Act
46	<i>Integrated Pest Management Act</i>

Commencement

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