



BERMUDA

CLEAN AIR ACT 1991

1991 : 38

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29 Commencement and transitional

[preamble and words of enactment omitted]

Short title

1 This Act may be cited as the Clean Air Act 1991.

Interpretation

2 In this Act, unless the context requires otherwise—

“air contaminant” means any solid, liquid or gas, or any combination of solids, liquids and gases, whose presence in the air results directly or indirectly from the activities of man;

“air pollution” means the presence in the ambient air of any air contaminant—

- (a) in a concentration exceeding the maximum prescribed concentration;
- (b) causing an odour in contravention of any regulation regulating offensive odours; or
- (c) that directly or indirectly is likely to—
 - (i) endanger the health, safety or welfare of humans; or
 - (ii) cause damage to any plant, animal, property or ecosystem;

“ambient air” means that portion of the air, excluding the air internal to any building or other structure, to which the general public has access;

“the Authority” means the Environmental Authority established by section 3;

“construction permit” means a permit provided for in sections 4 to 6;

“controlled plant” means, subject to section 4(3), a plant described in the First Schedule;

“the Court” means the Supreme Court;

“emission control order” means an order made under section 12;

“inspector” means—

- (a) any officer of the Ministry responsible for the Environment appointed by the Minister by instrument in writing to be an inspector under this Act; or
- (b) any environmental health officer of the Ministry responsible for Health; or
- (c) any police officer; or
- (d) any customs officer; or

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(e) any fire officer;

“licence” means an operating licence;

“the Minister” means the Minister responsible for the Environment;

“operating licence” means a licence provided for in sections 7 to 9;

“permit” means a construction permit;

“prescribed” means prescribed by a regulation or a rule;

“regulation” means a regulation made under section 11;

“rule” means a rule made under section 25;

“stop order” means an order made under section 13.

[Section 2 “air pollution” and “controlled plant” substituted, “ambient air” inserted, and para (e) of “inspector” inserted, by 2005:45 s.3 effective 31 December 2005]

The Environmental Authority

- 3 (1) There is established a body called the Environmental Authority.
- (2) The Authority shall consist of—
- (a) a member appointed by the Minister to be the Chairman of the Authority;
 - (b) a member appointed by the Minister responsible for Health;
 - (c) a member appointed by the Minister responsible for works and engineering; and
 - (d) such number of members not exceeding four as the Minister may think fit to appoint in addition.
- (3) The Authority shall perform the functions assigned to it by this Act.
- (4) The provisions in the Second Schedule have effect in relation to the Authority.

[Section 3 subsection (2)(c) amended by BR 5/2011 para.5 effective 25 February 2011]

Construction of controlled plants without a permit forbidden

- 4 (1) Subject to subsection (3), a person shall not commence or continue the construction of a controlled plant unless there is a construction permit in force for the purpose.
- (2) A person who commences or continues construction of a controlled plant—
- (a) without there being in force a construction permit for the purpose; or
 - (b) in contravention of a construction permit in force in relation to that plant,
- is guilty of an offence.
- (3) The expression “controlled plant” in this section does not include a controlled plant that is moveable.

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Applications for permits

5 (1) A person desiring a construction permit shall make application to the Authority in the prescribed form for the permit.

(2) An application under subsection (1) shall include plans and specifications which show—

- (a) the location of the proposed controlled plant; and
- (b) the size and capacity of the proposed controlled plant; and
- (c) the nature of the operation for which the proposed controlled plant is to be used; and
- (d) the method by which any air contaminant is to be released from the proposed controlled plant; and
- (e) any other details or information that the Authority may require.

Issue of permits

6 (1) Subject to sections 16 and 17, the Authority may issue or refuse to issue a construction permit.

(2) The Authority may, as a condition precedent to issuing a construction permit, require a change in the location of the proposed controlled plant or in that plant's plans or specifications.

(3) The Authority may issue a construction permit—

- (a) subject to such terms and conditions as it may think fit, whether or not relating to the concentrations, weights or rates of emission of air contaminants referred to in regulations; or
- (b) subject to such requirements as it may think fit regarding the manner in which and the frequency with which levels of concentration, density or weight of air contaminants to be emitted by the proposed plant are to be recorded; or
- (c) subject to such requirements as it may think fit as to the manner in which the controlled plant is to be tested or operated before normal operations commence.

Operation of controlled plants without a licence forbidden

7 (1) A person shall not commence or continue the operation of a controlled plant unless there is an operating licence in force for the purpose.

(2) A person who operates a controlled plant—

- (a) without there being in force an operating licence for the purpose; or
- (b) in contravention of an operating licence in force in relation to that plant,

is guilty of an offence.

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Applications for licences

8 (1) A person who proposes to operate a controlled plant shall, before beginning to operate the plant, make application to the Authority in the prescribed form for an operating licence in respect of the plant.

- (2) The Authority may require an applicant for an operating licence—
- (a) where a construction permit was required, to show that the plant was constructed in accordance with the permit and that the requirements of the permit have been complied with; and
 - (b) to show that the person who will operate the plant will operate it in conformity with the operating licence if it is granted; and
 - (c) to supply any other details or information that the Authority may require.

Grant of licences

9 (1) Subject to sections 16 and 17, the Authority may grant or refuse to grant an operating licence.

- (2) The Authority may grant an operating licence—
- (a) subject to such terms and conditions as it may think fit, whether or not relating to the concentrations, weights or rates of emission of air contaminants referred to in regulations; or
 - (b) subject to such requirements as it may think fit regarding the manner in which and the frequency with which levels of concentration, density or weight of air contaminants to be emitted by the plant are to be recorded; or
 - (c) subject to other requirements as to the manner in which the plant is to be operated.

Permit and Licence not transferable

10 (1) A construction permit or an operating licence shall not be transferred or sold.

(2) Any such transfer or sale in contravention of subsection (1) shall be null and void.

[Section 10 substituted by 2005:45 s.4 effective 31 December 2005]

Regulations

- 11 (1) The Minister may make regulations—
- (a) prescribing the maximum permissible concentration of an air contaminant for the whole or any part of Bermuda;
 - (b) prescribing the maximum permissible calculated ground level concentration of an air contaminant for the whole or any part of Bermuda;

- (c) prescribing the maximum concentration of an air contaminant that may be emitted into the air from a plant, structure or thing;
- (d) prescribing the maximum weight of an air contaminant that may be emitted into the air from a plant, structure or thing;
- (e) prescribing the maximum rate of emission of an air contaminant that may be emitted into the air from a plant, structure or thing;
- (f) prescribing the method or type of method or instrument for measuring or determining—
 - (i) the concentration of an air contaminant;
 - (ii) the calculated ground level concentration of an air contaminant;
 - (iii) the concentration of an air contaminant emitted into the air from a plant, structure or thing;
 - (iv) the weight of an air contaminant emitted into the air from a plant, structure or thing;
 - (v) the rate of emission of an air contaminant into the air from a plant, structure or thing;
- (g) prescribing the point at which a measurement pursuant to the regulations is to take place;
- (h) prescribing the methods and procedures for determining the visible emissions that are emitted from any source in all or any part of Bermuda, for the purpose of determining whether those visible emissions exceed the maximum prescribed limits;
- (ha) prescribing the methods and procedures for the control of open fire, hazardous materials, offensive odour and sulphur content of fuel;
 - (i) prescribing the maximum visible emissions permitted to be emitted in all or any part of Bermuda, and for that purpose dividing Bermuda into areas in a manner the Minister considers necessary;
- (j) establishing a programme for the certification of persons as visible emission readers, including—
 - (i) the manner in which visible emission readers are taught and certified as qualified visible emission readers;
 - (ii) the regulation of the activities of visible emission readers; and
 - (iii) the issue, suspension and cancellation of certificates of visible emission readers;
- (k) appointing persons to act as analysts with respect to any analysis or description of any ingredient, quality, quantity or temperature of any material, whether solid, liquid or gaseous, for the purposes of or in connection with this Act or the regulations;

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- (ka) providing for the making of exceptions to provisions in regulations;
- (kb) empowering persons or bodies in such cases or circumstances as may be thought fit—
 - (i) to impose more stringent requirements or standards than those called for by regulations; or
 - (ii) to authorize less stringent requirements or standards than those called for by regulations;
- (kc) empowering persons or bodies to prohibit (whether absolutely or subject to conditions or to the grant of licences, permits or other approvals) the doing of acts, or classes of acts, causing, or considered to cause, or to be able or likely to cause, air pollution;
- (kd) requiring the making of reports either generally or in particular circumstances;
 - (l) prescribing any matter or thing (being a matter or thing not of a procedural nature) required or permitted by this Act to be prescribed;
 - (m) creating summary offences for breach of any regulation, and prescribing penalties (including imprisonment but not exceeding the maximum penalty specified at section 26(2)) for those offences.

(2) A regulation may be made to apply to a particular plant, structure or thing, or to a class of plants, structures or things, or generally.

(3) Regulations may refer to, incorporate or adopt, in whole, in part or with modifications, documents that set out standards of or relate to air quality, the prevention or control of air pollution or the design, construction, maintenance or operation of a plant, structure or thing that may be a source of air pollution.

(4) Regulations are subject to the affirmative resolution procedure.

[Section 11 amended by 1993:53 effective 23 July 1993; subsection (1)(ha) inserted by 2005:45 s.5 effective 31 December 2005]

Emission control orders

- 12 (1) If it appears to an inspector—
- (a) that there is in the air an air contaminant—
 - (i) in a concentration that exceeds, or in his opinion will exceed, the maximum concentration prescribed for that air contaminant; or
 - (ii) in an amount that exceeds, or in his opinion will exceed, the maximum ground level concentration prescribed for that air contaminant; or
 - (iii) of a degree of visibility that exceeds, or in his opinion will exceed, the maximum degree prescribed for that air contaminant; or
 - (iv) that does not comply with a regulation regulating offensive odours; or

- (v) that is, or is likely to be, injurious to life or health, or to be detrimental to property; or
- (b) that an air contaminant has been emitted or is being emitted into the air from a plant, structure or thing—
 - (i) in a concentration that has exceeded, or is exceeding, or in his opinion will exceed, the maximum concentration of that air contaminant permitted by regulations to be emitted from that plant, structure or thing; or
 - (ii) at a rate that has exceeded, or is exceeding, or in his opinion will exceed, the maximum rate permitted by regulations for that plant, structure or thing,

the inspector may serve an emission control order on the person owning or operating any plant, structure or thing that the inspector considers to be the source of, or one of the sources of, that air contaminant.

(2) If it appears to an inspector that a term or condition of an operating licence has been or is about to be contravened, being a term or condition imposing a restriction on the emission of an air contaminant, the inspector may serve an emission control order on the person owning or operating the controlled plant concerned.

(3) In an emission control order the inspector may require the person on whom the order is served—

- (a) to limit or control the rate of emission of the air contaminant by the plant, structure or thing in accordance with directions contained in the order;
- (b) to stop the plant, structure or thing in question from emitting the air contaminant either permanently or for a specified period or during times or in circumstances specified in the order;
- (c) to comply with any directions contained in the order relating to the manner in which the air contaminant may be emitted or the procedures to be followed in the control or elimination of the emission of the air contaminant;
- (d) to install, replace or alter any equipment or thing designed to control or eliminate the emission of the air contaminant;
- (e) to report to him with respect to any matter required by him pursuant to paragraphs (a) to (d), in accordance with directions specified in the order.

(4) The inspector may issue an emission control order notwithstanding that the plant, structure or thing specified in the order—

- (a) was the subject of a construction permit or an operating licence; or
- (b) is being operated under an operating licence at the time the order is made.

(5) Subject to sections 16 and 17, if a person on whom an emission control order is served does not comply with the order, he is guilty of an offence.

Stop orders

- 13 (1) If it appears to the Minister—
- (a) that a person has contravened or is contravening this Act or a regulation or a rule; or
 - (b) that a person has failed to comply with an order made, or a direction given, under this Act or a regulation or a rule; or
 - (c) that a person has failed to comply with a term or condition of a licence; or
 - (d) that a plant, structure or thing owned or operated by a person is a source of air pollution that the Minister considers to be an immediate danger to human life or property or both,

the Minister may serve an order under this section (a “stop order”) on that person.

(2) An act or state of affairs described in paragraph (a) or (b) or (c) or (d) of subsection (1) is in this section referred to as a contravention; and every stop order shall specify the contravention which is the subject-matter of the stop order.

(3) A stop order may require the person on whom the order is served to stop the contravention specified in the order, and shall state the reasons for the making of the order.

(4) A stop order may, subject to sections 16 and 17, be enforced in either of the ways set forth in sections 14 and 15.

Offence of contravening stop orders

14 (1) Subject to subsection (2), a person who fails to comply with a stop order served on him is guilty of an offence.

(2) Where the Minister has taken proceedings against a person under section 15 for a failure by that person to comply with a stop order, that person shall not be prosecuted in respect of that failure by virtue of this section unless or until the proceedings under section 15 are concluded.

Enforcement of stop orders

15 (1) If it appears to the Minister that a person on whom he has served a stop order has failed to comply with the order, he may make application to the Court under this section for an enforcement order.

(2) If after hearing the Minister and the person in question in relation to an application made under subsection (1), the Court is satisfied that the stop order has been lawfully made and has not been complied with, the court may make an enforcement order allowing an inspector—

- (a) to enter on any land, plant or structure; and
- (b) to seize and hold any equipment used on that land, plant or structure in contravention of the stop order,

for the carrying out of the stop order.

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(3) Any equipment seized under subsection (2)(b) shall be disposed of in such manner as the Court may direct in the enforcement order.

(4) The Minister may recover by action any expenses incurred by the Government on account of anything done pursuant to the enforcement order under subsection (2).

[Section 15 subsections (2)-(4) substituted for subsection (2) by 2005:45 s.6 effective 31 December 2005]

Appeals to the Minister

16 (1) A person aggrieved—

(a) by a decision of the Authority under section 6 or 9; or

(b) by an emission control order served on him by an inspector under section 12,

may by notice under this subsection appeal to the Minister against that decision or that order.

(2) A person aggrieved by a stop order may by notice under this subsection require the Minister to refer his grievance against the order to the Authority for inquiry and report under subsection (7).

(3) A notice under subsection (1) or (2) shall be served on the Minister in such manner and within such time as may be prescribed.

(4) A decision of the Authority under section 6 or 9 affecting a person, or an emission control order served on a person, does not take effect in relation to him until the expiry of the time prescribed pursuant to subsection (3) or, where he in fact brings an appeal under subsection (1) (an “appeal”), until the appeal is determined or abandoned.

(5) A stop order takes effect forthwith upon the serving of the order, whether or not the order is the subject of a requisition under subsection (2) (a “requisition”).

(6) A person bringing an appeal by virtue of paragraph (b) of subsection (1) may by notice under this subsection require the Minister to refer the matter under appeal to the Authority for inquiry and report under subsection (7).

(7) Where a grievance against a stop order, or an appeal, is referred to the Authority pursuant to subsection (2) or (6), the Authority shall, within thirty days of the reference—

(a) hold a hearing to inquire into the matter; and

(b) determine whether, in its opinion, there were sufficient grounds for the making of the decision which is being questioned;

and, on completion of the inquiry, the Authority shall make a report to the Minister, accompanied by such recommendations as may seem fitting.

(8) The Minister—

(a) where there is an appeal, may allow or dismiss the appeal, or may reverse or vary any part of the decision or order appealed against, whether the

appeal relates to that part or not, and may deal with the subject-matter of the appeal as if that subject-matter had come to him (instead of to the Authority or an inspector) for decision under this Act in the first instance;

- (b) may confirm or amend or revoke a stop order which is the subject of a requisition;

but, in every case where there has been an inquiry under subsection (7), the Minister shall take the Authority's report and any recommendations accompanying that report into account before he exercises his powers under this subsection.

Appeals to the Court

17 (1) Any party to any proceedings under section 16 who is aggrieved by a decision of the Minister under subsection (8) of that section may appeal to the Court on a point of law within twenty-one days or such longer period as the Court may allow after that party received notice of the decision or direction.

(2) On such an appeal the Court may make such order, including an order for costs, as the Court thinks fit.

Rights of entry and inspection

18 (1) Any person authorised in writing in that behalf by the Minister may at any reasonable time—

- (a) enter upon any land for the purpose of—
 - (i) performing any function conferred on the Minister by virtue of this Act; or
 - (ii) determining whether, and if so in what manner, such a function should be performed; or
 - (iii) determining whether any provision of this Act or of an instrument made by virtue of this Act is being complied with; and
- (b) carry out such inspections, measurements and tests on the land or of any articles on it, and take away such samples of the land or articles, as that person considers appropriate for such a purpose.

(2) If it is shown to the satisfaction of a magistrate on sworn information in writing on behalf of a person entitled to enter upon land in pursuance of subsection (1)—

- (a) that—
 - (i) admission to the land has been refused to that person; or
 - (ii) such a refusal is apprehended; or
 - (iii) the land is unoccupied; or
 - (iv) the occupier is temporarily absent; or
 - (v) the case is one of emergency; or

- (vi) an application for such admission would defeat the object of the entry;
and
- (b) that there is reasonable ground for his entry upon the land for the purpose for which entry is required,

then, subject to subsection (3), the magistrate may by warrant under his hand authorise that person to enter the land, if need be by force.

(3) A magistrate shall not issue a warrant under subsection (2) in respect of any land unless he is satisfied—

- (a) that admission to the land in pursuance of subsection (1) was sought after not less than seven days notice of the intended entry had been served on the occupier; or
- (b) that admission to the land in pursuance of subsection (1) was sought in an emergency, and was refused by or on behalf of the occupier; or
- (c) that the land is unoccupied; or
- (d) that an application for admission to the land would defeat the object of the entry.

(4) A warrant under subsection (2) continues in force until the purpose for which the entry is required has been satisfied.

Provisions supplementary to s.18

19 (1) A person authorised to enter upon any land in pursuance of section 18 shall, if so required, produce evidence of his authority before he enters upon the land.

(2) A person so authorised may take with him on to the land in question such other persons and such equipment as may be necessary.

(3) Admission to any land used for residential purposes, and admission with heavy equipment to any other land, shall not, except in an emergency or in a case where the land is unoccupied, be demanded as of right in pursuance of section 18(1) unless a notice of the intended entry has been served on the occupier not less than seven days before the demand.

(4) A person who, in the exercise of powers conferred upon him by virtue of section 18 or this section, enters upon any land which is unoccupied or of which the occupier is temporarily absent shall leave the land as effectually secured against trespassers as he found it.

(5) It is the Minister's duty to make full compensation to any person who has sustained damage by reason of—

- (a) the exercise of a person authorised by the Minister of any powers conferred upon the person so authorised by virtue of section 18 or this section; or
- (b) the failure of a person so authorised to perform the duty imposed on him by subsection (4) of this section,

except where the damage is attributable to the default of the person who sustained it.

(6) In section 18 and this section any reference to an emergency is a reference to a case where a person requiring entry to any land has reasonable cause to believe that circumstances exist which are likely to endanger life or health, and that immediate entry to the land is necessary to verify the existence of those circumstances, or to ascertain their cause, or to effect a remedy.

(7) A person who wilfully obstructs another person acting in the exercise of any powers conferred on the other person by virtue of section 18 or this section is guilty of an offence.

Power to obtain information

20 (1) Subject to any rules, the Minister may serve on any person a notice requiring him to furnish to the Minister, within a period, or at times, specified in the notice and in a form so specified, any information so specified which the Minister reasonably considers that he needs for the purposes of any function conferred on him by or under this Act.

(2) A person who fails without reasonable excuse to comply with the requirements of a notice served on him pursuant to this section is guilty of an offence.

False documents of information

21 Any person who, for any purposes of this Act, issues a document or information which is false or misleading in a material respect, or signs a document which is false or misleading in a material respect, or takes part in the preparation or issue of a document or information which is false or misleading in a material respect, is guilty of an offence unless he proves—

- (a) if an individual, that he had no knowledge of the falsity or misleading character of the document or information, and took every reasonable precaution to ensure its accuracy; and
- (b) in any other case, that every person acting on his behalf had no such knowledge, and took every such reasonable precaution, as aforesaid.

Verification of information

22 (1) The Minister may refuse to accept any plan, specification or other information that is required by or under this Act to be supplied to him unless it is certified as accurate by a person who is in the Minister's opinion qualified to give such a certificate.

(2) Where the Minister requires a certificate under subsection (1), he shall provide the person who must furnish the certificate with the name and address of one or more persons who are qualified to give such a certificate.

Use of information

23 Where an operating licence directly or indirectly requires the holder of the licence to supply to the Minister information obtained by the holder in the course of monitoring emissions of air contaminant into the atmosphere, that information—

- (a) may be used by the Minister; or

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- (b) may be passed on by the Minister—
 - (i) to any other Government authority for use by it; or
 - (ii) to the public at large for its information; or
 - (iii) to any court of law,as the Minister may deem fit in the public interest.

[Section 23 paragraph (b)(iii) inserted by 2005:45 s.7 effective 31 December 2005]

Cancellation etc. of permits and licences

24 The provisions in the Third Schedule have effect for the purpose of enabling construction permits and operating licences to be cancelled, suspended or varied, and appeals to be made where permits or licences are cancelled, suspended or varied.

Rules

- 25 (1) The Minister may make rules—
- (a) governing applications for, and the issue of,—
 - (i) construction permits and amendments to them; and
 - (ii) operating licences and amendments to them; and
 - (b) regulating the procedure in any proceedings under this Act or regulations;
 - (c) regulating the making and submission of returns and reports;
 - (d) prescribing any matter or thing (being a matter or thing of a procedural nature)—
 - (i) which is required or permitted by this Act to be prescribed; or
 - (ii) which it is convenient to prescribe;
 - (e) creating summary offences for breach of any rule, and prescribing penalties (including imprisonment but not exceeding the maximum penalty specified at subsection (2) of section 26) for those offences.
- (2) Rules are subject to the negative resolution procedure.

[Section 25 amended by 1993:53 effective 23 July 1993]

Offences

- 26 (1) Offences against this Act may be prosecuted summarily.
- (2) Subject to subsections (3) and (4), a person is liable upon conviction of an offence against this Act to imprisonment for a term not exceeding 6 months or a fine not exceeding \$5,000 or to both.
- (3) A person convicted of an offence under section 14(1) is liable to imprisonment for a term not exceeding 12 months or a fine not exceeding \$50,000 or to both.

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(4) Where a person who has been convicted of an offence under section 14(1) by reason of non-compliance with a stop order continues that non-compliance after the conviction, he is liable to a fine not exceeding \$50,000 for each day that the non-compliance so continues.

(5) Where an individual who has committed an offence against this Act was at the time he committed the offence a director, manager, secretary or other similar functionary of a body corporate and committed the offence in that capacity, then the body corporate also is guilty of the offence and liable to be proceeded against and punished accordingly.

Service of documents

27 (1) A document to be served under this Act by one person ("the server") on another person ("the subject") is to be treated as properly served on the subject if dealt with as provided for in this section.

(2) The document may be delivered or sent by post to the subject, or addressed to him by name and left at his proper address.

(3) For the purposes of subsection (2), a document sent by post to, or left at, the address last known to the server as a person's address shall be treated as sent by post to, or left at, his proper address.

(4) References in this section to the serving of a document on a person include the giving of the document to him.

The Crown

28 This Act binds the Crown but not so as to make the Crown capable of a criminal offence.

Commencement and transitional

29 (1) Subject to subsections (2) and (3), this Act commences on such day as the Minister may appoint by notice published in the Gazette ("the commencement day").

(2) In relation to a controlled plant that was in course of construction immediately before the commencement day, section 4 does not have any effect.

(3) In relation to any person continuing to operate a controlled plant that was in existence immediately before the commencement day, section 7 does not have effect until the expiry of 6 months beginning on that day.

(4) Notwithstanding subsection (3), if before the expiration of the 6 months mentioned in that subsection ("the holdover deadline") the Authority is satisfied that any standard set, or any prohibition or requirement imposed, by a regulation cannot be complied with at or in relation to a controlled plant referred to in that subsection on or after that deadline, then the Authority may in that case with the prior approval of the Minister by notice in writing to the operator of the plant cancel that standard, prohibition or requirement as respects that plant, or in relation to that plant modify it to such extent, and for such period as the Authority may think fit; and, where such a notice has been given to an operator, any such standard, prohibition or requirement shall, as respects the plant in

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question, cease to have effect, or as the case may be shall have effect subject to the modifications specified in the notice, for as long as the notice is in force.

(5) Where the Authority has given a notice to an operator under subsection (4), the Authority may with the prior approval of the Minister and after consulting with the operator amend the notice in such manner as the Authority may think fit.

[Section 29 amended by 1993:53 effective 23 July 1993; and subsection (4) by 1999:11 s.2 effective 24 March 1999]

FIRST SCHEDULE

(Section 2)

DEFINITION OF "CONTROLLED PLANT"

For the purposes of this Act, a controlled plant is a plant which is fixed or moveable (but not capable of being carried by hand), being one of the following—

- (a) a facility for the manufacture of—
 - (i) asphalt or ready-mixed concrete; or
 - (ii) chemical, stone, clay, glass, cement or lime products or fertilizers or animal by-products;
- (b) a facility for the production or processing of metal or of organic or inorganic chemicals, or for the processing of wood or wood products;
- (c) a facility for the crushing, processing or transfer of gravel, stone, sand or soil;
- (d) a facility for the treatment or disposal of sewage;
- (e) a facility for the drying of hay or forage, or for the production of compost;
- (f) a facility which generates electricity or steam;
- (g) an incinerator;
- (ga) a facility for the spray painting of vehicles or machinery;
- (gb) a facility for the dry cleaning of apparel;
- (gc) a facility using non-portable internal combustion engines (excluding motor vehicle engines) such as compressors and gas or diesel-powered pumps;
- (h) a facility for the storage, treatment or disposal of hazardous materials (as defined in regulations);
- (i) a facility for burning, or a pyre consisting of, prohibited debris (as defined in regulations);
- (j) any other thing declared by regulations to be a controlled plant for the purposes of this Act.

[First Schedule amended by 1993:53 effective 23 July 1993; and paragraphs (ga) to (gc) inserted by 1999:11 s.3 effective 24 March 1999; amended by 2005:45 s.8 effective 31 December 2005]

SECOND SCHEDULE

(Section 3(4))

THE ENVIRONMENTAL AUTHORITY

1 A member of the Authority holds office at the pleasure of the Minister who appointed him.

2 The Minister who appointed a member of the Authority may appoint an alternate to that member from time to time as occasion requires, to perform the functions of that member in his absence.

3 The Chairman or, failing him, such member of the Authority as the Chairman may select, shall preside over meetings of the Authority.

4 Three members form a quorum for meetings of the Authority.

5 Any question for decision by the Authority shall be decided by a majority of the members present and voting. Each member has one vote except that the person presiding has a second vote if there is a tie.

6 There shall be a secretary to the Authority, who shall keep minutes in proper form.

7 An act of the Authority is not invalid by reason only of a vacancy in the Authority's membership or a defect in a member's appointment.

8 Subject to the above provisions, the Authority may regulate its proceedings as it sees fit.

THIRD SCHEDULE

(Section 24)

CANCELLATION, SUSPENSION AND VARIATION OF CONSTRUCTION PERMITS
AND OPERATING LICENCES

Part A —Permits

Cancellation of permits

1 The Authority may, subject to the provisions of this paragraph and paragraphs 3 and 4, in writing cancel a permit—

- (a) at the request of the permit-holder; or
- (b) on any one or more of the following grounds, namely—
 - (i) that the permit-holder has stopped construction of the controlled plant;
 - (ii) that the permit-holder has contravened a requirement of, or a condition attached to, his permit, or a requirement made of him by or under this Act;
 - (iii) that the permit-holder is constructing the controlled plant in a manner detrimental to the public interest.

Suspension and variation of permits

2 The Authority may, subject to the provisions of this paragraph and paragraphs 3 and 4, in writing suspend or vary a permit—

- (a) at the request of the permit-holder; or
- (b) on any one or more of the following grounds, namely—
 - (i) that the permit-holder has contravened a requirement of, or a condition attached to, his permit, or a requirement made of him by or under this Act; or
 - (ii) that the permit-holder is constructing the controlled plant in a manner detrimental to the public interest.

Preconditions to cancelling, suspending or varying a permit

3 (1) Before it cancels a permit under sub-paragraph (b) of paragraph 1 or suspends or varies a permit under sub-paragraph (b) of paragraph 2, the Authority shall—

- (a) give the permit-holder notice in writing of the ground or grounds on which it intends to do so; and

- (b) afford the permit-holder an opportunity to make objection in writing within the period of thirty days after receipt of the notice; and
- (c) take any such objection into consideration;

and, if the Authority decides to cancel, suspend or vary the permit, it shall cause the instrument cancelling, suspending or varying the permit (as the case may be) to be served on the permit-holder.

(2) Subject to paragraph 4, the cancellation, suspension or variation of a permit takes effect on the expiration of twenty-one days beginning on the date of service on the permit-holder of the instrument cancelling, suspending or varying the permit, as the case may be.

Appeals

4 (1) A permit-holder may appeal to the Minister against the cancellation of his permit under sub-paragraph (b) of paragraph 1 or against the suspension or variation of his permit under sub-paragraph (b) of paragraph 2.

(2) The bringing of such an appeal suspends the cancellation, suspension or variation appealed against pending the determination or abandonment of the appeal.

(3) An appeal under this paragraph must be brought within twenty-one days of the date on which the instrument cancelling, suspending or varying the permit, as the case may be, was served on the permit-holder.

(4) On an appeal under this section, the Minister may confirm, vary or reverse the decision of the Authority and exercise any power that the Authority could have exercised under this Act in the matter under appeal.

Part B —Licences

Cancellation of licences

1 The Minister may, subject to the provisions of this paragraph and paragraphs 3 and 4, in writing cancel a licence—

- (a) at the request of the licensee; or
- (b) on any one or more of the following grounds, namely—
 - (i) that the licensee has ceased to operate the controlled plant;
 - (ii) that the licensee has contravened a requirement of, or a condition attached to, his licence, or a requirement made of him by or under this Act;
 - (iii) that the licensee is operating the controlled plant in a manner detrimental to the public interest.

Suspension and variation of licences

2 The Minister may, subject to the provisions of this paragraph and paragraphs 3 and 4, in writing suspend or vary a licence—

- (a) at the request of the licensee; or
- (b) on any one or more of the following grounds, namely—
 - (i) that the licensee has contravened a requirement of, or a condition attached to, his licence, or a requirement made to the licensee by or under this Act;
 - (ii) that the licensee is operating the controlled plant in a manner detrimental to the public interest.

Preconditions to cancelling, suspending or varying a licence

3 (1) Before he cancels a licence under sub-paragraph (b) of paragraph 1 or suspends or varies a licence under sub-paragraph (b) of paragraph 2, the Minister shall—

- (a) give the licensee notice in writing of the ground or grounds on which he intends to do so; and
- (b) afford the licensee an opportunity to make objection in writing within the period of thirty days after receipt of the notice; and
- (c) take any such objection into consideration;

and, if the Minister decides to cancel, suspend or vary the licence, he shall cause the instrument cancelling, suspending or varying the licence (as the case may be) to be served on the licensee.

(2) The Minister shall not cancel, suspend or vary a licence without first consulting the Authority.

(3) Subject to paragraph 4, the cancellation, suspension or variation of a licence takes effect on the expiration of twenty-one days beginning on the date of service on the licensee of the instrument cancelling, suspending or varying the licence, as the case may be.

Appeals

4 (1) A licensee may appeal to the Supreme Court against the cancellation of his licence under sub-paragraph (b) of paragraph 1 or against the suspension or variation of his licence under sub-paragraph (b) of paragraph 2.

(2) The bringing of such an appeal suspends the cancellation, suspension or variation appealed against pending the determination or abandonment of the appeal.

(3) An appeal under this paragraph must be brought within twenty-one days of the date on which the instrument cancelling, suspending or varying the licence, as the case may be, was served on the licensee.

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(4) On an appeal under this paragraph, the Supreme Court may confirm, vary or reverse the decision of the Minister and exercise any power that the Minister could have exercised under this Act in the matter under appeal.

[Assent Date: 1 October 1993]

[Amended by:

1993 : 53

1999 : 11

2005 : 45

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