

**TOQUAHT NATION GOVERNMENT**

**ENVIRONMENTAL PROTECTION ACT**

**TNS 15/2011**



**OFFICIAL CONSOLIDATION – CURRENT TO SEPTEMBER 16, 2015**

This is a certified true copy of the consolidated Environmental Protection Act TNS 15/2011,  
Current to September 16, 2015

Date: October 8<sup>th</sup>, 2015

*Kristen Johnson*

Signed: \_\_\_\_\_  
Law Clerk

TOQUAHT NATION GOVERNMENT  
ENVIRONMENTAL PROTECTION ACT TNS 15/2011  
OFFICIAL CONSOLIDATION – CURRENT TO SEPTEMBER 16, 2015

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## PREAMBLE

The Toquaht Nation asserts that we have occupied, benefited from and governed our Hahoulthee (traditional territory) since time immemorial.

The Toquaht traditional territory has in the past provided the resources necessary to sustain us and provide for our physical and spiritual needs. We value and honour our past and present connection to the lands, waters and resources of our Toquaht traditional territory and recognize that all life forms are Hish-uk-ist-sawalk (interconnected) and that all humanity must have Iisaak (respect for the earth and all life forms on it).

Through our inherent right to self-government, and the responsibility given to us by Naas (the creator) for our traditional territory, the Toquaht Nation has always, since time immemorial, taken the steps we are able to preserve and protect our Toquaht traditional territory.

It is the goal of the Toquaht Nation that our Toquaht lands be vibrant and healthy, full of abundant life, as they have been in the past. We desire that our Toquaht lands will continue forever to provide the resources necessary to sustain the Toquaht Nation, to preserve our traditional ways and culture, encourage self-sufficiency and security through sustainable economic development and growth that respects our environment and that they will always provide a home for our future generations.

To assist with realizing these goals, the Toquaht Nation, now as a self-governing treaty first nation, wishes to establish a law that speaks to and reflects these values and our goals of protecting the environment of our Toquaht lands for all time, a law that sets out the administrative structure necessary to implement the goals and values that have guided the Toquaht Nation in our relationship with the natural environment since time immemorial.

The Toquaht Nation adopts this Act based on these values.

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## PART 1 - INTRODUCTORY PROVISIONS

### Short title

1.1 This Act may be cited as the Environmental Protection Act.

### Executive oversight

1.2 The member of the Executive holding the lands, public works and environmental protection portfolio is responsible for the executive oversight of this Act.

### Application

1.3 This Act applies to Toquaht lands, the air above Toquaht lands and the streams and groundwater that form part of Toquaht lands.

### Definitions

1.4 In this Act,

“contaminant” means any noise, heat, vibration or substance and includes such other substances as the Executive may prescribe that, where discharged into the environment,

- (a) injures or is capable of injuring the health or safety of an individual,
- (b) injures or is capable of injuring property or any life form,
- (c) interferes with or is capable of interfering with visibility,
- (d) interferes with or is capable of interfering with normal enjoyment of life or property,
- (d) interferes with or is capable to interfering with normal conduct of business,
- (e) causes or is capable of causing material physical discomfort to a person, or
- (f) damages or is capable of damaging the environment;

“court” means a justice of the peace or the Provincial Court;

“director” means the director of lands, public works and resources;

“discharge” includes any pumping, pouring, throwing, dumping, emitting, burning, spraying, spreading, leaking, spilling or escaping;

“emergency” has the meaning given to it in the Financial Administration Act;

“endanger” includes contributing to the endangerment of, or likely to endanger;

“environment” means the components of the Earth and includes

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

“inspector” means a person appointed under section 7.4 and includes the director;

“permit” means a permit issued under section 6.1;

“Review Board” means the Administrative Decisions Review Board;

“substance” means any solid, liquid, gas, odour or organism or combination of any of them.

### **Binding on government**

**1.5** For certainty, this Act and the regulations bind the Toquaht government.

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## PART 2 - PROHIBITIONS

### Discharge of contaminants

- 2.1 (a) For the purposes of this section, “the conduct of a prescribed industry, trade or business” includes the operation by any person of facilities or vehicles for the collection, storage, treatment, handling, transportation, discharge, destruction or other disposal of contaminants in relation to the prescribed industry, trade or business.
- (b) Subject to subsection (e), a person must not introduce or cause or allow contaminants to be introduced into the environment in the course of conducting a prescribed industry, trade or business.
- (c) Subject to subsection (e), a person must not introduce or cause or allow to be introduced into the environment, contaminants produced by a prescribed activity or operation.
- (d) Subject to subsection (e), a person must not introduce contaminants into the environment in such a manner or quantity as to cause pollution.
- (e) Nothing in this section or in a regulation made under subsection (b) or (c) prohibits any of the following:
- (i) the disposition of contaminants in compliance with this Act and with all of the following that are required or apply in relation to the disposition:
    - (A) a valid and subsisting permit;
    - (B) a valid and subsisting approval;
    - (C) a valid and subsisting Order;
    - (D) a regulation; or
    - (E) a contaminants management plan approved by the director;
  - (ii) the discharge into the air of an air contaminant from an incinerator or other emission source operated under an authority or permit issued by the director;
  - (iii) the disposition of human remains in accordance with a Toquaht enactment or provincial law;
  - (iv) the burning of leaves, foliage, weeds, crops or stubble for domestic or agricultural purposes;

- (v) the use of pesticides or biocides for agricultural, domestic or forestry purposes in compliance with a Toquaht enactment, federal law or provincial law governing their use;
  - (vi) fires set or controlled by a person
    - (A) acting under an Order of the director if the director, by Order, authorizes the fires for training purposes,
    - (B) carrying out fire control under section 9 of the Wildfire Act (British Columbia), or
    - (C) if the fires are resource management open fires under the Wildfire Act (British Columbia) and are lit, fuelled or used in accordance with that Act;
  - (vii) emissions from steam powered or internal combustion engines in compliance, if applicable, with the Motor Vehicle Act (British Columbia);
  - (viii) emission into the air of soil particles or grit in the course of agriculture or horticulture;
  - (ix) emission into the air of soil particles or grit in the course of road construction or maintenance;
  - (x) emission of an air contaminant from combustion of wood or fossil fuels used solely for the purpose of comfort heating of domestic, institutional or commercial buildings;
  - (xi) emission of an air contaminant from food preparation in
    - (A) residential premises, or
    - (B) retail food outlets; or
  - (xii) an owner, agent or manager from carrying out an activity related to mineral and coal exploration if that activity is exempted under a Toquaht enactment.
- (f) Nothing in subsection (e)(ii) or (e)(x) authorizes the use of an incinerator or domestic, institutional or commercial heating equipment for the purpose of destroying contaminants by means of combustion.
- (g) In subsection (e)(xi),
- (i) “residential premises” includes hospitals, clinics, logging camps, factory and office canteens and other similar premises;

- (ii) “retail food outlets” means
  - (A) restaurants, hotels, motels and similar premises, and
  - (B) premises in which food is prepared and sold by retail sale, such as
    - (I) exclusively retail bakeries, and
    - (II) premises selling take out food.

### **Exception does not apply**

**2.2** The exceptions set out in section 2.1(e) to the prohibitions set out in sections 2.1(b), 2.1(c) and 2.1(d) do not apply where a person discharges a contaminant that the inspector has reasonable grounds to believe is not usually associated with a discharge from the excepted activity.

### **Confinement of contaminants**

- 2.3** (a) A person who produces, stores, transports, handles, treats, recycles, deals with, processes or owns contaminants must keep the contaminants confined in accordance with the regulations.
- (b) Except to the extent expressly authorized by a permit, an approval, an Order, a contaminants management plan or the regulations, a person must not release contaminants from the confinement required by subsection (a).

### **Contaminants management facility**

**2.4** A person must not construct, establish, alter, enlarge, extend, use or operate a facility for the treatment, recycling, storage, disposal or destruction of contaminants except in accordance with the regulations.

### **Contaminants storage and disposal**

- 2.5** (a) A person must not store more than a prescribed amount of contaminants except in accordance with any of the following that apply:
- (i) the regulations in relation to storing contaminants;
  - (ii) an Order that requires the person to store that kind of contaminant; or
  - (iii) an approved contaminant management plan that provides for storage of contaminants.
- (b) A person who is storing a quantity of a substance at the time that the substance is prescribed to be a contaminant does not contravene subsection (a) by continuing

to store the same or a different quantity of that substance if the person notifies the director, in accordance with the regulations, of the location, quantity and type of substance that the person is storing.

- (c) Despite subsection (b), the director
  - (i) may, by Order, require a person referred to in that subsection to comply with the regulations or the approved contaminant management plan within the period specified in the Order, and
  - (ii) must deliver in accordance with Toquaht law a copy of the Order to that person.
- (d) If a person who is served with an Order under subsection (c) does not comply with the regulations and the approved contaminant management plan in the period specified by the director, the person must dispose of the contaminant as directed by the director.

### **Transportation of contaminants**

- 2.6** (a) A person who produces or stores contaminants
- (i) must not cause or allow more than a prescribed quantity of the contaminants to be transported from the property where he or she produces or stores the contaminants unless the person first
    - (A) completes, in the prescribed form and manner, the part of a manifest that applies to him or her, and
    - (B) files the manifest in the prescribed manner,
  - (ii) must ensure that the person transporting more than the prescribed quantity of the contaminants from the place where it is produced or stored has a permit for that purpose, and
  - (iii) must not cause or allow more than the prescribed quantity of the contaminants to be transported to a place unless
    - (A) an Order, contaminant management plan or regulation authorizes or requires it to be stored at that place,
    - (B) a permit, approval, Order, contaminant management plan or regulation authorizes or requires it to be introduced into the environment or treated at that place, or
    - (C) storage of the contaminants at that place is otherwise not prohibited under section 2.5.

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- (b) A person must not transport more than a prescribed quantity of a contaminant unless the person
- (i) carries with him or her
    - (A) a manifest completed as required by subsection (a) and this subsection, and
    - (B) if required by the regulations, a permit, and
  - (ii) has completed, in accordance with the regulations, that part of the manifest that applies to him or her.
- (c) A person must not accept delivery of more than a prescribed quantity of a contaminant unless the person
- (i) receives from the transporter a manifest that has been completed as required by subsections (a) and (b),
  - (ii) completes the part of the manifest that applies to him or her and files the manifest in the prescribed form and manner, and
  - (iii) has a permit or an approval authorizing the person to introduce into the environment that kind and quantity of contaminant, is authorized under the regulations to treat or recycle that kind and quantity of contaminant or is not prohibited under section 2.5 from storing that kind and quantity of contaminant.
- (d) In a prosecution for a contravention of this section, the burden of proving compliance with subsections (a) and (b) is on the defendant.

### **Packaging, product containers and disposable products**

- 2.7** A person must not use, offer for sale or sell packaging, product containers or disposable products, or any material used in packaging, product containers or disposable products, contrary to this Act.

### **Littering**

- 2.8** (a) In this section, “public place” means
- (i) a place that is open to the air, including a covered place that is open to the air on at least one side, and to which the public is entitled or permitted to have access without payment, and
  - (ii) a park or public campground.

- (b) A person must not throw down, drop or otherwise deposit, and leave litter in a public place.
- (c) The prohibition in subsection (b) does not apply if the depositing and leaving was authorized by a Toquaht enactment, or was done with the consent of the owner, occupier or other person or authority having control of the public place.
- (d) In a prosecution, the burden of establishing that subsection (c) applies is on the defendant.

### **Discharge of contaminants from recreational vehicles**

- 2.9** A person must not discharge domestic sewage or other contaminants from a trailer, camper, transportable housing unit, boat or house boat onto land, into any reservoir or into any lake, pond, stream or other natural body of water, except
- (a) in compliance with a permit, an approval, an Order, a contaminant management plan or a regulation, or
  - (b) if disposal facilities are provided, in accordance with proper and accepted methods of disposal using those facilities, and in accordance with the Public Health Act (British Columbia).



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## PART 3 - ENVIRONMENTAL EMERGENCIES

### Environmental emergency

- 3.1** Where a discharge of a contaminant into the environment in contravention of this Act or a permit occurs or a reasonable likelihood of such a discharge exists, every person causing or contributing to the discharge or increasing the likelihood of such a discharge, and the owner or the person in charge, management or control of the contaminant before its discharge or likely discharge, must immediately
- (a) subject to any regulations, report the discharge or likely discharge to the director,
  - (b) take all reasonable measures consistent with public safety to stop the discharge, repair any damage caused by the discharge and prevent or eliminate any danger to life, health, property or the environment that results or may be reasonably expected to result from the discharge or likely discharge, and
  - (c) make a reasonable effort to notify every member of the public who may be adversely affected by the discharge or likely discharge.

### Protection Order

- 3.2** (a) Where the director believes on reasonable grounds that it is necessary or advisable for the protection of the environment to do so, the director may, by Order, require any person
- (i) to install safeguards to prevent the discharge of contaminants into the environment,
  - (ii) to site, transport or store any contaminant in the manner set out in the Order, or
  - (iii) to have on hand at all times the equipment and material necessary to alleviate the effect of any discharge of contaminants that may be specified in the Order.
- (b) Where an inspector believes on reasonable grounds that a discharge of a contaminant in contravention of this Act or a permit is likely to occur, the inspector may, by Order, require any person whose actions may increase the likelihood of a discharge or the owner or person in charge, management or control of the contaminant to take the preventive measures that the inspector considers necessary.

### Order of inspector

- 3.3** (a) Where an inspector believes on reasonable grounds that a discharge of a contaminant in contravention of this Act or a permit has occurred or is occurring,

- the inspector may, by Order, require any person causing or contributing to the discharge or the owner or the person in charge, management or control of the contaminant to stop the discharge by the date specified in the Order.
- (b) For certainty, the issue of an Order under this section does not preclude the prosecution of an offence under section 9.1.
  - (c) Despite subsection (a), where a person discharges or permits the discharge of a contaminant into the environment, an inspector may, by Order, require that person to repair or remedy any injury or damage to the environment that results from the discharge.

### **Director may remediate**

- 3.4** Where a person fails or neglects to repair or remedy any injury or damage to the environment in accordance with an Order made under section 3.3(c) or where immediate remedial measures are required to protect the environment, the director may, at that person's own expense, cause to be carried out the measures that he or she considers necessary to repair or remedy an injury or damage to the environment that results from any discharge.

### **Emergency Order**

- 3.5**
- (a) Despite section 3.6, where, in the opinion of an inspector, an emergency exists and an Order must be issued under section 3.2 or 3.3, the inspector may issue a verbal Order to the person who, in the opinion of the inspector, is the person best able to comply with the Order.
  - (b) An Order issued under subsection (a) will take effect from the time it is issued.
  - (c) An Order issued under subsection (a) has the same force and effect as a written Order.
  - (d) An Order issued under subsection (a) must be served in written form in accordance with section 3.6 as soon as practicable after it is issued.

### **Service of Orders**

- 3.6** An Order under section 3.2 or 3.3 must be delivered in accordance with Toquaht law.

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## PART 4 - UNSIGHTLY LAND

### Meaning of unsightly land

- 4.1 Land is unsightly where an inspector believes, on reasonable grounds and in comparison to land used for a similar purpose, that litter or things placed on the land cause the land to be unsightly.

### Unsightly land

- 4.2 No owner or occupier of Toquaht lands may allow that land to become unsightly.

### Directive to improve condition of land

- 4.3 Where an inspector believes on reasonable grounds that any Toquaht lands are unsightly, the director may, by directive, require the owner or occupier of the land or the last person to own or occupy the land to improve the condition of the land in such manner and to such extent as may be set out in the directive.

### Improvement of condition of land by director

- 4.4 Where a person fails to comply with a directive under section 4.3, the director may, at that person's own expense, take such action as he or she considers necessary to improve the condition of the land in accordance with the directive.

### Limitation

- 4.5 No directive may be made under section 4.3 to a person who is the last person to own or occupy land that is unsightly more than five years after that person ceased to own or occupy the land.

### Regulations

- 4.6 The Executive may, by regulation,
- (a) prohibit or regulate the disposal of litter on Toquaht lands, or
  - (b) further define unsightly land, prohibit owners or occupiers of land from allowing that land to become unsightly and provide for the improvement of unsightly land.

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## PART 5 - CONTAMINATED SITE REMEDIATION

### Definitions and interpretation

**5.1** (a) In this Part,

“approved professional” means a person who is named on a roster established under section 42(2) of the Environmental Management Act (British Columbia);

“approving officer” means the approving officer as defined in the Land Act;

“contaminated site” means an area of Toquaht lands in which the soil or any groundwater lying beneath it, or the water or the underlying sediment, contains

- (i) a prescribed contaminant, or
- (ii) another prescribed substance

in quantities or concentrations exceeding prescribed risk based or numerical criteria or standards or conditions;

“contamination” means the presence in soil, sediment, water or groundwater of

- (i) a contaminant, or
- (ii) a prescribed substance for the purposes of paragraph (ii) of the definition of “contaminated site”

in quantities or concentrations exceeding the criteria, standards or conditions prescribed for the purposes of the definition of “contaminated site”;

“detailed site investigation” means a detailed site investigation and report under section 5.3 that complies with the regulations;

“operator” means, subject to subsection (b), a person who is or was in control of or responsible for any operation located at a contaminated site, but does not include a secured creditor unless the secured creditor is described in section 5.6(c);

“orphan site” means a contaminated site determined under section 5.11 to be an orphan site;

“owner” means a person who

- (i) is in possession,
- (ii) has the right of control, or

(iii) occupies or controls the use

of Toquaht lands, and includes a person who has an estate or interest, legal or equitable, in the Toquaht lands, but does not include a secured creditor unless the secured creditor is described in section 5.6(c);

“person” includes a government body and any director, officer, employee or agent of a person or government body;

“preliminary site investigation” means a preliminary site investigation and report under section 5.3 that complies with the regulations;

“registrar” means the lands registrar;

“remediation Order” means an Order under section 5.9;

“remediation standards” means prescribed numerical standards relating to concentrations of substances and standards relating to risk assessment;

“responsible person” means a person referred to in section 5.6;

“secured creditor” means a person who holds a mortgage, charge, debenture, hypothecation or other security interest in property at a contaminated site and includes an agent for that person;

“site investigation” means a detailed site investigation or a preliminary site investigation;

“site profile” means a site profile referred to in section 5.2;

“subdivision” means a subdivision as defined in the Planning and Land Use Management Act.

- (b) The Toquaht government is not an operator only as a result of
- (i) exercising regulatory authority in relation to a contaminated site,
  - (ii) carrying out remediation of a contaminated site, or
  - (iii) providing advice or information in relation to a contaminated site or an activity that took place on the contaminated site.

### Site profiles

- 5.2** (a) A person must provide a site profile in accordance with the regulations to the director when the person applies for or otherwise seeks approval for

- 
- (i) a subdivision of Toquaht lands that the person knows or reasonably should know is or were used for industrial or commercial activity,
  - (ii) zoning of Toquaht lands that the person knows or reasonably should know is or were used for industrial or commercial activity,
  - (iii) a development permit or a development variance permit for Toquaht lands that the person knows or reasonably should know is or were used for industrial or commercial activity,
  - (iv) removal of soil from Toquaht lands that the person knows or reasonably should know is or were used for industrial or commercial activity,
  - (v) a demolition permit respecting a structure that the person knows or reasonably should know is or was used for public, industrial or commercial activity, or
  - (vi) a prescribed activity.
- (b) Subject to the regulations, an owner of Toquaht lands must provide a site profile to the director if the owner
- (i) owns Toquaht lands that are used or have been used for activities specified in the regulations,
  - (ii) dismantles a building or structure, or otherwise decommissions a type of site, specified in the regulations,
  - (iii) applies for, or otherwise seeks, approval for any other prescribed activity, or
  - (iv) undertakes prescribed activities or receives prescribed information.
- (c) The director must assess a site profile received under subsection (a) or (b) in accordance with the regulations to determine if a site investigation is required.
- (d) The director may impose reasonable fees for an assessment under subsection (c).
- (e) A vendor of Toquaht lands who knows or reasonably should know that the land has been used for
- (i) a prescribed industrial or commercial purpose, or
  - (ii) a prescribed purpose or activity,
- must provide a site profile to a prospective purchaser of the land and the director in accordance with the regulations.

- (f) A trustee, receiver or liquidator or a person commencing foreclosure proceedings who takes possession or control of Toquaht lands for the benefit of one or more creditors must provide a site profile to the director immediately on taking possession or control if the land has been used for
- (i) an industrial or commercial purpose prescribed for the purpose of subsection (e)(i), or
  - (ii) a purpose or activity prescribed for the purpose of subsection (e)(ii).
- (g) The director may, by Order, require a person to prepare and provide to the director, at that person's own expense, a site profile if that person
- (i) owns or occupies Toquaht lands that, in the opinion of the director, may be a contaminated site on account of any past or current use on that or other land, or
  - (ii) is a person referred to in subsections (a) to (f) and fails to provide a satisfactorily completed site profile.
- (h) If the director orders the preparation of a site profile under subsection (g) respecting land that is subsequently determined not to be a contaminated site, the director and the Toquaht Nation are not liable for any costs incurred by a person in preparing the site profile.
- (i) Except for the duty of a vendor to provide a site profile to a prospective purchaser under subsection (e), the duty to provide a site profile does not apply if a person
- (i) has been ordered to undertake a site investigation under section 5.3,
  - (ii) seeks and obtains a determination that the site is a contaminated site under section 5.5(c), or
  - (iii) has already provided a site profile for the site under subsection (a).

### Site investigations

- 5.3** (a) The director may, by Order, require an owner or operator of a site, at the owner or operator's own expense, to undertake a preliminary site investigation or a detailed site investigation and to prepare a report of the investigation in accordance with the regulations if the director reasonably suspects on the basis of a site profile, or any other information, that the site
- (i) may be a contaminated site, or
  - (ii) contains substances that may cause or threaten to cause adverse effects on human health or the environment.



- (b) If the director orders a preliminary site investigation or a detailed site investigation under subsection (a) respecting a site that is subsequently determined not to be a contaminated site, the director and the Toquaht Nation are not liable for any costs incurred by a person for completing the investigation and the related report.
- (c) On receipt of a report of a preliminary site investigation or a detailed site investigation submitted under this section, the director
  - (i) must determine whether the report and investigation comply with any applicable regulations and Orders,
  - (ii) must deliver in accordance with Toquaht law notice to the owner or operator of the site of the determination under paragraph (i), and
  - (iii) may require the additional investigation and reporting the director considers necessary for the report and investigation to comply with any applicable regulations or Orders.
- (d) The duty to undertake a preliminary site investigation or a detailed site investigation and to prepare a report of the investigation under this section does not apply if a person seeks and obtains a determination that a site is a contaminated site under section 5.5(c).

### Site information

- 5.4**
- (a) The director must provide to the registrar, in a form suitable for inclusion in the records of the lands registry office, information respecting
    - (i) all site profiles, preliminary site investigations and detailed site investigations that the director receives,
    - (ii) all Orders, approvals and decisions, including determinations under sections 5.5(b) and 5.5(c), made by the director under this Part,
    - (iii) declarations and Orders made by the director under section 5.11, and
    - (iv) other information required by the regulations.
  - (b) The director may request the registrar to enter in the records of the lands registry office information that
    - (i) is already available to the director, and
    - (ii) would normally be obtained through a site profile or site investigation, if, before requesting the registrar to do so, the director

- (iii) delivers in accordance with Toquaht law a notice to the owners or operators of the site, if known to the director, of the intention to make the request, and
  - (iv) provides an opportunity for those owners or operators to show cause to the director why the information contained in the request should not be entered into the records of the lands registry office.
- (c) The registrar must enter by notation into the records of the lands registry office information referred to in subsections (a) and (b) and decisions of the Review Board under section 6.12 relating to this Part.
- (d) In accordance with the regulations, the registrar must provide for reasonable public access to information recorded in the lands registry office under this Part.

### **Determination of contaminated sites**

- 5.5** (a) The director may determine whether a site is a contaminated site and, if the site is a contaminated site, the director may determine the boundaries of the contaminated site.
- (b) Subject to subsection (c), in determining whether a site is a contaminated site, the director must do all of the following:
- (i) make a preliminary determination of whether or not a site is a contaminated site, on the basis of a site profile, a preliminary site investigation, a detailed site investigation or other available information;
  - (ii) deliver in accordance with Toquaht law notice of the preliminary determination to
    - (A) the person who submitted the site profile, preliminary site investigation or detailed site investigation for the site,
    - (B) any person with a registered interest in the site as shown in the records of the lands registry office or the land title office at the time the director searches the records of the lands registry office or land title office, and
    - (C) any person known to the director who may be a responsible person under section 5.6 if the site is finally determined to be a contaminated site;
  - (iii) provide an opportunity for any person to comment on the preliminary determination;
  - (iv) make a final determination of whether or not a site is a contaminated site;

- (v) deliver in accordance with Toquaht law notice of the final determination to
  - (A) the person who submitted the site profile, preliminary site investigation or detailed site investigation for the site,
  - (B) any person with a registered interest in the site as shown in the records of the lands registry office or the land title office at the time the director searches the records of the lands registry office or land title office,
  - (C) any person known to the director who may be a responsible person under section 5.6, and
  - (D) any person who has commented under paragraph (iii); and
- (vi) carry out any other prescribed procedures.
- (c) The director, on request by any person, may omit the procedures set out in subsections (b)(i) to (b)(iii) and make a final determination that a site is a contaminated site if the person
  - (i) provides reasonably sufficient information to determine that the site is a contaminated site, and
  - (ii) agrees to be a responsible person for the contaminated site.
- (d) The lack of a determination under subsection (b) or (c) does not mean that a site is not a contaminated site.
- (e) A final determination made under this section is a decision that may be appealed under section 6.9.

### **Persons responsible for remediation of contaminated sites**

- 5.6** (a) Subject to section 5.7, the following persons are responsible for remediation of a contaminated site:
- (i) a current owner or operator of the site;
  - (ii) a previous owner or operator of the site;
  - (iii) a person who
    - (A) produced a contaminant, and

- (B) by contract, agreement or otherwise caused the contaminant to be disposed of, handled or treated in a manner that, in whole or in part, caused the site to become a contaminated site;
  - (iv) a person who
    - (A) transported or arranged for transport of a contaminant, and
    - (B) by contract, agreement or otherwise caused the contaminant to be disposed of, handled or treated in a manner that, in whole or in part, caused the site to become a contaminated site; and
  - (v) a person who is in a class designated in the regulations as responsible for remediation.
- (b) In addition to the persons referred to in subsection (a), the following persons are responsible for remediation of a contaminated site that was contaminated by migration of a substance to the contaminated site:
- (i) a current owner or operator of the site from which the contaminant migrated;
  - (ii) a previous owner or operator of the site from which the contaminant migrated;
  - (iii) a person who
    - (A) produced the contaminant, and
    - (B) by contract, agreement or otherwise caused the contaminant to be disposed of, handled or treated in a manner that, in whole or in part, caused the contaminant to migrate to the contaminated site; and
  - (iv) a person who
    - (A) transported or arranged for transport of the contaminant, and
    - (B) by contract, agreement or otherwise caused the contaminant to be disposed of, handled or treated in a manner that, in whole or in part, caused the substance to migrate to the contaminated site.
- (c) A secured creditor is responsible for remediation of a contaminated site if
- (i) the secured creditor at any time exercised control over or imposed requirements on any person regarding the manner of treatment, disposal or

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- handling of a contaminant and the control or requirements, in whole or in part, caused the site to become a contaminated site, or
- (ii) the secured creditor becomes the registered owner of the contaminated site.
- (d) A secured creditor is not responsible for remediation if it acts primarily to protect its security interest, including, if the secured creditor
- (i) participates only in purely financial matters related to the site,
  - (ii) has the capacity or ability to influence any operation at the contaminated site in a manner that would have the effect of causing or increasing contamination, but does not exercise that capacity or ability in such a manner as to cause or increase contamination,
  - (iii) imposes requirements on any person, if the requirements do not have a reasonable probability of causing or increasing contamination at the site, or
  - (iv) appoints a person to inspect or investigate a contaminated site to determine future steps or actions that the secured creditor might take.

### **Persons not responsible for remediation**

- 5.7** (a) The following persons are not responsible for remediation of a contaminated site:
- (i) a person who would become a responsible person only because of an act of God that occurred before April 1, 2011, if the person exercised due diligence in relation to any contaminant that, in whole or in part, caused the site to become a contaminated site;
  - (ii) a person who would become a responsible person only because of an act of war if the person exercised due diligence in relation to any contaminant that, in whole or in part, caused the site to become a contaminated site;
  - (iii) a person who would become a responsible person only because of an act or omission of a third party, other than
    - (A) an employee,
    - (B) an agent, or
    - (C) a party with whom the person has a contractual relationship,if the person exercised due diligence in relation to any contaminant that, in whole or in part, caused the site to become a contaminated site;

- (iv) an owner or operator who establishes that
  - (A) at the time the person became an owner or operator of the site,
    - (I) the site was a contaminated site,
    - (II) the person had no knowledge or reason to know or suspect that the site was a contaminated site, and
    - (III) the person undertook all appropriate inquiries into the previous ownership and uses of the site and undertook other investigations, consistent with good commercial or customary practice at that time, in an effort to minimize potential liability,
  - (B) if the person was an owner of the site, the person did not transfer any interest in the site without first disclosing any known contamination to the transferee, and
  - (C) the owner or operator did not, by any act or omission, cause or contribute to the contamination of the site;
- (v) an owner or operator who
  - (A) owned or occupied a site that at the time of acquisition was not a contaminated site, and
  - (B) during the ownership or operation, did not dispose of, handle or treat a substance in a manner that, in whole or in part, caused the site to become a contaminated site;
- (vi) a person described in section 5.6(a)(iii), 5.6(a)(iv), 5.6(b)(iii) or 5.6(b)(iv) who
  - (A) transported or arranged to transport the contaminant to the site, if the owner or operator of the site was authorized under an Act to accept the contaminant at the time of its deposit, and
  - (B) received permission from the owner or operator referred to in section 5.6(a)(i) or 5.6(b)(i) to deposit the contaminant;
- (vii) the Toquaht government if it involuntarily acquires an ownership interest in the contaminated site, other than by expropriation, unless it caused or contributed to the contamination of the site;

- (viii) a person who provides assistance respecting remediation work at a contaminated site, unless the assistance is carried out in a negligent fashion;
  - (ix) a person who provides advice respecting remediation work at a contaminated site, unless the advice is negligent;
  - (x) a person who owns or operates a contaminated site that was contaminated only by the migration of a substance from other real property not owned or operated by the person;
  - (xi) an owner or operator of a contaminated site containing substances that are present only as natural occurrences not assisted by human activity and if those substances alone caused the site to be a contaminated site;
  - (xii) subject to subsection (b), the Toquaht government if it possesses, owns or operates a roadway, highway or right of way for sewerage or waterworks on a contaminated site, to the extent of the possession, ownership or operation; or
  - (xiii) a person who is in a prescribed class as not responsible for remediation.
- (b) Subsection (a)(xii) does not apply in relation to contamination placed or deposited below a roadway, highway or right of way for sewerage or waterworks by the Toquaht government when it possesses, owns or operates the roadway, highway or right of way for sewerage or waterworks.
- (c) A person seeking to establish that he or she is not a responsible person under subsection (a) has the burden to prove all elements of the exemption on the balance of probabilities.

### **General principles of liability for remediation**

- 5.8**
- (a) A person who is responsible for remediation of a contaminated site is absolutely, retroactively and jointly and separately liable to any person or the Toquaht government for reasonably incurred costs of remediation of the contaminated site, whether incurred on or off the contaminated site.
  - (b) Subsection (a) must not be construed as prohibiting the apportionment of a share of liability to one or more responsible persons by the court in an action or proceeding under subsection (e) or by the director in a remediation Order.
  - (c) For the purpose of this section, “costs of remediation” means all costs of remediation and includes, without limitation,
    - (i) costs of preparing a site profile,

- (ii) costs of carrying out a site investigation and preparing a report, whether there has been a determination under section 5.5 as to whether the site is a contaminated site,
  - (iii) legal and consultant costs associated with seeking contributions from other responsible persons, and
  - (iv) fees imposed by the director or an approving officer.
- (d) Liability under this Part applies
  - (i) even though the introduction of a contaminant into the environment is or was not prohibited by any enactment if the introduction contributed in whole or in part to the site becoming a contaminated site, and
  - (ii) despite the terms of any cancelled, expired, abandoned or current permit or approval that authorizes the discharge of contaminants into the environment.
- (e) Any person, including a responsible person and the director, who incurs costs in carrying out remediation of a contaminated site may commence an action or a proceeding to recover the reasonably incurred costs of remediation from one or more responsible persons in accordance with the principles of liability set out in this Part.
- (f) Subject to subsection (g), a person is not required to obtain, as a condition of an action or proceeding under subsection (e) being heard by a court, a decision, determination, opinion or apportionment of liability for remediation from the director.
- (g) In all cases, the site that is the subject of an action or proceeding must be determined or considered under section 5.5 to be or to have been a contaminated site before the court can hear the matter.
- (h) The court may determine in accordance with the regulations, unless otherwise determined or established under this Part, any of the following:
  - (i) whether a person is responsible for remediation of a contaminated site;
  - (ii) whether the costs of remediation of a contaminated site have been reasonably incurred and the amount of the reasonably incurred costs of remediation;
  - (iii) the apportionment of the reasonably incurred costs of remediation of a contaminated site among one or more responsible persons in accordance with the principles of liability set out in this Part; or



- (iv) such other determinations as are necessary to a fair and just disposition of these matters.

### **Remediation Orders**

- 5.9**
- (a) The director may issue a remediation Order to any responsible person.
  - (b) A remediation Order may require a person referred to in subsection (a) to do any or all of the following:
    - (i) undertake remediation;
    - (ii) contribute, in cash or in kind, towards the costs of another person who has reasonably incurred costs of remediation; or
    - (iii) give security, which may include real and personal property, in the amount and form the director specifies.
  - (c) For the purpose of deciding whether to require a person to undertake remediation under subsection (b), the director may consider whether remediation should begin promptly, and must consider each of the following:
    - (i) adverse effects on human health or pollution of the environment caused by contamination at the site;
    - (ii) the potential for adverse effects on human health or pollution of the environment arising from contamination at the site;
    - (iii) the likelihood of the responsible persons or other persons not acting expeditiously or satisfactorily in implementing remediation; and
    - (iv) other prescribed factors.
  - (d) For the purpose of deciding who will be ordered to undertake or contribute to remediation under subsections (a) and (b), the director, to the extent feasible without jeopardizing remediation requirements, must
    - (i) take into account private agreements between or among responsible persons respecting liability for remediation, if those agreements are known to the director, and
    - (ii) on the basis of information known to the director, name one or more persons whose activities, directly or indirectly, contributed most substantially to the site becoming a contaminated site, taking into account such factors as

- (A) the degree of involvement by the persons in the generation, transportation, treatment, storage or disposal of any substance that contributed, in whole or in part, to the site becoming a contaminated site, and
  - (B) the diligence exercised by persons in relation to the contamination.
- (e) A remediation Order does not affect or modify a right of a person affected by the Order to seek or obtain relief under an agreement, other legislation or common law, including damages for injury or loss resulting from a release or threatened release of a contaminating substance.
- (f) If a remediation Order is issued in relation to a site, and the director has not yet determined under section 5.5 whether the site is a contaminated site, as soon as reasonably possible after the issuance of the Order, the director must determine
  - (i) whether the site is a contaminated site, in accordance with section 5.5, and
  - (ii) whether the person named in the Order is a responsible person.
- (g) If a person named in a remediation Order referred to in subsection (f) is determined not to be a responsible person, the Toquaht government must compensate the person, in accordance with the regulations, for any costs directly incurred by the person in complying with the Order.
- (h) A person who receives a remediation Order under subsection (a) or notice of a remediation Order under subsection (m) must not, without the consent of the director, knowingly do anything that diminishes or reduces assets that could be used to satisfy the terms and conditions of the remediation Order, and if the person does so, the director, despite any other remedy sought, may commence an action against the person to recover the amount of the diminishment or reduction.
- (i) The director may provide in a remediation Order that a responsible person is not required to begin remediation of a contaminated site for a specified period of time if the contaminated site does not present an imminent and significant threat or risk to
  - (i) human health, given current and anticipated human exposure, or
  - (ii) the environment.
- (j) A person who has submitted a site profile under section 5.2(g) must not directly or indirectly diminish or reduce assets at a site designated in the records of the lands registry office as a contaminated site, including, without limitation, by
  - (i) disposing of real or personal assets, or

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- (ii) subdividing land
    - unless he or she first requests and obtains written notice from the director that the director does not intend to issue a remediation Order.
  - (k) If the director issues or gives notice of the intention to issue a remediation Order to a person referred to in subsection (j), subsection (h) applies.
  - (l) The director may amend or cancel a remediation Order.
  - (m) The director, on making a remediation Order must, within a reasonable time, deliver in accordance with Toquaht law notice of the Order to every person holding an interest in the contaminated site if the interest is registered in the land title office or the lands registry office at the time of issuing the Order.
  - (n) A remediation Order may authorize, subject to the terms and conditions the director considers necessary and reasonable, any person designated by the director to enter specified Toquaht lands for the purpose of ensuring that the remediation Order is carried out according to its terms.
  - (o) If a remediation Order authorizes a person to enter specified Toquaht lands, the person who owns or occupies the land must allow the authorized person to enter in accordance with the authorization.
  - (p) Subsections (n) and (o) do not authorize any person to enter any structure or part of a structure that is used solely as a private residence.
  - (q) Upon completion of the remediation of the site to the satisfaction of the director and in accordance with the remediation Order, the director must, within a reasonable time, deliver in accordance with Toquaht law a certificate of compliance to every person holding an interest in the site if the interest is registered in the land title office or the lands registry office at the time of issuing the certificate of compliance.

### **Selection of remediation options**

- 5.10** (a) A person conducting or otherwise providing for remediation of a site must give preference to remediation alternatives that provide permanent solutions to the maximum extent practicable, taking into account the following factors:
- (i) any potential for adverse effects on human health or for pollution of the environment;
  - (ii) the technical feasibility and risks associated with alternative remediation options;

- (iii) remediation costs associated with alternative remediation options and the potential economic benefits, costs and effects of the remediation options; and
  - (iv) other prescribed factors.
- (b) When issuing a certificate of compliance, the director must consider whether permanent solutions have been given preference to the maximum extent practicable as determined in accordance with any guidelines set out in the regulations.

### **Orphan sites**

- 5.11** (a) The director may determine in accordance with the regulations whether a contaminated site is an orphan site.
- (b) The director may declare, in writing, that it is necessary for the protection of human health or the environment for the government to undertake remediation of a contaminated site that is not otherwise being adequately remediated.
- (c) If the director has made a declaration under subsection (b), the director may carry out remediation and recover the reasonably incurred costs of the remediation and the director, or an officer authorized in writing by the director may, by Order even if the ordered action interferes with or takes away property rights, require any person to
- (i) provide labour, services, material, equipment or facilities, or
  - (ii) allow the use of land for the purpose of undertaking the remediation.
- (d) If the director has made a declaration under subsection (b), the director, an officer or any person directed to do so by the officer, may enter the property and carry out remediation, even though the entry or remediation interferes with or takes away property rights.
- (e) A person affected by an Order made under subsection (c) must comply with the Order despite any other enactment.
- (f) A certificate signed by the director and showing an amount of money spent by the government under this section is conclusive proof of the amount spent.
- (g) If the director makes a declaration under subsection (b) or an Order under subsection (c), the registrar must make a notation of the declaration or Order in the records of the lands registry office or land title office, as applicable, against the property that has been remediated under this section.

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### Cost recovery if director carries out remediation

- 5.12** (a) The director may recover all or a portion of the cost of remediation by
- (i) taking steps to identify and recover costs from responsible persons during or after remediation, or
  - (ii) arranging to sell or selling any property comprising all or part of the site.
- (b) The amount shown on the certificate under section 5.11(f) is a debt due to the Toquaht government and, subject to subsection (c), is recoverable
- (i) from any responsible person, by action in the Supreme Court, or
  - (ii) by Order of the director directing a person who is purchasing or otherwise acquiring an interest in land that is subject to remediation under section 5.11 to pay to the director, in relation to the amounts spent in remediation, instead of to the vendor, an amount not exceeding the amount owing to the vendor, and the purchaser is discharged in the amount paid to the director from the obligation to pay the vendor.
- (c) If the Supreme Court is satisfied that the expenditure incurred by the government under section 5.11 is either
- (i) excessive, taking into consideration the requirements of the regulations governing remediation, or
  - (ii) unnecessary, taking into consideration the regulations governing remediation,
- the Supreme Court may reduce or extinguish the amount of the judgment that it would otherwise have ordered to be entered against the person against whom the action has been brought.
- (d) The director may register a lien at the land title office or lands registry office against a contaminated site for the costs of remediation incurred by the Toquaht government at the contaminated site that has been remediated under section 5.11.
- (e) A lien under subsection (d) is payable in priority over all liens, charges or mortgages of every person, whenever created or to be created, in relation to the site or proceeds of the site.
- (f) If the director makes an Order under subsection (b)(ii), the registrar must make a notation in the lands register against the property that has been remediated under section 5.11 or request the notation be made in the land title office, if applicable.

**Director retains right to take future action**

- 5.13** The director may exercise any of the director’s duties or powers under this Part, even though they have been previously exercised and despite any voluntary remediation, if
- (a) additional information relevant to establishing liability for remediation becomes available,
  - (b) activities occur on a site that may change its condition or use,
  - (c) information becomes available about a site or a contaminating substance at the site that leads to a reasonable inference that the site poses a threat to human health or the environment,
  - (d) a responsible person fails to exercise due care in relation to any contamination at the site, or
  - (e) a responsible person directly or indirectly contributes to contamination at the site after previous action.

**Immunity in relation to contaminated sites**

- 5.14** (a) In this section, “protected person” means
- (i) the Toquaht government, and
  - (ii) the current or a former Toquaht official.
- (b) Subject to subsection (c), no action lies and no proceedings may be brought against a protected person because of
- (i) any
    - (A) act, advice, including pre-application advice, or recommendation, or
    - (B) failure to act, failure to provide advice, including pre-application advice, or failure to make recommendationsin relation to this Part, or
  - (ii) any
    - (A) purported performance of duties or exercise of powers, or
    - (B) failure to perform any duties or exercise any powersarising under this Part.

- (c) Subsection (b) does not provide a defence if, in relation to the subject matter of the action or proceedings,
  - (i) the protected person is a responsible person, or
  - (ii) the conduct of the protected person was dishonest, gross negligence, malicious, or willful misconduct.

TOQUAHT NATION GOVERNMENT  
ENVIRONMENTAL PROTECTION ACT TNS 15/2011  
OFFICIAL CONSOLIDATION – CURRENT TO SEPTEMBER 16, 2015

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## PART 6 - PERMITS

### Issuing permits

- 6.1** (a) The director may issue a permit authorizing the handling, treatment, transportation, storage and introduction of contaminants into the environment subject to requirements for the protection of the environment that the director considers advisable and, without limiting that power, may do one or more of the following in the permit:
- (i) require the permittee to repair, alter, remove, improve or add to works or to construct new works and to submit plans and specifications for works specified in the permit;
  - (ii) require the permittee to give security in the amount and form and subject to conditions the director specifies;
  - (iii) require the permittee to monitor, in the manner specified by the director, the contaminants, the method of handling, treating, transporting, discharging and storing the contaminants and the places and things that the director considers will be affected by the discharge of the contaminants or the handling, treatment, transportation or storage of the contaminants;
  - (iv) require the permittee to conduct studies and to report information specified by the director in the manner specified by the director;
  - (v) specify procedures for monitoring and analysis, and procedures or requirements respecting the handling, treatment, transportation, discharge or storage of contaminants that the permittee must fulfill; or
  - (vi) require the permittee to recycle certain contaminants, and to recover certain reusable resources, including energy potential from contaminants.
- (b) A permit does not authorize the introduction of contaminant into the environment unless it specifies the characteristics and quantity of contaminant that may be introduced.
- (c) Despite subsection (a), the director may not issue or, subject to subsection (d), amend a permit authorizing the introduction of contaminants into the environment if the introduction is governed by
- (i) a code of practice that is established in the regulations in relation to the industry, trade or business that applies for the permit or amendment,
  - (ii) a code of practice that is established in the regulations in relation to the activity or operation in relation to which the permit or amendment is applied for, or

- (iii) a regulation, unless the regulation requires that a permit be obtained in relation to the discharge for the industry, trade or business activity or operation.
- (d) The director, on receipt of an application or on his or her own initiative, may amend a permit authorizing an introduction of contaminants described in subsection (c)(i), (c)(ii) or (c)(iii) if
  - (i) in the opinion of the director, the amendment is necessary for the protection of the environment, or
  - (ii) the amendment is for one or more of the following purposes:
    - (A) a change of ownership or name;
    - (B) a change of address;
    - (C) a decrease in the authorized quantity of the discharge, emission or stored substance;
    - (D) an increase of not more than 10% in the authorized quantity of the discharge, emission or stored substance;
    - (E) a change in the authorized quality of the discharge, emission or stored substance such that, in the opinion of the director, the change has resulted in or will result in an equal or lesser impact on the environment;
    - (F) a change in a monitoring program; or
    - (G) a change to the works, method of treatment or any other condition of a permit or an approval such that, in the opinion of the director, the change has resulted in or will result in an equal or lesser impact on the environment.

## Approvals

- 6.2**
- (a) The director may approve the introduction of contaminants into the environment for a period of up to six months without issuing a permit.
  - (b) The director may issue his or her approval under subsection (a) subject to requirements for the protection of the environment that the director considers advisable and, without restricting that power, may include as a requirement anything referred to in section 6.1(a).

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### Amendment of permits and approvals

- 6.3** (a) The director may, subject to section 6.1(c), this section and the regulations, for the protection of the environment,
- (i) on the director's own initiative if he or she considers it necessary, or
  - (ii) on application by a holder of a permit or an approval,
- amend the requirements of the permit or approval.
- (b) If a permit or an approval is subject to conditions imposed pursuant to a decision made in a review by the Review Board under section 6.9, those conditions must not be amended except
- (i) by the Review Board, and
  - (ii) after the Review Board has given the parties to the review an opportunity to be heard on the question of whether the conditions should be amended.
- (c) The director's power to amend a permit or an approval includes all of the following:
- (i) authorizing or requiring the construction of new works in addition to or instead of works previously authorized or required;
  - (ii) authorizing or requiring the repair of, alteration to, improvement of, removal of or addition to existing works;
  - (iii) requiring security, altering the security required or changing the type of security required or the conditions of giving security;
  - (iv) extending or reducing the term of or renewing the permit or approval;
  - (v) authorizing or requiring a change in the characteristics or components of contaminants discharged, treated, handled, stored or transported;
  - (vi) authorizing or requiring a change in the quantity of contaminants discharged, treated, handled, stored or transported;
  - (vii) authorizing or requiring a change in the location of the discharge, treatment, handling, storage or transportation of the contaminants;
  - (viii) altering the time specified for the construction of works or the time in which to meet other requirements imposed on the holder of the permit or approval;

- (ix) authorizing or requiring a change in the method of discharging, treating, handling, storing or transporting the contaminants; and
  - (x) changing or imposing any procedure or requirement that was imposed or could have been imposed under section 6.1 or 6.2.
- (d) The director may renew an approval before or after the end of the term of the approval.
- (e) The director may not renew an approval if the term of the approval and the term of renewal, when taken together, would exceed six months.
- (f) If the director amends a permit or approval, the director
- (i) may require that the holder of the permit or approval supply the director with plans, specifications and other information the director requests, and
  - (ii) must deliver in accordance with Toquaht law a notice of the amendment to the holder of the permit or approval notice in writing of the amendment and publish in accordance with Toquaht law a notice of the amendment.
- (g) Despite subsection (f), the director may give the notice by electronic means to an address provided by the holder of the permit or approval.

#### **Transfers of permits, approvals, etc.**

- 6.4** (a) A transfer of a permit or approval is without effect unless the director has consented in writing to the transfer.
- (b) Despite subsection (a), the director may consent to a transfer by electronic means to an address provided by the holder of the permit or approval.
- (c) For certainty, a permit referred to in section 2.6 is not transferable.

#### **Suspension or cancellation of permits and approvals**

- 6.5** (a) Subject to this section, the director, by notice delivered in accordance with Toquaht law to the holder of a permit or approval, may
- (i) suspend the permit or approval for any period, or
  - (ii) cancel the permit or approval.
- (b) A notice delivered under subsection (a) must state the time at which the suspension or cancellation takes effect.

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- (c) The director may exercise the authority under subsection (a) in any of the following circumstances:
- (i) a holder of a permit
    - (A) fails to complete construction of works specified in the permit within the time specified in the permit or, if no time is specified in the permit, within two years after issuance of the permit, or
    - (B) does not exercise any rights under the permit for a period of two years;
  - (ii) a holder of a permit or an approval fails to pay money owing to the Toquaht government under the permit or approval;
  - (iii) a holder of a permit or an approval fails to comply with the terms of the permit or approval;
  - (iv) a holder of a permit or an approval fails to comply with an Order issued under this Act and related to the subject matter of the permit or approval;
  - (v) a holder of a permit or an approval or the holder's agent has made or makes a material misstatement or misrepresentation in the application for the permit or approval or in the information required under this Act in relation to the permit or approval;
  - (vi) a holder of a permit or an approval fails to comply with any other requirements of this Act;
  - (vii) a permit or an approval conflicts with or is replaced by a contaminant management plan approved by the director;
  - (viii) a permit or an approval is replaced by a regulation;
  - (ix) a permit or an approval is not, in the opinion of the director, in the interest of the Toquaht Nation.
- (d) In addition to the authority conferred by subsection (a), the director may, without notice to the holder,
- (i) suspend a permit or approval for the length of time requested if the holder requests that the permit or approval be suspended, or
  - (ii) cancel a permit or approval if the holder of the permit or approval
    - (A) dies,

- (B) is a corporation that is liquidated, dissolved or otherwise wound up or is an extraprovincial company within the meaning of the Business Corporations Act (British Columbia) that has had its registration cancelled under Part 10 to 12 of that Act,
  - (C) is a partnership that is dissolved,
  - (D) requests that the permit or approval be cancelled, or
  - (E) has given notice of abandonment under section 6.7.
- (e) For certainty, a permit or an approval that is suspended or cancelled is not a valid and subsisting permit or approval.

### **Variance orders**

- 6.6** (a) If the director considers that a person should have temporary relief from a requirement of an Order, a permit, an approval, a code of practice or a contaminant management plan, the director may issue a variance Order in relation to a requirement of the Order, permit, approval, a code of practice or contaminant management plan.
- (b) If the director issues a variance Order, the director must
- (i) specify the requirements in relation to which he or she grants the relief,
  - (ii) specify the period during which the variance Order will remain in effect, and
  - (iii) publish in accordance with Toquaht law a notice of the variance Order.
- (c) Despite subsection (b), the director may
- (i) cancel a variance Order, or
  - (ii) renew or extend a variance Order.

### **Abandonment**

- 6.7** (a) A person to whom a permit or an approval has been issued, but who has not exercised any right under it to discharge contaminants, may abandon the permit or approval by sending or delivering to the director notice that the person elects to abandon the permit or approval.
- (b) A person who elects under subsection (a) to abandon a permit or an approval does not commit an offence merely because he or she has not complied with a requirement of the permit or approval.

- (c) Subject to subsection (d), a person to whom a permit or an approval has been issued and who has exercised a right under it to discharge contaminants may abandon the permit or approval by sending or delivering to the director notice that the person elects to abandon the permit or approval.
- (d) A notice under subsection (c) is not effective until it is received by the director.
- (e) A person who elects under subsection (c) to abandon a permit or an approval
  - (i) does not commit an offence merely because after the abandonment became effective he or she has not complied with the requirements of the permit or approval, and
  - (ii) despite the abandonment, is bound by those additional requirements that the director imposes respecting restoration of the environment or the control and monitoring of the contaminants discharged or the contaminants that continue to be discharged after abandonment.

#### **Written reasons**

- 6.8**
- (a) Where the director refuses to issue a permit or suspends a permit, the director must provide written reasons for the refusal or suspension to the applicant or to the permit holder as the case may be.
  - (b) The director must deliver in accordance with section 3.6, notice of the refusal or suspension under subsection (a) and written reasons for the refusal or suspension.

#### **Right to review**

- 6.9**
- (a) A person whose application for a permit is refused may, within 30 days of receiving notice of the refusal, request a review of that decision under the Administrative Decisions Review Act.
  - (b) A person whose permit has been issued subject to conditions may, within 30 days of receiving the permit request a review of the conditions under the Administrative Decisions Review Act.
  - (c) A person whose permit has been suspended may, within 30 days of receiving notice of the suspension request a review of the suspension under the Administrative Decisions Review Act.
  - (d) Within 30 days of the issuance of an Order under this Act or a directive under section 4.3, a person may request a review of that Order or directive, as applicable, under the Administrative Decisions Review Act.

**Effect of review**

- 6.10** (a) A review request of an Order made under section 3.2 or a directive issued under section 4.3 acts as a stay of the operation of that Order or directive, as applicable.
- (b) A review request of an Order made under section 3.3 or 3.5 does not act as a stay of the operation of that Order.

**Review Board**

- 6.11** (a) The Review Board will conduct all reviews under this Act and, for certainty and unless otherwise provided for, the Administrative Decisions Review Act applies to review requests under this Act.
- (b) The Review Board may engage the services of experts or take such other reasonable actions as it considers necessary to obtain the information the Review Board requires to make a decision on a review request under this Act.
- (c) In addition to any action taken under subsection (b), the Review Board may require the applicant to provide such further information as the Review Board considers necessary and the applicant must provide the information required.

**Time and effect of decision**

- 6.12** (a) Within 30 days of receiving a review request under this Act, the Review Board must
- (i) make a decision on the review request; or
- (ii) deliver to the applicant, in accordance with section 3.6, a notice extending the time period within which it will make a decision on the review request.
- (b) Within 14 days of making a decision on a review request, the Review Board must deliver to the applicant, in accordance with section 3.6, written reasons.

**Regulations**

- 6.13** Without limiting section 11.1, the Executive may make regulations as follows:
- (a) prescribing the form and content of manifests and the procedures for completing and filing manifests;
- (b) requiring the licensing of persons who transport contaminants or a specified class of contaminants and prohibiting the unlicensed transportation of contaminants or a specified class of contaminants;



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- (c) authorizing the issue, suspension, cancellation and amendment of permits for the transportation of contaminants or a class of contaminants;
  - (d) regulating and restricting any activity, operation or industry that creates or produces contaminants or a specified class of contaminants and requiring persons who operate any industry or process that creates or produces contaminants to register with the director;
  - (e) prescribing for the purpose of section 2.1(b) industries, trades and businesses;
  - (f) prescribing for the purpose of section 2.1(c) activities, operations and classes of persons;
  - (g) regulating litter including the sale, return and reuse of beverage containers and packaging materials or classes of beverage containers and packaging materials which may
    - (i) require classes of persons to pay refunds in the amounts established for beverage containers,
    - (ii) require persons to accept empty beverage containers or classes of beverage containers and handle, store and transport beverage containers or classes of beverage containers received by them in the manner required, and
    - (iii) regulate the size, shape, features and composition of beverage containers and their packaging, labelling and use;
  - (h) requiring, on request of the director, that a person or a class of persons involved in the manufacture, distribution, sale, transportation or importation of empty or filled beverage containers of a prescribed type, or another person or association on behalf of the person or class of persons, supply information respecting the use, reuse and wastage of a prescribed type of beverage container;
  - (i) respecting the minimum content of material derived from recyclable material that must be contained in types or classes of packaging and products sold on Toquaht lands;
  - (j) prescribing packaging, product containers or products or classes of products for which a charge, including a deposit, handling fee, levy or core charge, must be paid or for which a refund must be given, and prescribing the amount of the charge or refund and the circumstances in which the charge or refund applies;
  - (k) requiring the use of standardized definitions, terms, logos, symbols and other representations on packaging, and prescribing those definitions, terms, logos, symbols and other representations;

- (l) prohibiting or restricting the use of packaging or classes of packaging or product containers or classes of product containers;
- (m) prescribing for the purposes of section 2.7 the content, shape, weight, nature and volume of packaging used per unit of product;
- (n) requiring prescribed industrial, commercial and institutional operations or classes of operations to develop and implement a contaminants reduction and prevention plan for packaging, product containers or any other material or substance, and prescribing the contents of the plan;
- (o) requiring prescribed industrial, commercial and institutional operations or classes of operations to develop and maintain an infrastructure for the reuse or recycling of packaging, product containers or any other material or substance;
- (p) requiring prescribed industrial, commercial and institutional operations or classes of operations to conduct periodic packaging or other contaminant audits, and prescribing the terms and conditions of the audits, including to whom reports should be made and other reporting requirements; or
- (q) requiring a person who manages contaminants or introduces contaminants into the environment, other than in accordance with a permit under section 6.1, to give security in the amount and form and subject to the conditions the Executive may specify, or authorizing the director to require a person who manages contaminants or introduces contaminants into the environment, other than in accordance with a permit under section 6.1, to give security in the amount and form and subject to the conditions the director may specify.

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## PART 7 - ADMINISTRATION

### Director's duties and powers

- 7.1 (a) The duties and powers of the director extend to any matter relating to the management, protection and enhancement of the environment, including the following matters:
- (i) planning, research and investigation in relation to the environment;
  - (ii) development of policies for the management, protection and use of the environment;
  - (iii) planning, design, construction, operation and maintenance of works and undertakings for the management, protection or enhancement of the environment;
  - (iv) providing information to Toquaht citizens about the quality and use of the environment;
  - (v) preparing and publishing policies, strategies, objectives, guidelines and standards for the protection and management of the environment; and
  - (vi) preparing and publishing environmental management plans for specific areas of Toquaht lands which may include measures in relation to the following:
    - (A) flood control, flood hazard management and development of land that is subject to flooding;
    - (B) drainage;
    - (C) soil conservation;
    - (D) water resource management;
    - (E) fisheries and aquatic life enhancement initiatives;
    - (F) wildlife management enhancement initiatives;
    - (G) waste management; and
    - (H) air quality management over Toquaht lands.

**Delegation authority**

- 7.2** (a) The Executive may delegate to the director, in writing, the performance of any of the Executive's duties or the exercise of any of the Executive's powers under this Act, except the powers set out in sections 7.8, 7.8 and 11.1.
- (b) Despite the delegation of any duties or powers under subsection (a), the Executive remains responsible for ensuring that the duties are performed properly and the powers are exercised appropriately by the director.
- (c) Upon the approval of the director of operations, the director may delegate the performance of any of the director's duties or the exercise of any of the director's powers, other than the performance of the duties or the exercise of powers delegated to the director by the Executive under subsection (a) to
- (i) another Toquaht director,
  - (ii) a Toquaht government employee, or
  - (iii) an independent contractor of the Toquaht Nation.
- (d) Despite the delegation of any duties or powers under subsection (c), the director remains responsible for ensuring that the duties are performed properly and the powers are exercised appropriately.

**Additional duties and powers of the director**

- 7.3** In addition to the authority of the director under section 7.1, the director may
- (a) perform any of the duties or exercise any of the powers of an inspector appointed under section 7.4,
  - (b) establish, operate and maintain stations to monitor the quality of the environment of Toquaht lands,
  - (c) conduct research studies, conferences and training programs relating to contaminants and to the preservation, protection or enhancement of the environment,
  - (d) engage the services of experts or persons having special technical or other knowledge to advise the director or to inquire into and report to the director on matters within the jurisdiction of the director,
  - (e) develop, co-ordinate and administer policies, standards, guidelines and codes of practice relating to the preservation, protection or enhancement of the environment,

- (f) collect, publish and distribute information relating to contaminants and to the preservation, protection or enhancement of the environment, and
- (g) compile and study information directly or indirectly related to matters pertaining to the preservation, protection or enhancement of the environment for the purpose of using the results to exercise his or her powers under this Act.

### **Inspectors**

- 7.4**
- (a) The director may appoint inspectors and must specify in the appointment the duties that may be performed and the powers that may be exercised by the inspector under this Act.
  - (b) Every member of the Royal Canadian Mounted Police and every conservation officer appointed under the Resources Harvesting Act is an inspector by virtue of his or her office.
  - (c) Every inspector, other than an inspector under subsection (b), must be furnished with identification in a form approved by the director, and on entering any place or vehicle under this Act, must, if so requested by the owner or person in charge, produce that identification.

### **Powers and liabilities of inspectors**

- 7.5**
- (a) An inspector appointed under section 7.4 must perform the duties and may exercise the powers of his or her appointment.
  - (b) Subject to subsection (d), an inspector, acting in the performance of a duty or in the exercise of a power under this Act, may enter and pass over any Toquaht lands without being liable for trespass.
  - (c) A person who is subject to an Order may enter and pass over any Toquaht lands without being liable for trespass when the trespass is necessary for compliance with the Order.
  - (d) An inspector or other person referred to in subsections (b) and (c) who enters and passes over Toquaht lands under the authority of that subsection is liable for damages to the land resulting from his or her activities.
  - (e) Subsections (b) and (d) apply to any person who is assisting an inspector.

### **Powers conferred on included officials**

- 7.6** A provision of this Act that confers powers on an inspector also confers them on the director.

## Agreements

- 7.7** The Executive may enter into agreements with British Columbia, another Maa-nulth First Nation or treaty first nation, or with any person, institution, organization or firm respecting the administration and enforcement of
- (a) this Act, or
  - (b) any enactment of British Columbia or another Maa-nulth First Nation relating to the preservation, protection or enhancement of the environment.

## Committees

- 7.8**
- (a) The Executive may establish committees or other bodies to provide advice relating to the preservation, protection or enhancement of the environment.
  - (b) Where the Executive establishes a body under subsection (a), the Executive may
    - (i) appoint the members,
    - (ii) establish the term of office of the members,
    - (iii) designate a chairperson, vice-chairperson and secretary for the body,
    - (iv) provide for the remuneration of the members of the body for their services and allowances for traveling and other expenses, and
    - (v) authorize the body to hire and establish remuneration for experts.
  - (c) The Executive must specify the duties that the body established under subsection (a) is to perform and the manner in which the duties are to be performed at the time the committee is established.

## Public inquiry

- 7.9**
- (a) The Executive may, by Order, direct that a public inquiry be held where a discharge of a contaminant has resulted in
    - (i) injury or death to any person,
    - (ii) danger or potential danger to the health or safety of the public, or
    - (iii) significant damage to property or the environment.
  - (b) The Executive may appoint persons to conduct the inquiry.
  - (c) Where a person appearing before a public inquiry refuses to comply with a requirement of the public inquiry, the Executive may, by its own application or as

a party to a proceeding, apply to the Supreme Court for an order compelling compliance with the requirement of the public inquiry.

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## PART 8 - VOLUNTARY REPORTING

### Definitions

**8.1** In this section,

“environmental audit” means an independent assessment of

- (a) a person’s compliance with this Act, guidelines or environmental standards,
- (b) a person’s environmental plans, policies, practices, controls and records, and
- (c) the extent to which a person’s environmental plans, policies and controls have been implemented;

“environmental site assessment” means an independent assessment of a site or the operations on a site to

- (a) determine whether the environment is or may be subject to contamination,
- (b) establish the extent of any contamination,
- (c) identify the causes of any contamination and identify anything that may cause contamination in the future,
- (d) identify ways to repair or remedy any injury or damage to the environment resulting from contamination, and
- (e) identify ways to prevent future contamination.

### Voluntary information

- 8.2**
- (a) Where a person voluntarily provides the director with detailed information which that person has obtained through an environmental audit or an environmental site assessment about that person’s non-compliance with this Act, guidelines or environmental standards, the director may
    - (i) negotiate and enter into an agreement with that person to address any injury or damage to the environment or any other circumstances arising from the non-compliance, or
    - (ii) issue an Order under section 3.2 or 3.3.
  - (b) For certainty, the fact that the director has negotiated or entered into an agreement with a person under subsection (a)(i) does not operate as a bar to the director making an Order under section 3.2 or 3.3.

**Person may not be prosecuted and exceptions**

- 8.3** (a) A person who voluntarily provides the director with information under section 8.2 about that person's non-compliance with this Act must not be prosecuted for the non-compliance if the person complies with
- (i) the terms of an agreement subsequently entered into by the director and the person under section 8.2(a)(i) where an agreement has been entered into and an Order has not been made as referred to in section 8.2(a)(ii);
  - (ii) an Order issued under section 3.2 or 3.3, where an Order has been made and an agreement has not been entered into under section 8.2(a)(i); or
  - (iii) the terms of an agreement referred to in paragraph (i) and an Order referred to in paragraph (ii), where an agreement has been entered into and an Order has been made.
- (b) Subsection (a) does not apply where
- (i) the director, prior to receiving the information from the person under section 8.2, had received or obtained information that gave the director reason to believe that the person was not complying with this Act, or
  - (ii) the person does not provide the director with all information relevant to the non-compliance
    - (A) that is in the person's possession at the time an agreement is entered into or an Order is made as referred to in section 8.2, or
    - (B) that comes into the person's possession during the time an agreement or Order is in effect.
- (c) The fact that an agreement was entered into under section 8.2(a)(i) does not preclude the prosecution of the person who is a party to the agreement in relation to matters not covered by the agreement.

**False information, documents, or statements**

- 8.4** A person must not knowingly provide false information or documents or make false statements to the director or an inspector respecting the person's compliance or non-compliance with this Act.

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## PART 9 - OFFENCES

### Offences

- 9.1** (a) Every person who
- (i) contravenes section 2.1, or
  - (ii) fails to comply with an Order made under section 3.3 or 3.5, commits an offence and is liable, on summary conviction,
    - (iii) if the offence is committed negligently, for a first offence,
      - (A) to a fine not exceeding \$100,000, or
      - (B) to imprisonment for a term not exceeding two months,
    - (iv) if the offence is committed knowingly, for a first offence,
      - (A) to a fine not exceeding \$200,000, or
      - (B) to imprisonment for a term not exceeding four months, and
    - (v) for each subsequent offence, to a fine not exceeding \$300,000 or to imprisonment for a term not exceeding six months.
- (b) Every person who fails to comply with the terms of
- (i) an Order made under section 3.2, or
  - (ii) a directive made under section 4.3,
- commits an offence and is liable, on summary conviction, to a fine not exceeding \$100,000.
- (c) Every person who contravenes this Act or a permit other than a provision referred to in subsection (a) or (b), commits an offence and is liable, on summary conviction, to a fine not exceeding \$300,000 or to imprisonment for a term not exceeding six months.

### Orders of court

- 9.2** Where a person has been convicted of an offence under this Act, in addition to any other punishment that may be imposed under this Act, the court may make an order with one or more of the following terms:

- (a) prohibiting the person from doing any act or engaging in any activity that may result in the continuation or repetition of the offence;
- (b) directing the person to take any action at the person's expense that the court considers appropriate to remedy any harm to the environment that results or may result from the act or omission that constituted the offence;
- (c) directing the person to take any action that the court considers appropriate to avoid any harm to the environment that may result from the act or omission that constituted the offence;
- (d) directing the person to publish, in the manner determined by the court, the facts relating to the offence;
- (e) directing the person to notify, at his or her own cost and in a specified manner, any person aggrieved or affected by the person's conduct of the facts relating to the offence;
- (f) directing the person to post a bond or pay an amount of money into court that will ensure compliance with any order made under this section;
- (g) cancelling or suspending any permit;
- (h) directing the person to pay the cost of any research or analysis related to the prosecution of the offence;
- (i) any further terms the court considers appropriate in the circumstances; and
- (j) requiring the offender to comply with any other reasonable conditions that the court considers appropriate and just in the circumstances for securing the offender's good conduct and for preventing the offender from repeating the offence or committing other offences under this Act.

### **Continuing offences**

**9.3** Every contravention of this Act or failure to comply with the terms of an Order or notice made or given under this Act is a continuing offence and a separate information may be laid for each day the offence continues, and the punishment provided for in section 9.1 applies for each conviction resulting from the laying of each information.

### **Further prosecutions**

**9.4** The conviction of a person for an offence under this Act does not prohibit further prosecution of that person for the continued neglect or failure on his or her part to comply with this Act or any Order or notice made or given under this Act.

### **Where prosecution not barred**

- 9.5** Nothing in section 3.2, 3.3, 3.5 or 4.3 prohibits a prosecution for contravening section 2.1 or 4.2.

### **Proof of offence**

- 9.6** In a prosecution for an offence under this Act it is sufficient proof of the offence to establish that it 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.

### **Liability of directors**

- 9.7** (a) Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and commits the offence.
- (b) An officer, director or agent of a corporation is liable to conviction under this section whether or not the corporation has been prosecuted for or convicted of the offence.

### **Defence**

- 9.8** No person may be convicted of an offence under this Act if the person establishes that he or she exercised all due diligence to prevent that offence.

### **Limitation**

- 9.9** Proceedings in relation to an offence under this Act may be instituted at any time within three years after the day on which the director became aware or ought to have become aware of the subject matter of the proceedings.

### **Order is proof**

- 9.10** An Order purporting to be signed by the director or an inspector, or a certified copy of the Order, is admissible in evidence in an action, prosecution or other proceeding and, in the absence of evidence to the contrary, the document is proof of the statements contained in it without proof of the signature or of the official character of the person appearing to have signed it.

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## PART 10 - OTHER REMEDIES

### Injunction

- 10.1** (a) Where, on the application of the director, it appears to a judge of the Supreme Court that a person has done or is about to do or is likely to do any act or thing constituting or directed toward the commission of an offence under this Act, the judge may issue an injunction ordering any person named in the application
- (i) to refrain from doing any act or thing that it appears to the judge may constitute or be directed toward the commission of an offence under this Act, or
  - (ii) to do any act or thing that it appears to the judge may prevent the commission of an offence under this Act.
- (b) No injunction may be issued under subsection (a) unless the party or parties named in the application have been served in accordance with section 3.6 with 48 hours notice or the urgency of the situation is such that service of notice would not be in the public interest.

### Joint and several liability for costs and expenses

- 10.2** (a) The Toquaht government may claim and recover the reasonable expenses incurred in taking any measures under this Act from every person who, through his or her actions or negligence or the actions or negligence of others for whom he or she is by law responsible, caused, permitted or contributed to the discharge of a contaminant or otherwise contravened this Act.
- (b) Where the Toquaht government may claim and recover expenses from two or more persons under subsection (a), the expenses may be recovered jointly and severally from those persons.
- (c) Where a person fails to comply with an Order issued under this Act, that person is liable for all expenses incurred as a result of any action taken under this Act to carry out the Order.
- (d) A claim for expenses under this Act may be sued for and recovered with costs as a debt due to the Toquaht government.

### Request for records

- 10.3** (a) The director may, in writing, require that, within a specific time, any records that are required to be maintained for the purposes of this Act be provided to the director by the owner or person who is required to maintain records.

- (b) A person who receives a written request under subsection (a) must comply with the request.

### **Inspection of any place or vehicle**

- 10.4** (a) For the purposes of determining whether there is compliance with this Act or a permit, an inspector may, at any reasonable time, without a warrant, enter and inspect any place or vehicle, other than a dwelling house, where the inspector believes on reasonable grounds that
- (i) a contaminant is located on or in the place or vehicle, or
  - (ii) any books, records, electronic data or other documents relevant to the administration of this Act can be found in the place or vehicle.
- (b) An inspector may, for the purposes of an inspection under subsection (a), stop a vehicle and direct the driver to park the vehicle at a place specified by the inspector.
- (c) Where, under subsection (b) an inspector directs the driver of a vehicle to stop, the driver must
- (i) immediately park the vehicle at the place specified by the inspector, and
  - (ii) not move the vehicle until permitted to do so by the inspector.
- (d) An inspector may, in the performance of an inspection under subsection (a),
- (i) examine any substance,
  - (ii) open and examine any receptacle or package that the inspector has reason to believe contains any contaminant,
  - (iii) examine any books, records, electronic data or documents that the inspector believes on reasonable grounds contain any information required by the inspector and make copies of them or take extracts from them,
  - (iv) take samples of any thing, and
  - (v) conduct any tests or take any measurements.
- (e) Every person who is in possession or charge of any place or vehicle being inspected under subsection (a) must permit the inspector
- (i) to use or cause to be used any computer system at the place or vehicle, and
  - (ii) to use or cause to be used any copying equipment at the place.



- (f) An inspector may destroy or otherwise dispose of a contaminant in any manner that is appropriate
  - (i) if, in the performance of an inspection under subsection (a), he or she believes on reasonable grounds that the contaminant is a danger to life, health, property or the environment and has been abandoned or has deteriorated, or
  - (ii) with the written consent of the owner or person in charge, management or control of the contaminant.
- (g) The owner of or person in charge of a contaminant is liable for all reasonable costs and expenses incurred as a result of an inspector destroying or disposing of the contaminant under subsection (f).

## Search

- 10.5**
- (a) On an application made without notice, a court may issue a warrant authorizing such inspectors or peace officers, as the court may specify in the warrant, to enter and search a place or vehicle, subject to such conditions as the court may specify in the warrant, where the court is satisfied by information on oath that there are reasonable grounds to believe that there is in the place or vehicle
    - (i) anything in relation to which any contravention of this Act or a permit has been or is suspected to have been committed, or
    - (ii) anything that there are reasonable grounds to believe will afford evidence in relation to the commission of any contravention of this Act or a permit.
  - (b) An inspector or peace officer to whom a warrant is issued under subsection (a) may exercise the powers described in section 10.4(d).
  - (c) Where an inspector on reasonable grounds believes that there is in any place or vehicle anything referred to in subsection (a)(i) or (a)(ii), but by reason of exigent circumstances it would not be practicable to obtain a warrant under subsection (a), the inspector may search that place or vehicle without a warrant.
  - (d) An inspector making a search under subsection (a) or (c) may use such force as, in the opinion of the inspector, is necessary to facilitate the search, including the breaking of any lock or fastening.
  - (e) An inspector making a search of a place or vehicle under subsection (a) or (c) may
    - (i) use or cause to be used any computer system at the place or vehicle, and
    - (ii) use or cause to be used any copying equipment at the place.

- (f) Every person who is in possession or charge of any place or vehicle in relation to which a search is carried out under subsection (a) or (c) must permit the inspector carrying out the search
  - (i) to use or cause to be used any computer system at the place or vehicle, and
  - (ii) to use or cause to be used any copying equipment at the place.
- (g) The owner or the person in charge of a place or vehicle entered by an inspector under subsection (a) or (c) and every person found in the place or vehicle must
  - (i) give the inspector all reasonable assistance to enable the inspector to perform his or her duties and exercise his or her powers under this Act, and
  - (ii) furnish the inspector with such information as, in the opinion of the inspector, is necessary for the enforcement of this Act.

## Seizure

- 10.6** (a) Where, during the course of an inspection or a search, an inspector has reasonable grounds to believe that this Act or a permit has been contravened, the inspector may seize any thing
- (i) by means of or in relation to which the inspector reasonably believes the contravention occurred, or
  - (ii) that the inspector reasonably believes will afford evidence of the contravention.
- (b) An inspector must not seize any thing under subsection (a) unless it is required as evidence or for purposes of analysis or the inspector has reasonable grounds to believe that the seizure is necessary in the public interest.
- (c) An inspector who has seized a thing under subsection (a) must, as soon as practicable and in writing, advise the person in whose possession it was at the time of seizure
- (i) of the seizure of the thing and
  - (ii) of the provision of this Act or the permit that the inspector believes has been contravened.
- (d) The director must release from seizure any thing seized under subsection (a)
- (i) on application to the director by the owner of the thing or the person in whose possession it was at the time of seizure and the director is satisfied

that it is not in the public interest to continue to detain the thing or that it is not required as evidence or for purposes of analysis, or

- (ii) 180 days after the day of seizure, unless before that time
  - (A) the thing has been forfeited under section 10.7,
  - (B) proceedings have been instituted in relation to the contravention in relation to which the thing was seized, in which case it may be detained until the proceedings are concluded, or
  - (C) the director has served or made reasonable efforts to serve notice of an application for an order extending the time during which the thing may be detained in accordance with subsection (e).
- (e) Where proceedings have not been instituted in relation to the contravention in relation to which a thing was seized under subsection (a), the director may, before the expiration of 180 days after the day of seizure and on serving notice in accordance with subsection (f) on the owner of the thing or on the person who at the time of seizure was in charge, management or control of it, apply to a court for an order extending the time during which it may be detained.
- (f) A notice referred to in subsection (e) must be served in accordance with section 3.6 at least 10 days prior to the date the application is to be heard and must specify
  - (i) the court in which the application is to be made,
  - (ii) the place where and the time at which the application is to be heard,
  - (iii) the thing seized in relation to which the application is to be made, and
  - (iv) the grounds on which the director intends to rely to show why there should be an extension of the time during which the thing seized may be detained.
- (g) Where, on the hearing of an application made under subsection (e), the court is satisfied that the thing seized should continue to be detained, the court must order
  - (i) that the thing be detained for such additional period of time and on such conditions as the court considers proper, and
  - (ii) that the thing be released from seizure at the expiration of the additional period of time unless before that time action is taken under subsection (d)(ii)(B) or (d)(ii)(C).
- (h) Where, on the hearing of an application made under subsection (e), the court is not satisfied that the thing seized should continue to be detained, the court must

- order that, on the expiration of 180 days after the day of seizure, it be released unless, before the expiration of the 180 days, action is taken under subsection (d)(ii)(B) or (d)(ii)(C).
- (i) Where, at the time of the hearing of an application made under subsection (e), 180 days have expired after the day of seizure, the court must order the release of the thing.
  - (j) A thing seized by an inspector under subsection (a) must be kept or stored in the place where it was seized except where it is removed in accordance with subsection (k) or (l).
  - (k) The inspector may remove a thing seized where, in the opinion of the inspector,
    - (i) it is not in the public interest to keep or store a thing seized in the place it was seized, or
    - (ii) the thing seized, or a sample of it, is required as evidence and removal and storage of the thing seized is necessary to ensure that the thing or sample will be available as evidence in any related proceedings.
  - (l) Where the person who had possession of the thing at the time of seizure or the person entitled to possession of the place where the thing was seized requests the inspector to have it removed to some other place, the thing may be removed and stored in any other place at the direction of an inspector at the expense of the person who requested the removal.
  - (m) Unless authorized by an inspector, no person may remove, alter or interfere in any way with any thing seized by an inspector under subsection (a).
  - (n) An inspector must, at the request of the person from whom a thing was seized, allow that person or any person authorized by that person to examine it and, where practicable, furnish a sample or copy of it to such person.

## **Forfeiture**

- 10.7** (a) A thing seized by an inspector under section 10.6(a) is forfeited to the Toquaht government where the owner or person in whose possession it was at the time of seizure consents in writing to the forfeiture of the thing.
- (b) The director may dispose of or destroy any thing forfeited under subsection (a).
  - (c) If the director so directs, the owner or the person who was in lawful possession of the thing at the time it was seized is liable for all reasonable expenses incurred as a result of the disposal or destruction of the thing seized.

- (d) Where a person is convicted of an offence under this Act and any thing seized under section 10.6(a) or in relation to that offence is being detained,
  - (i) the thing is, if the court so directs, forfeited to the Toquaht government in which case
    - (A) the director may dispose of or destroy the thing, and
    - (B) the offender is liable for all reasonable costs of the disposal or destruction, or
  - (ii) the thing must, on the expiration of the time for taking an appeal from the conviction or on the final conclusion of the proceedings, as the case may be, be restored to the person from whom it was seized or to any other person entitled to possession of it on such conditions, if any, as may be imposed by order of the court and as, in the opinion of the court, are necessary to avoid the commission of any further offence under this Act.

#### **Liability for thing seized**

- 10.8** No right of action lies and no right of compensation exists against the Toquaht government, the director or an inspector or a person acting under the authority of any of them for loss or damage arising from the disposal authorized by this Act or the deterioration of any thing during any period when it is under seizure unless the Toquaht government or any such person was negligent in the care of the thing seized.



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## PART 11 - GENERAL PROVISIONS

### Regulations

- 11.1** Subject to section 11.2, the Executive may make regulations which it considers necessary or advisable for the purposes of this Act, including
- (a) prescribing any matter that may be prescribed under this Act,
  - (b) respecting contaminants or the concentration of contaminants that may or may not be discharged into the environment,
  - (c) respecting the maximum permissible concentration of a contaminant in the environment,
  - (d) respecting acceptable levels of contaminants within other substances,
  - (e) respecting the reporting of discharges of contaminants or the likely discharge of contaminants,
  - (f) respecting the methods for sampling and analyzing contaminants,
  - (g) respecting the methods for sampling and analyzing the rate of emission of a contaminant into the environment,
  - (h) respecting the manufacture, use, installation, removal or modification of equipment designed to control the release of contaminants,
  - (i) categorizing contaminants,
  - (j) respecting the design, construction, identification, siting and operation of disposal sites for contaminants,
  - (k) respecting the requirements for the identification, storage, handling, discharge, transport or use of contaminants,
  - (l) respecting methods of collection, treatment, distribution, recycling, reuse or disposal of contaminants,
  - (m) respecting standards for environmental audits and environmental site assessments referred to in section 8.1,
  - (n) respecting procedures for entering into agreements under section 8.2(a)(i), and the contents of those agreements,
  - (o) creating classes of permits,

- (p) respecting the requirements for the application, issuing, refusal and suspension of permits and public participation relating to this subject matter,
- (q) respecting procedures relating to appeals and public participation relating to appeals,
- (r) respecting the measures required and the standards to be met for the remedy or repair of any injury or damage to the environment,
- (s) respecting the material and equipment required to be on hand to alleviate the effect of any discharge of contaminants,
- (t) respecting the safeguards required to prevent the discharge of contaminants,
- (u) prescribing the contents of forms to be used under this Act,
- (v) prescribing fees to be charged under this Act, and
- (w) respecting any other matter necessary to carry out the purposes and provisions of this Act.

### **Publication of proposed regulation**

**11.2** Subject to section 11.3, the Executive must publish in accordance with Toquaht law at least 90 days before the proposed effective date of a regulation, a copy of every regulation that the Executive proposes to make under sections 11.1(o), 11.1(p) and 11.1(q) and a reasonable opportunity must be afforded to interested persons to make representations in relation to the regulation.

### **Exceptions**

- 11.3** The Executive is not required to publish a proposed regulation if the proposed regulation
- (a) has been published in accordance with section 11.2 whether or not it has been amended as a result of representations made by interested persons as provided in that section, or
  - (b) makes no material substantive change in an existing regulation.

### **Commencement**

**11.4** This Act comes into force on the Maa-nulth Treaty effective date.



## LEGISLATIVE HISTORY

Environmental Protection Act TNS 15/2011 enacted April 1, 2011

### Amendments

<b>Section</b>	<b>Amendment</b>	<b>In Force</b>
1.2	TNS 3/2012, s.6.4(c)	July 10, 2012
2.1(e)(i)(C)	TNS 8/2014, s.4.8(a)	June 10, 2014
2.3(b)	TNS 8/2014, s.4.8(a)	June 10, 2014
2.5(a)(ii)	TNS 8/2014, s.4.8(a)	June 10, 2014
2.5(d)	TNS 8/2014, s.4.8(a)	June 10, 2014
2.6	TNS 8/2014, s.4.8(a)	June 10, 2014
2.9(a)	TNS 8/2014, s.4.8(a)	June 10, 2014
3.4	TNS 8/2014, s.4.8(a)	June 10, 2014
5.9(e)	TNS 8/2014, s.4.8(a)	June 10, 2014
5.9(f)	TNS 8/2014, s.4.8(a)	June 10, 2014
5.9(g)	TNS 8/2014, s.4.8(a)	June 10, 2014
5.9(m)	TNS 8/2014, s.4.8(a)	June 10, 2014
5.11(e)	TNS 8/2014, s.4.8(a)	June 10, 2014
5.11(g)	TNS 8/2014, s.4.8(a)	June 10, 2014
5.12(b)(ii)	TNS 8/2014, s.4.8(a)	June 10, 2014
5.12(f)	TNS 8/2014, s.4.8(a)	June 10, 2014
6.5(c)(iv)	TNS 8/2014, s.4.8(a)	June 10, 2014
7.5(c)	TNS 8/2014, s.4.8(a)	June 10, 2014
7.9(a)	TNS 8/2014, s.4.8(a)	June 10, 2014
8.2	TNS 8/2014, s.4.8(a)	June 10, 2014
8.3	TNS 8/2014, s.4.8(a)	June 10, 2014
9.1(a)(ii)	TNS 8/2014, s.4.8(a)	June 10, 2014
9.1(b)(i)	TNS 8/2014, s.4.8(a)	June 10, 2014
9.3	TNS 8/2014, s.4.8(a)	June 10, 2014
9.4	TNS 8/2014, s.4.8(a)	June 10, 2014
9.10	TNS 8/2014, s.4.8(a)	June 10, 2014
10.2(c)	TNS 8/2014, s.4.8(a)	June 10, 2014
4.4	TNS8/2014, s.4.8(b)	June 10, 2014
4.5	TNS8/2014, s.4.8(b)	June 10, 2014
9.1(b)(ii)	TNS8/2014, s.4.8(b)	June 10, 2014
2.1(e)(vi)(A)	TNS8/2014, s.4.8(c)	June 10, 2014
2.5(c)	TNS8/2014, s.4.8(d)	June 10, 2014
3.2	TNS8/2014, s.4.8(e)	June 10, 2014
3.3	TNS8/2014, s.4.8(f)	June 10, 2014
3.5	TNS8/2014, s.4.8(g)	June 10, 2014
3.6	TNS8/2014, s.4.8(h)	June 10, 2014

4.3	TNS8/2014, s.4.8(i)	June 10, 2014
5.1(a)	TNS8/2014, s.4.8(j)	June 10, 2014
5.2(g)	TNS8/2014, s.4.8(k)	June 10, 2014
5.3(a)	TNS8/2014, s.4.8(k)	June 10, 2014
5.3(c)	TNS8/2014, s.4.8(l)	June 10, 2014
5.4(a)	TNS8/2014, s.4.8(l)	June 10, 2014
5.8(b)	TNS8/2014, s.4.8(m)	June 10, 2014
5.9	TNS8/2014, s.4.8(n)	June 10, 2014
5.9(g)	TNS8/2014, s.4.8(o)	June 10, 2014
5.11(c)	TNS8/2014, s.4.8(p)	June 10, 2014
6.6	TNS8/2014, s.4.8(q)	June 10, 2014
6.9(d)	TNS8/2014, s.4.8(r)	June 10, 2014
6.10	TNS8/2014, s.4.8(s)	June 10, 2014
4.4	TNS 4/2015, s.4.4	September 16, 2015
9.1(b)(ii)	TNS 4/2015, s.4.4	September 16, 2015

**Amending Acts:**

TNS 3/2012	Economic Development Act enacted July 10, 2012
TNS 8/2014	Enforcement Framework Amendment Act No. 2 enacted June 10, 2014
TNS 4/2015	Miscellaneous Amendments Act No. 2 enacted September 16, 2015

**Regulations enacted under this Act:**