

MOTION IN AMENDMENT

BILL 29

I, Honourable George Heyman, move, in Committee of the Whole, on

Bill 29

Environmental Management Amendment Act, 2023

to amend as follows:

CLAUSE 3, in the proposed sections 91.8 and 91.87, by deleting the text shown as struck out and adding the underlined text as shown:

Definitions

91.8 (1) In this Division:

“abandoned facility” means a specified facility determined under section 91.86
[abandoned facilities – government authority to decommission and close] to
be an abandoned facility;

“decommissioning and closure plan” means a plan that is prepared and
submitted under section 91.82 *[decommissioning and closure plans]*;

“owner”, in relation to a specified facility, means

(a) a person who is in possession, has the right of control, or occupies or
controls the use of the facility, or

(b) a person who has an estate or interest, legal or equitable, in the facility,
but does not include a person excluded by regulation;

“responsible person”, in relation to a specified facility, means, subject to
subsection (2),

(a) an owner of the facility, or

(b) a person who is in control of or responsible for any operation located at
the facility,

~~but does not include a person excluded by regulation;~~

“specified facility” means a facility used for a prescribed industrial or
commercial purpose or activity.

(2) The following are not responsible persons:

- (a) the government;
- (b) an employee of a responsible person if the employee has no legal or beneficial interest in the profits resulting from activities taking place at the facility;
- (c) a person excluded by regulation.

Cost recovery if government carries out decommissioning and closure

91.87 (1) In this section, “**accountable person**”, in relation to an abandoned facility, means ~~any~~ all of the following persons unless excluded by regulation:

- (a) an owner of the facility;
 - (b) a person who was a responsible person in relation to the facility immediately before operations ceased at the facility.
- (2) Subject to the regulations, if, in relation to an abandoned facility, the total amount of the costs incurred by the government under section 91.86 [*abandoned facilities – government authority to decommission and close*] exceeds the amount of security, if any, given under section 91.84 [*security in relation to decommissioning and closure*] and held by the government, the amount of the excess is a debt due to the government by an accountable person.
- (3) The costs referred to in subsection (2) include all of the government’s costs in relation to the decommissioning and closure, including, without limitation,
- (a) for any of the following:
 - (i) the use of government employees or contractors in the decommissioning and closure, including
 - (A) hourly rates, and
 - (B) expenses, including food, accommodation and mileage;
 - (ii) the use of government vehicles, including mileage;
 - (iii) the use of consulting and professional services;
 - (iv) the use, maintenance and repair of government equipment;
 - (v) private goods and services contracted, hired, rented or purchased;
 - (vi) research and analytical services related to the decommissioning and closure, and
 - (b) a prescribed percentage of those costs the Lieutenant Governor in Council considers is sufficient to meet the government’s administrative costs.
- (4) Each accountable person in relation to the abandoned facility is jointly and separately liable for the debt referred to in subsection (2).

- (5) For the purpose of recovering all or part of the debt referred to in subsection (2), a director may file a certificate with a court that has jurisdiction, and, upon filing, the certificate has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the court with which it is filed against the person named, and in the amount set out, in that certificate.
- (6) A certificate under subsection (5) may be in the prescribed form, must be signed by a director and must contain
 - (a) the name of the accountable person to whom the certificate relates,
 - (b) the address or location of the abandoned facility, and
 - (c) the amount of the debt to be recovered from the accountable person.
- (7) A director may register a lien at the land title office against an abandoned facility for all or a portion of the debt referred to in subsection (2).
- (8) A director may register a lien against the personal property of an accountable person for all or a portion of the debt referred to in subsection (2).
- (9) On registration of a lien against the personal property of an accountable person under subsection (8), a lien is created on the present and after acquired personal property in which the person has a legal or equitable interest.

The Honourable George Heyman

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to amend as follows:

CLAUSE 4, by adding the underlined text as shown:

4 *Section 92 (1) is amended by adding the following paragraphs:*

- (d.1) respecting the exclusion of persons for the purposes of the definition of “owner” in section 91.8 (1);**
- (d.2) respecting the determination of whether an employee has a legal or beneficial interest for the purposes of section 91.8 (2) (b);**
- (d.3) respecting the exclusion of persons for the purposes of section 91.8 (2) (c);**
- (e) respecting the authority of a director to make an order under section 91.82 (2) [*decommissioning and closure plans*], including, without limitation, imposing restrictions on that authority;**
- (f) for the purposes of Division 2.2 [*Decommissioning and Closure of Facilities*], respecting the activities or level of activity that constitutes ceasing operations;**
- (g) respecting the preparation of decommissioning and closure plans, including, without limitation,**
 - (i) respecting the matters that must be addressed by, and the information that must be included in, a decommissioning and closure plan, including, without limitation,**
 - (A) if the activities at a specified facility are authorized by a permit or approval, requiring the inclusion of information respecting the actions that are planned to meet each requirement of the permit or approval,**
 - (B) requiring the inclusion of a summary of the actions proposed for the purpose of decommissioning and closing the specified facility,**

- (C) requiring the inclusion of site plans, and
 - (D) requiring the inclusion of information respecting the presence of substances capable of causing pollution,
- (ii) respecting the form of a decommissioning and closure plan,
- (iii) respecting the inclusion in a decommissioning and closure plan of the estimated costs of the proposed actions summarized in the plan,
- (iv) establishing requirements for the certification of a decommissioning and closure plan or the certification of a part of a decommissioning and closure plan,
- (v) establishing a process for consultation and cooperation by responsible persons, during the preparation of a decommissioning and closure plan, with Indigenous peoples whose rights or interests may be affected by the plan,
- (vi) respecting consultation by responsible persons with local governments during the preparation of a decommissioning and closure plan,
- (vii) requiring a decommissioning and closure plan to be accompanied by information about consultations or cooperation referred to in subparagraphs (v) or (vi), and
- (viii) requiring a decommissioning and closure plan to provide for long term monitoring of the specified facility for which the plan is prepared;
- (h) respecting the reviewing and updating of decommissioning and closure plans, including, without limitation, specifying circumstances in which a responsible person must update a decommissioning and closure plan and submit the updated plan to the director;
- (i) requiring responsible persons to report to a director respecting changes or events in relation to the specified facility for which a decommissioning and closure plan has been submitted, including, without limitation, changes in ownership and changes in the operations at the facility;
- (j) for the purposes of section 91.83 [*decommissioning and closure of specified facility*], respecting
 - (i) the authority of a director to make an order under section 91.83 (a) or (b), and
 - (ii) the decommissioning and closure of specified facilities, including, without limitation, specifying
 - (A) the actions that must be taken to decommission specified facilities and carry out reclamation, remediation or restoration of the land at specified facilities, and
 - (B) the standard of clean up that must be achieved;

- (j.1) respecting the exclusion of persons for the purposes of the definition of “accountable person” in section 91.87 (1);
- (k) respecting the costs referred to in section 91.87 (2) [*cost recovery if government carries out decommissioning and closure*].

The Honourable George Heyman