1979

c 91 The Environmental Protection Amendment Act, 1979

Ontario
CHAPTER 91

An Act to amend
The Environmental Protection Act, 1971

Assented to December 20th, 1979

H ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 15 of The Environmental Protection Act, 1971, being 1971, c. 86, chapter 86, as amended by the Statutes of Ontario, 1972, chapter 106, section 4, is repealed.

2. The said Act is amended by adding thereto the following Part: Part VIII-A, (ss. 68a-68m).

PART VIII-A

SPILLS

68a.—(1) In this Part,

(a) "adverse effects" means the effects, or any of the effects, mentioned in clauses a to h of subsection 1 of section 68b;

(b) "discharge", when used as a verb, includes add, deposit, emit or leak and, when used as a noun, includes addition, deposit, emission or leak;

(c) "municipality" means the corporation of a county, city, town, village, township or improvement district;

(d) "owner of the pollutant" means the owner of the pollutant immediately before the first discharge of the pollutant, whether into the natural environment or not, in a quantity or with a quality abnormal at the location where the discharge occurs, and "owner of a pollutant" has a corresponding meaning;

(e) "person having control of a pollutant" means the person and his employee or agent, if any, having the
charge, management or control of a pollutant immediately before the first discharge of the pollutant, whether into the natural environment or not, in a quantity or with a quality abnormal at the location where the discharge occurs, and "person having control of the pollutant" has a corresponding meaning;

(f) "pollutant" means a contaminant other than heat, sound, vibration or radiation, and includes any substance from which a pollutant is derived;

(g) "practicable" means capable of being effected or accomplished;

(h) "regional municipality" means the corporation of a metropolitan area, regional area or district area;

(i) "restore the natural environment", when used with reference to a spill of a pollutant, means restore all forms of life, physical conditions, the natural environment and things existing immediately before the spill of the pollutant that are affected or that may reasonably be expected to be affected by the pollutant, and "restoration of the natural environment", when used with reference to a spill of a pollutant, has a corresponding meaning;

(j) "spill", when used with reference to a pollutant, means a discharge,

(i) into the natural environment,

(ii) from or out of a structure, vehicle or other container, and

(iii) that is abnormal in quality or quantity in light of all the circumstances of the discharge,

and when used as a verb has a corresponding meaning;

(k) "substance" means any solid, liquid or gas, or any combination of any of them.

(2) A discharge of a pollutant designated by the regulations at a location designated by the regulations shall be deemed to be in a quantity or with a quality abnormal at the location.

(3) In determining what is practicable for the purposes of this Part, regard shall be had to the technical, physical and financial resources that are or can reasonably be made available.
(4) This Part does not apply to the disposal of animal wastes in accordance with normal farming practices.

(5) A reference in this Part, other than in section 68b, to an owner of a pollutant or a person having control of a pollutant includes a successor, assignee, executor or administrator of the owner of the pollutant or the person having control of the pollutant.

68b.—(1) Every person having control of a pollutant that is spilled and every person who spills or causes or permits a spill of a pollutant that,

(a) causes or is likely to cause impairment of the quality of the natural environment for any use that can be made of it;

(b) causes or is likely to cause injury or damage to property or to plant or animal life;

(c) causes or is likely to cause harm or material discomfort to any person;

(d) adversely affects or is likely to adversely affect the health of any person;

(e) impairs or is likely to impair the safety of any person;

(f) renders or is likely to render any property or plant or animal life unfit for use by man;

(g) causes or is likely to cause loss of enjoyment of normal use of property; or

(h) interferes or is likely to interfere with the normal conduct of business,

shall forthwith notify,

(i) the Ministry;

(j) the municipality or, if the spill occurred within the boundaries of a regional municipality, the regional municipality within the boundaries of which the spill occurred;

(k) where the person is not the owner of the pollutant and knows or is able to ascertain readily the identity of the owner of the pollutant, the owner of the pollutant; and

(l) where the person is not the person having control of the pollutant and knows or is able to ascertain
readily the identity of the person having control of the pollutant, the person having control of the pollutant, of the spill, of the circumstances thereof, and of the action that the person has taken or intends to take with respect thereto.

(2) The duty imposed by subsection 1 comes into force in respect of each of the person having control of the pollutant and the person who spills or causes or permits the spill of the pollutant immediately he knows or ought to know that the pollutant is spilled and is causing or is likely to cause adverse effects.

(3) The person required by subsection 1 to give notice and the owner of the pollutant shall give to the Director such additional information in respect of the pollutant, the source of the pollutant and the spill of the pollutant as may be required by the Director.

(4) A member of a police force or an employee of a municipality or other public authority who is informed of or who investigates the spill of a pollutant shall forthwith notify the Ministry of the spill of the pollutant unless he has reasonable grounds for believing that such notice has been given to the Ministry by another person.

68c.—(1) The owner of a pollutant and the person having control of a pollutant that is spilled and that causes or is likely to cause adverse effects shall forthwith do everything practicable to prevent, eliminate and ameliorate the adverse effects and to restore the natural environment.

(2) The duty imposed by subsection 1 comes into force in respect of each of the owner of the pollutant and the person having control of the pollutant immediately the owner or person, as the case may be, knows or ought to know that the pollutant is spilled and is causing or is likely to cause adverse effects.

68d.—(1) Where a pollutant is spilled and the Minister is of the opinion that there are or are likely to be adverse effects as a result of the spill, the Minister, in the circumstances specified in subsection 2, may give directions in accordance with subsection 3 to the employees and agents of the Ministry.

(2) The Minister may give directions in accordance with subsection 3 where the Minister is of the opinion that it is in the best interest of the public to do so and,
(a) the Minister is of the opinion that neither the person having control of the pollutant nor the owner of the pollutant will carry out promptly the duty imposed by section 68c;

(b) the Minister is of the opinion that the person having control of the pollutant or the owner of the pollutant cannot be readily identified or located and that as a result the duty imposed by section 68c will not be carried out promptly; or

(c) the person having control of the pollutant or the owner of the pollutant requests the assistance of the Minister in order to carry out the duty imposed by section 68c.

(3) Under this section, the Minister may direct the employees and agents of the Ministry to do everything practicable or to take such action as may be specified in the directions in respect of the prevention, elimination and amelioration of the adverse effects and the restoration of the natural environment.

(4) The Minister may give directions amending or revoking directions given under this section.

(5) No Act, regulation, by-law, order, permit, approval or licence bars the employees and agents of the Ministry from acting in accordance with directions given by the Minister under this section.

(6) The Minister need not hold or afford to any person an opportunity for a hearing before giving directions under this section.

68e.—(1) For the purpose of carrying out any duty imposed or order or direction made or given under this Part, any person subject to the duty or to whom the order or direction is made or given and his employees and agents, may enter and have access through or over any building, structure, vehicle, land, water or air and may construct structures and use machinery, structures, materials, and equipment therein or thereon and may remove therefrom the pollutant or any matter, thing, plant or animal or any part of the natural environment that is affected or that may reasonably be expected to be affected by the pollutant.

(2) The rights set out in subsection 1 may be enforced by application without notice to a judge of the Supreme Court or a local judge of the High Court by a person, employee or agent referred to in subsection 1.
Order by judge

(3) Where the judge or local judge is satisfied, on an application under subsection 2, that there is reasonable ground for believing that it is necessary,

(a) to enter and have access through or over any building, structure, vehicle, land, water or air;

(b) to construct structures or use machinery, structures, materials or equipment therein or thereon; or

(c) to remove the pollutant or any matter, thing, plant or animal or any part of the natural environment that is affected or that may reasonably be expected to be affected by the pollutant,

for the purpose of carrying out any duty imposed or order or direction made or given under this Part, the judge or local judge may issue an order authorizing the person and his employees and agents or any one or more of them to act as mentioned in clauses a, b and c, or any of them, but every such action shall be taken between sunrise and sunset unless the judge or local judge authorizes them or any of them to act at another time.

68j.—(1) No person, employee or agent exercising any authority under subsection 1 of section 68j or carrying out any duty imposed or order or direction made or given under this Part shall dispose of or use any pollutant, or any matter, thing, plant or animal or any part of the natural environment that is affected or that may reasonably be expected to be affected by the pollutant except,

(a) in accordance with an order of or direction by the Minister under this or any other Act;

(b) in accordance with a direction by or the approval of the Director, but such a direction or approval shall not be contrary to the regulations; or

(c) in accordance with an approval, order, requirement or direction by the Director under any other Part of this Act or by a Director under any other Act administered by the Minister, but such an approval, order, requirement or direction shall not be contrary to the regulations.

(2) The Director may give to any person, employee or agent mentioned in subsection 1, and may amend or revoke, a direction or approval mentioned in clause b of subsection 1 and may do so notwithstanding the terms of or conditions in a certificate of approval issued under Part V in respect of a waste disposal site.
(3) The Director may attach such conditions as he con-
siders necessary to an approval mentioned in clause b of
subsection 1.

(4) The Director need not hold or afford to any person an
opportunity for a hearing before giving, amending or
revoking a direction or approval referred to in clause b of
subsection 1.

68g.—(1) Where a pollutant is spilled and the Minister is of the opinion that there are or are likely to be adverse
effects and that it is in the best interest of the public to
make an order under this section, the Minister may make an
order directed to one or more of the following:

1. The owner of the pollutant.

2. The person having control of the pollutant.

3. The owner or the person having the charge, manage-
ment or control of any real property or personal
property that is affected or that may reasonably be
expected to be affected by the pollutant.

4. The municipality or regional municipality, or both
of them, within whose boundaries the spill occurred.

5. Any municipality or regional municipality contig-
uous to the municipality or regional municipality
within whose boundaries the spill occurred.

6. Any municipality or regional municipality that is
affected or that may reasonably be expected to be
affected by the spill of the pollutant.

7. Any public authority.

8. Any person who is or may be adversely affected
by the pollutant or whose assistance is necessary,
in the opinion of the Minister, to prevent, eliminate
or ameliorate the adverse effects or to restore the
natural environment.

(2) In an order under this section, the Minister may require
the doing of everything practicable or the taking of such
action as may be specified in the order in respect of the
prevention, elimination and amelioration of the adverse
effects and the restoration of the natural environment within such period or periods of time as may be specified in the order.

(3) In an order under this section, the Minister may require the doing of everything practicable or the taking of such action as may be specified in the order in respect of the use or disposal of,

(a) the pollutant; or

(b) any matter, thing, plant or animal or any part of the natural environment affected or that may reasonably be expected to be affected by the pollutant,

within such period or periods of time as may be specified in the order.

(4) The Minister by an order may amend or revoke an order made under this section.

(5) The Minister may make an order under this section notwithstanding any Act, regulation, by-law, order, permit, approval or licence.

(6) The Minister need not hold or afford to any person an opportunity for a hearing before making an order under this section.

(7) The Minister may direct, orally or in writing, a representative of the Ministry to give a written notice setting out an order of the Minister made orally or in writing under this section.

(8) An order of the Minister set out in a notice under subsection 7 is for all purposes an order of the Minister made under this section.

(9) Where an order under this section or a notice under subsection 7 that sets out an order is given to an employee or agent of an employer or principal named in the order, the order shall be deemed to be given to the employer or principal.

(10) An order under this section is not effective unless it is set out in writing or is set out in a notice referred to in subsection 7.
68h. A person that in good faith and in a reasonable manner, in carrying out or attempting to carry out,

(a) a duty imposed by this Part; or

(b) an order or direction by the Minister or a direction or approval by the Director under this Part,

takes or refrains from taking any action shall not be convicted of an offence in respect of such taking or refraining from taking of action.

68i.—(1) In this section, "loss or damage" includes personal injury, loss of life, loss of use or enjoyment of property and pecuniary loss, including loss of income.

(2) Her Majesty in right of Ontario or in right of Canada or any other person has the right to compensation,

(a) for loss or damage incurred as a direct result of,

(i) the spill of a pollutant that causes or is likely to cause adverse effects,

(ii) the exercise of any authority under subsection 1 of section 68j or the carrying out or attempting to carry out a duty imposed or an order or direction made under this Part, or

(iii) neglect or default in carrying out a duty imposed or an order or direction made under this Part;

(b) for all reasonable cost and expense incurred in respect of carrying out or attempting to carry out an order or direction under this Part,

from the owner of the pollutant and the person having control of the pollutant.

(3) An owner of a pollutant or a person having control of a pollutant is not liable under subsection 2 if he establishes that he took all reasonable steps to prevent the spill of the pollutant or if he establishes that the spill of the pollutant was wholly caused by,

(a) an act of war, civil war, insurrection, an act of terrorism or an act of hostility by the government of a foreign country;
(b) a natural phenomenon of an exceptional, inevitable and irresistible character; or

(c) an act or omission with intent to cause harm by a person other than a person for whose wrongful act or omission the owner of the pollutant or the person having control of the pollutant is by law responsible,

or any combination thereof.

(4) Subsection 3 does not relieve the owner of the pollutant or the person having control of the pollutant,

(a) from liability for loss or damage that is a direct result of neglect or default of the owner of the pollutant or the person having control of the pollutant in carrying out a duty imposed or an order or direction made under this Part; or

(b) from liability, under clause a of subsection 2, for cost and expense incurred or, under clause b of subsection 2, for all reasonable cost and expense incurred,

(i) to do everything practicable to prevent, eliminate and ameliorate the adverse effects; or

(ii) to do everything practicable to restore the natural environment,

or both.

(5) The right to compensation under subsection 2 may be enforced by action in a court of competent jurisdiction.

(6) Liability under subsection 2 does not depend upon fault or negligence.

(7) In an action under this section,

(a) where the plaintiff is an owner of the pollutant or a person having control of the pollutant, the court shall determine the degree, if any, in which the plaintiff would be liable to make contribution or indemnification under subsection 8 if the plaintiff were a defendant; and

(b) where the plaintiff is not an owner or a person having control referred to in clause a, the court shall determine the degree, if any, in which the plaintiff caused or contributed to the loss, damage, cost or expense by fault or negligence,
and the court shall reduce the compensation by the degree, if any, so determined.

(8) Where two or more persons are liable to pay compensation under this section, they are jointly and severally liable to the person suffering the loss, damage, cost or expense but as between themselves, in the absence of an express or implied contract, each is liable to make contribution to and indemnify each other in accordance with the following principles:

1. Where two or more persons are liable to pay compensation under this section and one or more of them caused or contributed to the loss, damage, cost or expense by fault or negligence, such one or more of them shall make contribution to and indemnify:

i. where one person is found at fault or negligent, any other person liable to pay compensation under this section, and

ii. where two or more persons are found at fault or negligent, each other and any other person liable to pay compensation under this section in the degree in which each of such two or more persons caused or contributed to the loss, damage, cost or expense by fault or negligence.

2. For the purpose of subparagraph ii of paragraph 1, if it is not practicable to determine the respective degrees in which the fault or negligence of two or more persons liable to pay compensation under this section caused or contributed to the loss, damage, cost or expense, such two or more persons shall be deemed to be equally at fault or negligent.

3. Where no person liable to pay compensation under this section caused or contributed to the loss, damage, cost or expense by fault or negligence, each of the persons liable to pay compensation is liable to make contribution to and indemnify each other in such degree as is determined to be just and equitable in the circumstances.

(9) The right to contribution or indemnification under subsection 8 may be enforced by action in a court of competent jurisdiction.

(10) Wherever it appears that a person not already a party to an action under this section may be liable in respect of the...
loss, damage, cost or expense for which compensation is claimed, the person may be added as a party defendant to the action upon such terms as are considered just or may be made a third party to the action in the manner prescribed by the rules of practice for adding third parties.

(11) A person liable to pay compensation under this section may recover contribution or indemnity from any other person liable to pay compensation under this section in respect of the loss, damage, cost or expense for which the compensation is claimed by settling with the person suffering the loss, damage, cost or expense and continuing the action or commencing an action against such other person.

(12) A person who has settled a claim and continued or commenced an action as mentioned in subsection 11 must satisfy the court that the amount of the settlement was reasonable, and, if the court finds the amount was excessive, the court may fix the amount at which the claim should have been settled.

(13) No person is liable to an action for compensation under this section unless the action is commenced within two years from,

(a) where the person commencing the action incurred loss or damage as a result of the spill of a pollutant, the date when the person knew or ought to have known of the loss or damage;

(b) where the person commencing the action incurred loss or damage as a result of carrying out or attempting to carry out or neglect or default in carrying out a duty imposed or an order or direction made under this Part, the date when the person knew or ought to have known of the loss or damage; or

(c) where the person commencing the action incurred cost and expense in respect of carrying out or attempting to carry out an order or direction made under this Part, the date when the person incurred the cost and expense.

(14) Where, within the period of time prescribed by subsection 13, an action for compensation is commenced against a person liable to pay compensation under this section or a person liable to pay compensation under this section settles a claim for compensation with a person who has suffered loss, damage, cost or expense, no proceedings for contribution or indemnity against another person liable to pay compensation under this section are defeated by the operation of any Act
limiting the time for the commencement of action against such other person if,

(a) the proceedings are commenced within one year of the date of the judgment in the action or the settlement, as the case may be; and

(b) there has been compliance with any Act requiring notice of claim against such other person.

68j—(1) Where a pollutant is spilled and causes or is likely to cause adverse effects,

(a) a municipality;

(b) a regional municipality; and

(c) a person or a member of a class of persons designated by the regulations,

or any one or more of them, may do everything practicable to prevent, eliminate and ameliorate the adverse effects and to restore the natural environment.

(2) A municipality or regional municipality or a person or member of a class of persons designated by the regulations acting under subsection 1 or an employee or agent of any of them so acting has the rights of a person under section 68e and, if acting in good faith and in a reasonable manner, the immunity conferred on a person by section 68h.

(3) A municipality or regional municipality or a person or a member of a class of persons designated by the regulations acting under subsection 1 must,

(a) co-ordinate efforts with;

(b) make use of the expertise of; and

(c) not impede,

a person carrying out a duty, order or direction under this Part.

(4) A municipality, a regional municipality or a person or member of a class of persons designated by the regulations has the right to compensation from the owner of the pollutant and the person having control of the pollutant for all reasonable cost and expense incurred in acting under subsection 1.
(5) The right to compensation under subsection 4 may be enforced by action in a court of competent jurisdiction.

(6) Where the right to compensation under subsection 4 arises, subsections 6 to 14 of section 68i apply with necessary modifications.

68k.—(1) A person, other than a person referred to in subsection 2, entitled under clause b of subsection 2 of section 68i to compensation for reasonable cost and expense has the right, subject to the conditions prescribed by the regulations, to payment of such compensation from Her Majesty in right of Ontario.

(2) Subsection 1 does not give a right to payment of compensation to,

(a) the owner of the pollutant;

(b) the person having control of the pollutant;

(c) a person liable at law other than under this Part for loss, damage, cost or expense arising from the spill of the pollutant;

(d) a person that has a right under a contract to payment of the reasonable cost and expense referred to in subsection 1,

or an employee or agent of any of them.

(3) The right to payment of compensation under subsection 1 may be enforced by action in a court of competent jurisdiction.

(4) Where compensation has been paid under subsection 1, Her Majesty in right of Ontario has the right to recover in the place of the person to whom the compensation was paid to the extent of the amount of the payment of compensation by and any costs of Her Majesty.

(5) Her Majesty in right of Ontario is entitled under subsection 4 to all rights of recovery whether under this Part or otherwise that the person has against any other person.

(6) For the purposes of subsection 4, the payment of compensation by Her Majesty in right of Ontario under subsection 1 shall not be construed to affect the right of the person under subsection 2 of section 68i to compensation for reasonable cost and expense so paid by Her Majesty.
(7) The right to compensation under subsection 4 may be enforced in a court of competent jurisdiction by Her Majesty in right of Ontario in Her Majesty’s name or in the name of the person to whom the compensation has been paid.

(8) A person that fails to comply with or contravenes a condition prescribed by the regulations that must be complied with before payment of compensation under subsection 1 is disentitled to the payment.

(9) Where a person fails to comply with or contravenes a condition prescribed by the regulations that attaches to the payment of compensation under subsection 1, Her Majesty in right of Ontario has the right to recover the amount of the compensation paid and the right may be enforced in a court of competent jurisdiction.

(10) An insurer as defined in The Insurance Act only acquires its subrogated right of recovery under any law, including sections 126 and 240 of The Insurance Act, or the provisions of any contract of insurance in respect of a person to whom a payment of compensation has been made under subsection 1 when Her Majesty in right of Ontario consents in writing to a settlement in accordance with which the right of recovery is discharged or to the bringing of an action to enforce the right of recovery.

(11) If an insurer referred to in subsection 10 purports to make a settlement or brings an action without the consent of Her Majesty, the insurer is liable to Her Majesty in right of Ontario in an amount equal to the amount of the payment of compensation under subsection 1 to the extent of the recovery under the judgment with respect to which the action was brought or the amount paid to the insurer in accordance with the settlement.

(12) A release in furtherance of or in accordance with a purported settlement made without the consent of Her Majesty in right of Ontario is a nullity.

(13) Her Majesty shall not unreasonably withhold the consent referred to in subsections 10, 11 and 12, but Her Majesty may attach conditions to the consent and may revoke the consent for breach of such a condition.

(14) The provisions of this section apply notwithstanding any other law or the provisions of any contract of insurance.

68ka. In this section and in sections 68kb to 68kt,

(a) “corporation” means the Environmental Compensation Corporation established by section 68kj;
(b) "director" means director of the corporation;

(c) "payment" means payment referred to in subsection 1 of section 68kb in respect of a spill of a pollutant.

68kb.—(1) Upon application, the corporation shall authorize payment in respect of a spill of a pollutant to,

(a) any person who has incurred loss or damage as a direct result of,

(i) the spill of a pollutant that causes or is likely to cause adverse effects,

(ii) the exercise of any authority under subsection 1 of section 68j or the carrying out of or attempting to carry out a duty imposed or an order or direction made under this Part, or

(iii) neglect or default in carrying out a duty imposed or an order or direction made under this Part;

(b) any person who has incurred reasonable cost and expense in respect of carrying out or attempting to carry out an order or direction under this Part; and

(c) the owner of the pollutant and the person having control of the pollutant who are liable to pay compensation under this Part,

if such person, owner of the pollutant or person having control of the pollutant is a member of a class prescribed by the regulations and meets the conditions prescribed by the regulations.

(2) The amount of the payment that the corporation shall authorize under subsection 1 shall be calculated in the manner prescribed by the regulations,

(a) generally;

(b) in respect of the class of which the person, the owner of the pollutant or the person having control of the pollutant is a member; or

(c) in respect of a class prescribed by the regulations,

(i) of spills of pollutants,

(ii) of loss or damage, or

(iii) of cost or expense.
(3) The corporation shall not authorize payment under subsection 1 in excess of a limit prescribed by the regulations or in excess of a limit calculated in the manner prescribed by the regulations and, in either case,

(a) generally;

(b) in respect of the class of which the person, the owner of the pollutant or the person having control of the pollutant is a member; or

(c) in respect of a class prescribed by the regulations,

   (i) of spills of pollutants,

   (ii) of loss or damage, or

   (iii) of cost or expense.

68kc.—(1) The corporation shall not authorize a payment to a person who fails to comply with or contravenes a condition prescribed by the regulations that must be complied with before the precedent payment.

(2) Where a person fails to comply with or contravenes a condition prescribed by the regulations that attaches to a payment, the corporation has the right to recover on behalf of Her Majesty in right of Ontario the amount of the payment and the costs of the corporation, and the right may be enforced by action in a court of competent jurisdiction.

68kd. In assessing the amount of a payment, the corporation, except as may be prescribed by the regulations, shall take into consideration any benefit, compensation or indemnity payable to the person from any source.

68ke.—(1) The corporation shall make a proposal in respect of payment in connection with each application for payment and shall give notice of its proposal, together with written reasons therefor, to the applicant.

(2) The corporation may cause an investigation and report to be made in respect of the performance of its function and the exercise of its powers in any matter.

68kf. The Statutory Powers Procedure Act, 1971 does not apply to proceedings of or proposals in respect of payment by the corporation under this Part or the regulations.

68kg.—(1) An applicant for payment may accept a proposal by the corporation by notice in writing given to the corporation.
within twenty days after the applicant is given notice of the proposal or, if the applicant is dissatisfied with the proposal, the applicant may apply within the twenty days to the High Court by originating notice for the determination of the right of the applicant to payment and the amount of the payment, and on such application the court, in accordance with the rules of court, may determine the right to payment and the amount or may direct the trial of the issue.

(2) The Minister is entitled to be heard, by counsel or otherwise, upon the hearing of an application by the High Court under subsection 1 or any proceeding or appeal with respect thereto.

(3) The corporation may extend the time for accepting a proposal by the corporation under subsection 1, either before or after the expiration of the time, where the corporation is satisfied that there are reasonable grounds for applying for the extension.

(4) The High Court may extend the time for applying to the High Court under subsection 1, either before or after the expiration of the time, where the High Court is satisfied that there are prima facie grounds for making a determination in favour of the applicant following the hearing or the trial of the issue under subsection 1 and that there are reasonable grounds for applying for the extension, and the High Court may give such directions as it considers proper consequent upon the extension.

68kh.—(1) Where, in accordance with this Part and the regulations, an applicant has accepted a proposal by the corporation or has applied to the High Court and it has been finally determined that the applicant is entitled to payment and the amount of the payment has been finally determined, the corporation shall certify to the Treasurer of Ontario in the form prescribed by the regulations the amount of the payment and the person to whom it is payable and, subject to subsection 2, the Treasurer shall pay such amount to the person out of the Consolidated Revenue Fund.

(2) The Treasurer of Ontario shall make payments under subsection 1 only during such period of time and subject to such conditions as may be prescribed by the regulations.

68ki.—(1) Where a payment is made in accordance with a certificate of the corporation, the corporation has the right on behalf of Her Majesty in right of Ontario to recover in the place of the person to whom the payment was made to the extent of the payment and any costs of the corporation.

(2) The corporation is entitled under subsection 1 to all rights of recovery whether under this Part or otherwise that the person has against any other person.
(3) The payment of an amount to a person in accordance with a certificate of the corporation shall not be construed to affect the right of the person to compensation under this Part or otherwise at law.

(4) The right of the corporation to recover under subsection 1 may be enforced in a court of competent jurisdiction by the corporation in its name or in the name of the person to whom the payment has been made.

(5) An insurer as defined in The Insurance Act only acquires its subrogated right of recovery under any law, including sections 126 and 240 of The Insurance Act, or the provisions of any contract of insurance in respect of a person to whom a payment has been made in accordance with a certificate of the corporation when the corporation gives its consent in writing to a settlement in accordance with which the right of recovery is discharged or to the bringing of an action to enforce the right of recovery.

(6) If an insurer referred to in subsection 5 purports to make a settlement or brings an action without the consent of the corporation, the insurer is liable to the corporation in an amount equal to the amount of the payment made in accordance with the certificate of the corporation to the extent of the recovery under the judgment with respect to which the action was brought or the amount paid to the insurer in accordance with the settlement.

(7) A release in furtherance of or in accordance with a purported settlement made without the consent of the corporation is a nullity.

(8) The corporation shall not unreasonably withhold the consent referred to in subsections 5, 6 and 7 but the corporation may attach conditions to the consent and may revoke the consent for breach of such a condition.

(9) The provisions of this section apply notwithstanding any law or the provisions of any contract of insurance.

68kj.—(1) There is hereby established a corporation without share capital with the name “Environmental Compensation Corporation”.

(2) The corporation shall be composed of not fewer than three directors who shall be appointed by the Lieutenant Governor in Council.

(3) The term of office of a director of the corporation is three years or until his successor is appointed and a director is eligible for reappointment.
Chairman

(4) The Lieutenant Governor in Council shall designate one of the directors as chairman.

Quorum

(5) A majority of the directors of the corporation constitutes a quorum.

Conduct of business by less than quorum

(6) The chairman may, in writing, authorize less than a quorum of the directors of the corporation to exercise the powers of the corporation in any matter specified by the chairman.

Management

68kk.—(1) The affairs of the corporation are under the management of its directors.

By-laws

(2) The directors may make by-laws regulating the proceedings of the corporation, governing the exercise of its powers and generally for the conduct and management of the affairs of the corporation.

By-laws by Lieutenant Governor in Council

(3) Where the Minister requests in writing that the corporation make, amend or revoke a by-law and the corporation has failed to do so, the Lieutenant Governor in Council may make the by-law, amendment or revocation specified in the request.

Powers

68kl. The powers of the corporation are,

(a) to receive and assess applications for payment in accordance with sections 68ka to 68kt and the regulations;

(b) to authorize payments in accordance with sections 68ka to 68kt and the regulations;

(c) to take action or commence proceedings in any case where the corporation is authorized to do so by or under any Act or law; and

(d) to carry out such other duties as may be prescribed by the regulations.

Remuneration of directors

68km. The corporation shall pay those of its directors who are not officers in the public service of the Province of Ontario such remuneration and expense allowance as may be fixed from time to time by the Lieutenant Governor in Council.

Agency

68kn.—(1) The corporation is an agency of the Crown.

Application of R.S.O. 1970, c. 89; 1976, c. 66

68ko. The corporation may engage on a temporary basis the services of persons having technical or specialized knowledge to
advise and assist the corporation in performing its function and exercising its powers and, with the approval of the Lieutenant Governor in Council, the corporation may fix and pay the remuneration and expenses of such persons.

68kp. — (1) The corporation may appoint inspectors to make investigations in respect of spills of pollutants in order to assist the corporation in the performance of its function and the exercise of its powers and to carry out such additional duties as may be prescribed by the regulations.

(2) It is the duty of an inspector appointed by the corporation,

(a) to make investigations in respect of spills of pollutants in order to assist the corporation in assessing applications for payment received by the corporation;

(b) to make such other investigations in respect of spills of pollutants as may be necessary or advisable to assist the corporation to perform its function and to exercise its powers; and

(c) to carry out such additional duties as may be prescribed by the regulations.

68kg. — (1) Except as to information in respect of a spill of a pollutant, every director and every employee of the corporation and every person engaged or appointed by the corporation shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties or employment under this Act and shall not communicate any such matter to any other person except,

(a) in connection with the administration of this Act and the regulations or in connection with any proceeding under this Act or the regulations;

(b) to his counsel; or

(c) with the consent of the person to whom the information relates.

(2) Except in a proceeding under this Act or the regulations, no person to whom subsection 1 applies shall be required to give testimony, other than testimony in respect of a spill of a pollutant, in any civil suit or proceeding with regard to information obtained by him in the course of his duties or employment.

68kr. Section 96a (which provides protection from personal liability) applies to the directors and the employees of the corpora-
tion and to persons engaged or appointed by the corporation in the same manner as it applies to persons described in that section.

68ks. The accounts and financial transactions of the corporation shall be audited annually by the Provincial Auditor, and reports of the audit shall be made to the corporation and to the Minister.

Annual report

68kt.-(1) The corporation shall make a report annually to the Minister upon the affairs of the corporation, and the Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

(2) The corporation, in addition to making an annual report, shall make to the Minister such other reports on its affairs and operations as the Minister may require.

Other reports

68l. Except as expressly provided in this Part, nothing in this Part limits or restricts any right or remedy that any person may have against another person.

Right of recourse

68m. The liability under this Part of farmers who are owners of pollutants or persons having control of pollutants and who are members of a class prescribed by the regulations is limited to the amount prescribed by the regulations or the amount calculated in the manner prescribed by the regulations in respect of such farmers.

s. 94, amended

3. Section 94 of the said Act, as amended by the Statutes of Ontario, 1972, chapter 106, section 31, 1973, chapter 94, section 11 and 1976, chapter 49, section 1, is further amended by adding thereto the following subsection:

Regulations relating to Part VIII-A

(8) The Lieutenant Governor in Council may make regulations relating to Part VIII-A,

(a) designating persons and classes of persons for the purposes of subsection 1 of section 68j and prescribing limitations that shall attach to any such designation;

(b) prescribing conditions that must be complied with by applicants for payment of compensation under subsection 1 of section 68k before payment of the compensation;

(c) prescribing conditions that shall attach to the payment of compensation under subsection 1 of section 68k;
(d) designating discharges of pollutants and locations of discharges for the purposes of subsection 2 of section 68a, but no discharge of pollutant or location of discharge shall be designated that is in accordance with an approval, licence, permit, order or regulation under this Act or an approval, direction, notice, order, regulation or report under The Ontario Water Resources Act or a licence, order, permit or regulation under The Pesticides Act, 1973;

(e) classifying spills and exempting any spill or any class of spill from the application of Part VIII-A or any section or portion of Part VIII-A and attaching conditions to any such exemption;

(f) prescribing any matter required or authorized by Part VIII-A to be, or referred to in those sections as, prescribed by the regulations;

(g) prescribing classes of or in respect of any matter that is or may be prescribed under clause f;

(h) limiting the application of any regulation under clause f to any one or more of the classes prescribed under clause g;

(i) classifying insurers, as defined in The Insurance Act, for the purposes of Part VIII-A and exempting any class of insurers from the application of Part VIII-A or any section or portion of Part VIII-A and attaching conditions to any such exemption.

4. Section 95 of the said Act, as amended by the Statutes of Ontario, 1974, chapter 125, section 2, is further amended by adding thereto the following subsection:

(3) Any class under this Act or the regulations may be defined with respect to any attribute, quality or characteristic or combination thereof and may be defined to include within the class any specified member or members whether or not with the same attributes, qualities or characteristics.

5. Subsections 3 and 4 of section 32 of The Ontario Water Resources Act, being chapter 332 of the Revised Statutes of Ontario, 1970, as amended by the Statutes of Ontario, 1972, chapter 1, section 70, are repealed.

6. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

7. The short title of this Act is The Environmental Protection Amendment Act, 1979.