

Environmental Contaminants Act 1978

INDEPENDENT STATE OF PAPUA NEW GUINEA.

Environmental Contaminants Act 1978,

Being an Act—

(a) relating to the prevention, abatement and control of environmental contamination;
and

(b) to provide for the protection of the environment in accordance with the fourth goal of the National Goals and Directive Principles; and

(c) to give effect to those Goals and Principles under Section 25 (*implementation of the National Goals and Directive Principles*) of the Constitution,

and for related purposes.

PART I.—PRELIMINARY.

1. Compliance with Constitutional requirements.

(1) This Act, to the extent that it—

(a) regulates or restricts a right or freedom referred to in Subdivision III.3.C of the *Constitution*, namely—

(i) the freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and

(ii) the right to privacy conferred by Section 49 of the *Constitution*; and

(b) regulates a right or freedom referred to in Subdivision III.3.C of the *Constitution*, namely, the right to freedom of information conferred by Section 51 of the *Constitution*,

is a law that is made for that purpose, taking into account the National Goals and the Basic Social Obligations, particularly the fourth goal of the National Goals and Directive Principles entitled "natural resources and environment".

(2) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this law relates to a matter of national interest.

2. Interpretation.

In this Act, unless the contrary intention appears—

"analysis" means any test or examination (physical, chemical or biological) of any matter, substance or process for the purposes of determining its composition, qualities or its effect on any segment of the environment;

"analyst" means an analyst appointed under Section 4;

"beneficial use" means a use of the environment or any element or segment of the environment that is conducive to public benefit, welfare, safety or health or the health or productivity of flora or fauna;

"Council" means the Environmental Contaminants Advisory Council established by Section 9;

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"Director" means the Departmental Head of the Department responsible for environment and conservation matters;

"element", in relation to the environment, means any of the principal constituent parts of the environment including water, atmosphere, soil, vegetation, climate, sound, odour, aesthetics, flora and fauna;

"environment" means the total stock of physical, biological and social resources available to man and other species and the ecosystems of which they are a part;

"environmental contaminant" means—

(a) any substance whether liquid, solid, gaseous or radio-active, or any form of electromagnetic or thermal energy which, when discharged, emitted or deposited into the environment, causes or may cause, by reason of its properties, characteristics, the volume, amount and weight and point of its discharge, or other circumstances, a present or future alteration of the environment so as to affect adversely its beneficial use; and

(b) any substance, material or matter prescribed to be an environmental contaminant or a hazardous environmental contaminant;

"environmental officer" means an environmental officer appointed under Section 4;

[ii]"export" means export from Papua New Guinea to another country or state;

[iii]"export permit" means an export permit granted under Section 46E;

"fauna" means a member of any species included in the animal kingdom other than man, whether native or introduced, and includes a micro-organism;

"flora" means a member of any species included in the plant kingdom, whether native or introduced, and includes a micro-organism;

"hazardous environmental contaminant" means a substance registered under Section 32(2) as a hazardous environmental contaminant;

"health inspector" means a person appointed to be an inspector of health under the *Public Health Act 1973*;

"import" means import to the country;

"inspector" means an inspector appointed under Section 4;

"licence" means a licence issued under Part IV;

"litter" includes any bottle, tin, carton, package, paper, glass or other refuse, rubbish or unwanted thing or any abandoned vehicle or part thereof;

"noise abatement notice" means a noise abatement notice issued under Section 53(1);

"permit" means a permit issued under Part V;

"pollution" means any act which causes or may cause impairment of the quality of the environment for any use that can be made of it;

"premises" includes—

- (a) any property or building or property and building together, any allotment, parcel or area of land held by lease or otherwise; and
- (b) in relation to any trade or industry—any machinery, plant or vehicle used in connection with it; and
- (c) a ship and an aircraft;

"public place" includes any street, road, beach, foreshore, public reserve, garden, park, place of public recreation, river, stream, watercourse or lake open to or used by the public;

"the Register" means the Register of Hazardous Environmental Contaminants established under Section 32(1);

"segment", in relation to the environment, means any portion of the environment expressed in terms of volume, space, area, quantity, quality or time or any combination of them;

"ship" includes every description of vessel or craft designed for use on or in water;

"soil" includes earth, the subsoil, sand, rock, shale, minerals of every description and vegetation in the soil;

"this Act" includes the regulations;

"trade" means any business or undertaking carried on by persons, whether of a commercial or other nature;

"vehicle" includes any car, truck, bus, motor bike, tractor or other self-propelled machine and includes any ship or aircraft;

"water" includes any sea, river, stream, watercourse, reservoir, well, bore, tank, dam, canal, channel, lake, lagoon, swamp, open drain, coastal or underground water.

3. Application to the State.

This Act binds the State.

PART II.—ADMINISTRATION.

4. Appointment of inspectors and analysts.

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The Director may, by notice in the National Gazette appoint such persons as he considers necessary for the purpose of this Act to be—

(a) inspectors; and

(b) analysts; and

(c) environmental officers.

[v]5. **Identification of inspectors.**

The Director shall provide each inspector with a written authority identifying that inspector, and the inspector shall produce that authority to any person on demand when the inspector is carrying out or is about to carry out any of his powers under this Act.

6. Powers of inspectors.

(1) Subject to Subsection (2), an inspector may, at any time, enter upon any premises—

(a) on which an industry or trade is being carried on; or

(b) from which he believes, on reasonable grounds, environmental contaminants are being discharged or emitted or on which he believes, on reasonable grounds, environmental contaminants are being deposited, stored or kept; or

(c) from which unreasonable levels of noise are being emitted.

(2) Where the premises referred to in Subsection (1) consists of a private dwelling-house, an inspector shall not enter other than at reasonable times unless he has previously obtained the permission of the owner or occupier of the private dwelling-house.

(3) An inspector exercising his powers under Subsection (1) may—

(a) examine and inspect any machinery, equipment or works used for or in connection with the industry or trade or the discharge of environmental contaminants or emission of noise; and

(b) take and remove samples of any material that is being or is likely to be, or is of a kind that is, used in connection with the industry or trade conducted on the premises, or which he believes to contain an environmental contaminant; and

(c) take and remove samples, and examine and test those samples as he considers necessary, to ascertain whether any of the provisions or requirements made under this Act, or the conditions, limitations or restrictions of any licence or permit, are being complied with; and

(d) make such measurements and tests, and take such photographs,

as he considers necessary for the purposes of carrying out his functions under this Act.

(4) An inspector may, by notice in writing served on the owner or occupier of any premises referred to in Subsection (1), require that person to produce to the inspector, and the inspector may make copies of, any reports, books, plans, maps or documents (including monitoring records) relating to the discharge from, or presence on, the premises of environmental contaminants, or the emission of noise from the premises.

7. Person to state name and address.

An inspector may require a person found offending against this Act, or whom he reasonably suspects of having offended against this Act, to state correctly his full name and address.

8. Obstruction of inspector.

No person shall—

- (a) hinder or obstruct an inspector in the execution of his duty under this Act; or
- (b) fail to comply with a lawful requirement made by an inspector under this Act; or
- (c) refuse an inspector entry to premises which the inspector may under this Act lawfully enter; or
- (d) impersonate an inspector; or
- (e) fail to state, or wrongly state, his name and address to an inspector in the execution of his duty under this Act.

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Penalty: A fine not exceeding K10,000.00.

PART III.—ENVIRONMENTAL CONTAMINANTS ADVISORY COUNCIL.

9. Environmental Contaminants Advisory Council.

- (1) There shall be an Environmental Contaminants Advisory Council which shall consist of the following members:—
 - (a) two persons nominated by the Minister responsible for conservation and environmental matters, one of whom shall be Chairman of the Council and the other of whom shall be the Deputy Chairman;
 - (b) one person nominated by the Minister responsible for health matters;
 - (c) one person nominated by the Minister responsible for labour and industry matters;
 - (d) one person nominated by the Minister responsible for minerals and energy matters;
 - (e) one person nominated by the Minister responsible for primary industry matters;
 - (f) one person nominated by the Minister responsible for transport matters;
 - (g) one person nominated by the Vice-Chancellor of the University of Papua New Guinea;
 - (h) one person nominated by the Vice-Chancellor of the University of Technology;

(i) one person nominated by the Prime Minister to represent the interests of the private sector.

(2) The members of the Council shall—

(a) be citizens; and

(b) be appointed by the Minister by notice published in the National Gazette; and

(c) be appointed for a period of three years; and

(d) be eligible for re-appointment.

(3) The members of the Council shall be paid such fees and allowances as the Minister determines.

10. Alternate members of the Council.

(1) For each member of the Council appointed under Section 9 there shall be an alternate member who shall be nominated and appointed in the same manner and subject to the same conditions as the member for whom he is the alternate.

(2) In the event of the inability of a member to act as a member of the Council, the alternate member has and may exercise all his powers, functions, duties and responsibilities as a member of the Council and this Act applies accordingly.

(3) An alternate member may, unless the Council otherwise directs, attend all meetings of the Council, but shall not, except where he is attending in the absence of the member for whom he is the alternate, take part in a debate, vote on any matter or be counted towards a quorum.

11. Meetings of the Council.

(1) The Chairman or Deputy Chairman shall preside at all meetings of the Council.

(2) Subject to Subsection (4), the Council shall meet at such times and places as the Chairman from time to time determines or as the Minister directs.

(3) Subject to Subsection (4), the Chairman shall, if requested so to do by not less than four members, call a meeting of the Council as soon as practicable after receiving the request.

(4) The Chairman shall give to all members of the Council at least seven days' notice of a meeting of the Council.

(5) Five members of the Council form a quorum.

(6) Questions arising at a meeting of the Council shall be decided by a majority of the votes of the members present and voting.

(7) The person presiding at a meeting of the Council has a deliberative and, in the event of an equality of votes on a question, also a casting vote.

(8) The Council shall cause minutes of its meetings to be recorded and kept.

(9) Subject to this section, the procedures of the Council are as determined by it.

12. Functions of the Council.

(1) The function of the Council is to advise the Minister on any matter referred to it under this Part and to tender that advice in writing to the Minister.

(2) Advice tendered to the Minister under Subsection (1) shall include—

(a) the number and names of members voting in support of the advice; and

(b) the number and names of members voting against the advice; and

(c) a brief summary of the opinions of the members voting against the advice; and

(d) the report of any Working Party appointed under Section 15(1).

13. Minister to consider advice of the Council.

The Minister shall consider the advice of the Council on a matter referred to it and take that advice into account before taking any action under or pursuant to this Act in relation to that matter.

14. Referral of matter for consideration by the Council.

Where the Minister wishes the advice of the Council on any matter he shall by notice addressed to the Chairman—

(a) set out in detail the matter in respect of which he wishes the advice of the Council; and

(b) specify the date by which the Council shall deliver a report to him on the matter referred.

15. The Council may request Working Party.

(1) Where the Council considers that a matter referred to it under Section 14 is of such a nature that it requires specialist advice, the Chairman shall advise the Minister

accordingly and the Minister may appoint a Working Party consisting of one or more persons having the appropriate specialist knowledge to investigate and report to the Council on the matter in question.

(2) The members of a Working Party appointed under Subsection (1) may be paid such fees and allowances as the Minister determines.

PART IV.—LICENSING OF DISCHARGE OF ENVIRONMENTAL CONTAMINANTS.

16. Environmental contaminants not to be discharged, etc., except in accordance with licence.

(1) Subject to Subsection (2) and to Sections 17, 23(3) and 28 a person shall not discharge, emit or deposit an environmental contaminant into the environment except in accordance with a licence held by him.

(2) A person who, at the commencement of this Act is discharging, emitting or depositing an environmental contaminant into the environment may continue to do so subject to compliance with the following provisions of this Part and subject to the provisions of Part VI.

17. Minister may require person to apply for licence to discharge environmental contaminants, etc.

(1) Subject to Subsection (3), the Minister may serve on a person who, at the commencement of this Act, is discharging, emitting or depositing an environmental contaminant into the environment, a notice in the prescribed form requiring that person, within 90 days immediately after service of the notice—

(a) to cease, either generally or from premises specified in the notice, the discharge, emission or deposit of that environmental contaminant into the environment; or

(b) to complete and lodge with the Minister, an application for a licence to discharge, emit or deposit that environmental contaminant into the environment.

(2) Upon receipt of a written application by the person upon whom a notice under Subsection (1) has been served, the Minister may extend the period specified in that subsection and that person may continue to discharge, emit or deposit that environmental contaminant into the environment during that extended period.

(3) Where the Minister is of the opinion that a person is discharging, emitting or depositing into the environment an environmental contaminant which constitutes a clear, present or major danger to public health, safety or welfare, he may, by notice served on that person, order the immediate cessation of the discharge, emission or deposit.

18. Application for licence.

(1) A person may make application to the Minister for a licence to discharge, emit or deposit an environmental contaminant into the environment.

(2) An application under Subsection (1) or under Section 17(1)(b) shall be in the prescribed form.

(3) The Minister may require an applicant to lodge such plans and specifications and provide such description and information as the Minister considers necessary or relevant to enable him adequately to assess the application, and failure by an applicant to lodge such plans and specifications and provide such description and information as required may be used as grounds for refusal to grant a licence.

19. Duties of Minister on receipt of application for licence.

(1) Where the Minister has received an application under Section 17(1)(b) or Section 18(1), together with any additional material required by him under Section 18(3), he—

(a) shall in accordance with Section 68 give notice of the application; and

(b) shall, where he considers that the application is of significant national importance, refer a copy of the application together with any additional material required by him under Section 18(3) to the Council and seek recommendations thereon.

(2) A notice under Subsection (1)(a) shall state—

(a) the name of the applicant; and

(b) the proposed location or alternative location where the discharge, emission or deposit is to take place; and

(c) the environmental contaminants referred to in the application; and

(d) that any person, likely to be aggrieved by the granting of a licence to the applicant, may make representation to the Minister within 28 days.

20. Person likely to be aggrieved by grant of licence may make representation to the Minister.

Where, under Section 19(1)(a) the Minister has given notice of an application under Section 17(1)(b) or Section 18(1), a person who is likely to be aggrieved by the grant of a licence may make representation to the Minister.

21. Licence may be granted.

- (1) The Minister may, after considering—
- (a) the application together with all material lodged under Section 18; and
 - (b) any recommendations made under Section 19(1)(b); and
 - (c) any representations made under Section 20; and
 - (d) the impact or potential impact of the discharge, emission or deposit on the environment,

approve the application, or approve the application subject to conditions, including a limitation in term, or refuse to approve the application.

(2) Before reaching a decision as to whether a licence shall be granted under Subsection (1), the Minister may, where he considers it necessary or desirable, order an inquiry under Section 67.

(3) Where the Minister approves an application or approves an application subject to conditions, he shall grant to the applicant a licence in the prescribed form.

(4) The Director shall, as soon as practicable, notify the licensee of the prescribed fee and the fee will be payable by the licensee to the Director within 30 days of notification.

(5) A licence granted under this section may be subject to a condition that the licensee shall, at his own expense, conduct a monitoring programme designed to provide the Director with information concerning the characteristics, volume and effects of any discharge, emission or deposit to which the licence relates and the characteristics of the receiving environment into which it is discharged, emitted or deposited.

(6) A licence granted under this section may be subject to a condition which requires the licensee to identify in a conspicuous manner all licensed discharge points by reference to the licence number and the numbered discharge point.

(7) Separate licences shall be granted with respect to the discharge, emission or deposit of an environmental contaminant to the atmosphere, water and land, and in the case of radio-active environmental contaminants, to any of those elements.

(8) Subject to Subsection (7), the Minister may, at his discretion, grant a single licence in respect of more than one point of discharge, emission or deposit.

22. Other circumstances in which licence shall be granted.

(1) Where—

(a) a proposal to embark upon a project has been approved under Section 18(1)(c) or (d) of the *Environmental Planning Act 1978* and the relevant environmental plan contained details of a proposed discharge, emission or deposit of environmental contaminants; or

(b) any agreement between the State and another party entered into before the coming into operation of this Act contained or implied permission to discharge, emit or deposit environmental contaminants; or

(c) the National Executive Council, having considered the details of a proposed discharge, emission or deposit of environmental contaminants in any case, so directs,

the Minister shall grant a licence to the person responsible or to be responsible for the discharge, emission or deposit of the environmental contaminants and such licence shall be in accordance with the details contained in the environmental plan or of the agreement or the direction of the National Executive Council, as the case may be.

(2) Where the National Executive Council so directs, a licence granted under Subsection (1) shall apply for the period of investment recovery plus a discounted cash flow return of 10% on funds employed.

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(3) The Commissioner General of Internal Revenue shall, where requested by the Minister, determine the period referred to in Subsection (2) and his decision shall be final.

23. Notice to be given on refusal of licence.

(1) Where the Minister refuses to issue a licence, he shall serve on the applicant a notice in writing setting out the grounds for refusing the application.

(2) Where an application has been received as a result of the service of a notice under Section 17(1) and the Minister refuses to issue a licence, the notice given under Subsection (1) shall, in addition to stating the grounds for refusing the application, specify a period of time (being not more than 90 days immediately after the service of that notice) in which the discharge, emission or deposit of environmental contaminants into the environment by the applicant shall cease, and after the expiry of that period of time any such discharge, emission or deposit shall be unlicensed.

(3) A person upon whom a notice under Section 17(1) has been served who—

(a) has complied with the provisions of paragraph (b) of that subsection; or

(b) has been granted an extension under Section 17(2) and has not failed to comply with requirements under Section 18(3),

may continue to discharge, emit or deposit environmental contaminants into the environment until his application has been determined by the Minister under Section 21(1).

24. Transfer of licence.

(1) A licence may, with the approval in writing of the Minister and subject to Subsection (3), be transferred from the licensee to another person where such other person advises the Minister in writing that he assumes responsibility for compliance with the licence conditions and with the Act and, upon written approval by the Minister being given to the transferee, he shall be deemed to be the licensee to whom the licence was originally issued.

(2) An application to transfer a licence shall be in the prescribed form and shall be accompanied by—

(a) the licensee's copy of the licence; and

(b) a transfer fee, being one half of the last annual fee paid or payable for that licence; and

(c) written advice by the transferee that he assumes responsibility for compliance with the licence conditions.

(3) The Minister may grant the transfer of a licence subject to such conditions as he sees fit, and such conditions shall be deemed to be conditions of the original grant, in addition to any other conditions imposed on the licensee at the time the licence was issued.

25. Duration of licence.

(1) Subject to Sections 22(2) and 26, a licence shall remain in force until revoked, suspended or sooner surrendered by the licensee.

(2) The holder of a licence shall not extend or alter the amount, volume or constituency, or change the location, of any discharge, emission or deposit of an environmental contaminant without the approval in writing of the Minister and such amendment of the licence as may be necessary.

26. Revocation and suspension of licence.

The Minister may, by notice in writing served on the holder of a licence, revoke or suspend his licence for any breach of this Act or the conditions, limitations or restrictions to which the licence is subject.

27. Licence to be returned to Minister.

(1) The Minister may by notice in writing served on the holder of a licence, require that the holder return the licence—

(a) where it has been revoked or suspended under Section 26; or

(b) for revocation or variation of any condition, limitation or restriction to which the licence is subject; or

(c) for the inclusion of any new condition, limitation or restriction in the licence that in accordance with this Act may be imposed.

(2) The holder or, where a licence has been revoked, the former holder, of a licence who fails to return his licence within 30 days immediately after the service upon him of a notice under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K100.00.

Default penalty: A fine not exceeding K50.00.

(3) The failure of a licence holder or former holder, as the case may be, to return his copy of the licence as required by this section shall not preclude the Minister from exercising his powers under Subsection (1)(b) or (c).

28. Exemptions from compliance with Part IV.

(1) The Minister may on the recommendation of the Council, by notice published in the National Gazette, exempt—

(a) a person or class of persons; or

(b) any premises or class of premises; or

(c) any category, type or volume of environmental contaminant,

from all or any of the provisions of this Part either absolutely or subject to such conditions as are specified in the notice.

(2) A notice under Subsection (1) shall state the reasons for the exemption.

29. Licence register to be kept and copies provided.

(1) The Minister shall retain the original of each licence and each licence application, and shall make available to any member of the public on request a copy of any licence or licence application.

(2) The Minister may require a person seeking a copy of a licence or licence application to pay a fee based upon the reasonable cost of reproducing that licence or licence application.

(3) The Minister shall keep a register of all licence applications received by him and all licences issued.

30. Minister to be notified of discharge, etc., of environmental contaminant out of the normal course of events.

(1) A person who—

(a) not being the holder of a licence; or

(b) in contravention of a condition of a licence,

discharges, emits or deposits an environmental contaminant or causes or permits the discharge, emission or deposit of an environmental contaminant into the environment accidentally or out of the normal course of events that—

(c) pollutes; or

(d) causes or may cause injury or damage to property or flora or fauna; or

(e) causes or may cause harm or material discomfort to any person; or

(f) affects adversely or may affect adversely the health of any person; or

(g) impairs or may impair the health of any person; or

(h) renders or may render any property or flora or fauna unfit for use by man,

shall immediately notify the Minister.

(2) A person who fails to comply with the provisions of Subsection (1) is guilty of an offence.

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Penalty: A fine not exceeding K5,000.00.

(3) Compliance with Subsection (1) shall not relieve or excuse any person from compliance with any other provision of this Act or from any prosecution, penalty or fine which may be imposed by virtue of any failure to comply with any other provision of this Act.

31. Offences.

(1) A person who discharges, emits or deposits into the environment an environmental contaminant (except an environmental contaminant in respect of which there is an exemption under Section 28) without being—

(a) licensed; or

(b) exempted under this Part from holding such a licence,

is guilty of an offence.

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Penalty: For a first offence, subject to Subsection (3)—a fine not exceeding K5,000.00.

For a second and subsequent offence, where the person convicted of the offence is—

(a) a corporation—a fine not exceeding K50,000.00; and

(b) other than a corporation—a fine not exceeding K10,000.00.

Default Penalty: A fine not exceeding K5,000.00.

(2) A person who, being the holder of a licence contravenes or fails to comply with a condition, limitation or restriction to which the licence is subject is guilty of an offence.

Penalty: A fine not exceeding K5,000.

Default penalty: A fine not exceeding K2,000.

(3) Where an offence against Subsection (1) is committed in circumstances where a licence relating to the discharge, emission or deposit of an environmental contaminant has been revoked or during a period during which that licence was suspended, the person found guilty of the offence shall be subject to a fine not exceeding K5,000 for a first offence.

PART V.—IMPORTATION, SALE, MANUFACTURE OR DISTRIBUTION OF HAZARDOUS ENVIRONMENTAL CONTAMINANTS.

32. Register of hazardous environmental contaminants.

(1) The Minister shall establish and keep a Register of hazardous environmental contaminants which shall be divided into—

(a) Part I, which shall include all substances registered as hazardous environmental contaminants; and

(b) Part II, which shall include all substances under consideration by the Minister for registration as hazardous environmental contaminants.

(2) The Minister may, by notice published in the National Gazette, declare a substance to be a hazardous environmental contaminant, and register it in Part I of the Register as a hazardous environmental contaminant.

(3) The Minister may register in Part II of the Register a substance under consideration for registration in Part I of the Register.

(4) Subject to Subsection (5), no substance shall be registered in Part I or Part II of the Register until the expiration of 21 days following publication by the Minister in the National Gazette of his intention to include that substance in Part I or Part II of the Register, as the case may be.

(5) Where the Minister is of the opinion that a substance constitutes a clear and present danger to public health, safety, welfare, flora or fauna, he may immediately register that substance in Part I of the Register without giving prior notice.

(6) Any person may make representation to the Minister requesting the inclusion of a substance in the Register.

33. Hazardous environmental contaminant not to be imported, etc., without permit.

(1) Subject to Subsection (2), no person shall import, sell, manufacture or distribute a hazardous environmental contaminant without being the holder of a permit for such importation, sale, manufacture or distribution.

[x]Penalty: For a first offence—a fine not exceeding K5,000.00.
For a second and subsequent offence, where the person convicted is—

- (a) a corporation—a fine not exceeding K50,000.00; and
- (b) other than a corporation—a fine not exceeding K10,000.00.

Default penalty: A fine not exceeding K5,000.00.

(2) A person shall not be guilty of an offence against Subsection (1) if within a period of 30 days immediately after the registration of a hazardous environmental contaminant he is engaged in the business of importing, selling, manufacturing or distributing that hazardous environmental contaminant and, within that period, he has applied to the Minister for a permit to be so engaged, and his application has not been refused.

(3) Where a substance has been included in Part II of the Register, a person who imports or manufactures that substance shall advise the Director of the amounts imported or manufactured.

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Penalty: A fine not exceeding K5,000.00

34. Application for a permit.

(1) A person, who is engaged in or proposes to engage in the import, sale, manufacture or distribution of a hazardous environmental contaminant, may make application to the Minister for a permit to import, sell, manufacture or distribute a hazardous environmental contaminant.

(2) An application under Subsection (1) shall be in the prescribed form and shall be accompanied by—

(a) the prescribed fee; and

(b) the name of the hazardous environmental contaminant; and

(c) particulars relating to the present or proposed importation, sale, manufacture or distribution of the hazardous environmental contaminant.

(3) The Minister may require an applicant to provide such further information as the Minister considers necessary or relevant to enable him adequately to assess the application, and failure by an applicant to lodge such further information may be used as grounds for a refusal to grant a permit.

35. Duties of Minister on receipt of application for permit.

(1) Where the Minister has received an application under Section 34(1), together with any additional information required by him under Section 34(3), he may give notice of the application in such manner as he considers appropriate.

(2) A notice under Subsection (1) shall state—

(a) the name of the applicant; and

(b) the location where the import, sale, manufacture or distribution is to take place; and

(c) the hazardous environmental contaminant referred to in the application; and

(d) that any person likely to be aggrieved by the granting of a permit to the applicant, may make representation to the Minister within 28 days.

36. Person likely to be aggrieved by grant of permit may make representation to the Minister.

Where under Section 35(1) the Minister has given notice of an application under Section 34, any person likely to be aggrieved by the granting of a permit to the applicant may make representation to the Minister within 28 days.

37. Consideration of application and granting of permit.

(1) The Minister may, after considering—

(a) the application together with all information supplied under Section 34(3); and

(b) any representations made under Section 36,

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approve the application, or approve the application subject to conditions (which may include a limit on the total amount to be imported in any one year, or a prohibition of the import of the hazardous environmental contaminant from certain countries or states) or refuse to approve the application.

(2) Before reaching a decision under Subsection (1), the Minister may, where he considers it necessary or desirable, order an inquiry under Section 67.

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(3) Where the Minister approves an application, or approves an application subject to conditions (which may include a limit on the total amount to be imported in one year, or a prohibition of the import of the hazardous environmental contaminant from certain countries or states), he shall grant to the applicant a permit in the prescribed form.

(4) The Director shall, as soon as practicable, notify the person to whom the permit has been granted of the prescribed fee and the fee will be payable by the person to whom the licence has been granted to the Director within 30 days.

(5) A permit may be granted in respect of more than one hazardous environmental contaminant and may relate to the import, sale, manufacture and distribution of all or any of them.

[xiv](6) If so required by the Minister, the holder of an import permit issued under Section 37(1) shall submit to the Director details of—

(a) each import of a hazardous environmental contaminant within 14 days of such an import being made; and

(b) by 31 January of each year the annual total import of hazardous environmental contaminants for the preceding year.

38. Other circumstances in which permit shall be granted.

(1) Where—

(a) a proposal to embark upon a project has been approved under Section 18(1)(c) or (d) of the *Environmental Planning Act 1978* and the relevant environmental plan contained details of any import, sale, manufacture or distribution of a hazardous environmental contaminant; or

(b) any agreement between the State and another party entered into before the coming into operation of this Act contained or implied permission to import, sell manufacture or distribute a hazardous environmental contaminant; or

(c) the National Executive Council, having considered the details of a proposed importation, sale, manufacture or distribution of a hazardous environmental contaminant, so directs,

the Minister shall grant a permit to the person responsible or to be responsible for the importation, sale, manufacture or distribution of the hazardous environmental contaminant and such permit shall be in accordance with the details contained in the environmental plan, or the terms of the agreement, or the direction of the National Executive Council, as the case may be.

(2) Where the National Executive Council so directs, a permit granted under Subsection (1) shall apply for the period of investment recovery plus a discounted cash flow return of 10% on funds employed.

[xv]

(3) The Commissioner General of Internal Revenue shall, where requested by the Minister, determine the period referred to in Subsection (2) and his decision shall be final.

39. Notice to be given on refusal of permit.

Where the Minister refuses to grant a permit under Section 37, he shall serve on the applicant a notice in writing setting out the grounds for refusing the application.

40. Transfer of permit.

(1) A permit may, with the approval in writing of the Minister, and subject to Subsection (3), be transferred from the permit holder to another person where such other person advises the Minister in writing that he assumes responsibility for compliance with

the permit conditions and, upon written approval by the Minister being given to the transferee, he shall be deemed to be the permittee to whom the permit was originally granted.

(2) An application to transfer a permit shall be in writing and in the prescribed form, and shall be accompanied by—

(a) the permit holder's copy of the permit; and

(b) a transfer fee, being one half of the last annual fee paid or payable for that permit; and

(c) written advice by the transferee that he assumes responsibility for compliance with the permit conditions.

(3) The Minister may grant the transfer of a permit subject to such conditions as he thinks fit, and such conditions shall be deemed to be conditions of the original grant in addition to any other conditions imposed on the permit at the time the original permit was granted.

41. Duration of permit.

Subject to Sections 37 and 38, a permit shall remain in force until revoked, suspended or sooner surrendered by the permit holder.

42. Revocation and suspension of permit.

The Minister may, by notice in writing served on a permit holder, revoke or suspend his permit for any breach of this Act or the conditions, limitations or restrictions to which the permit is subject.

43. Permit to be returned to Minister.

(1) The Minister may by notice in writing served on the holder of a permit require that the holder return the permit—

(a) where it has been revoked or suspended under Section 42; or

(b) for revocation or variations of any condition, limitation or restriction to which the permit is subject; or

(c) for the inclusion of any new condition, limitation or restriction in the permit that in accordance with this Act may be imposed.

(2) The holder or, where a permit has been revoked, the former holder, of a permit who fails to return his permit within 30 days immediately after the service upon him of a notice under Subsection (1) is guilty of an offence.

[xvi]

Penalty: A fine not exceeding K1,000.00.

Default penalty: A fine not exceeding K500.00.

(3) The failure of the permit holder or former holder, as the case may be, to return his copy of the permit as required by this section shall not preclude the Minister from exercising his powers under Subsection (1)(b) or (c).

44. Permit register to be kept and copies provided.

(1) The Minister shall retain the original of each permit and each permit application, and shall make available to any member of the public on request a copy thereof.

(2) The Minister may require a person seeking a copy of a permit or permit application to pay a fee based upon the reasonable cost of reproducing that permit or permit application.

(3) The Minister shall keep a register of all permit applications received by him and all permits issued.

45. Packaging and advertizing of hazardous environmental contaminants.

(1) In relation to a hazardous environmental contaminant for sale or distribution—

(a) the method and manner of packaging; and

(b) the materials used for packaging; and

(c) the label attached to any package; and

(d) the manner of advertizing,

shall be as prescribed.

(2) A person shall not—

(a) sell or distribute a hazardous environmental contaminant unless it is in a package as prescribed; or

(b) advertize a hazardous environmental contaminant other than in the prescribed manner.

Penalty: A fine not exceeding K500.00.

(3) For the purposes of this section, "package" includes anything by means of which a hazardous environmental contaminant is packed for sale or distribution as a single item or any hazardous environmental contaminants are packed for sale as a single item.

46. Offences.

A person who, being the holder of a permit, contravenes or fails to comply with a condition, limitation or restriction to which the permit is subject is guilty of an offence.

[xvii]

Penalty: Where the person convicted of an offence is—

- (a) a corporation—a fine not exceeding K50,000.00;
- (b) other than a corporation—a fine not exceeding K10,000.00.

Default penalty: A fine not exceeding K5,000.00.

[xviii] **PART VA.—EXPORTATION OF HAZARDOUS ENVIRONMENTAL CONTAMINANTS.**

46A. Restriction on export of hazardous environmental contaminants generally.

(1) The Minister may, by notice in the National Gazette, restrict or prohibit, either generally or specifically with regards to type or destination, the export of hazardous environmental contaminants to other countries or states or to a territory of a country or state.

(2) A person who contravenes or fails to comply with Subsection (1) is guilty of an offence.

Penalty: Where the person convicted of an offence is—

- (a) a corporation—a fine not exceeding K50,000.00; and
- (b) other than a corporation—a fine not exceeding K10,000.00.

Default penalty: A fine not exceeding K5,000.00.

46B. Application for export permit.

(1) A person, who wishes to export a hazardous environmental contaminant restricted under Section 46A, may apply to the Minister for an export permit to export that hazardous environmental contaminant.

(2) An application under Subsection (1) shall—

(a) be lodged with the Director; and

(b) be in the prescribed form; and

(c) specify the name and amount of the hazardous environmental contaminant the subject of the application; and

(d) contain such other information as is prescribed; and

(e) be accompanied by the prescribed fee.

(3) The Minister may require the applicant to provide such additional information in relation to the application as the Minister considers necessary and failure to provide such information may lead to refusal by the Minister to issue the export permit requested.

46C. Duties of Minister on receipt of application for export permit.

(1) Where the Minister has received an application under Section 46B(1), together with any additional information required by him under Section 46B(2), he may give notice of the application in such manner as he considers appropriate.

(2) A notice under Subsection (1) shall state—

(a) the name of the applicant; and

(b) the proposed port of export; and

(c) the hazardous environmental contaminant referred to in the application; and

(d) that any person likely to be aggrieved by the granting of the export permit to the applicant, may make representation to the Minister within 28 days.

46D. Person aggrieved by application may make representations.

Where under Section 46C the Minister has given notice of an application under Section 46B, any person likely to be aggrieved by the granting of an export permit to the applicant may make written representation to the Minister within 28 days.

46E. Consideration of application and granting of an export permit.

(1) The Minister may, after considering—

(a) an application under Section 46B(1) together with all other information supplied under Section 46B(1) and (2); and

(b) any representation made under Section 46D,

approve or refuse the application, or approve the application subject to conditions that may prohibit the export to certain countries or states.

(2) Where the Minister approves an application, or approves the application subject to conditions, he may grant the applicant an export permit in the prescribed form.

(3) The Director shall, as soon as practicable, notify the person to whom the export permit has been granted of the prescribed fee and the fee shall be payable to the Director within 30 days by the person to whom the licence has been granted.

(4) An export permit may be granted in respect of more than one hazardous environmental contaminant.

(5) If so required by the Minister, an export permit holder shall submit details of each export of a hazardous environmental contaminant to the Director within 14 days of such an export being made.

46F. Notice to be given on refusal of export permit.

Where the Minister refuses to grant an export permit under Section 46E, he shall serve on the applicant a notice in writing setting out the grounds for refusing the application.

46G. Transfer of export permit.

(1) An export permit may, with the approval in writing of the Minister and subject to Subsection (3), be transferred from the export permit holder to another person where such other person advises the Minister in writing that he assumes the responsibility for compliance with the conditions of the export permit and, upon written approval by the Minister being given to the transferee, he shall be deemed to be the permittee to whom the permit was originally granted.

(2) An application for approval to transfer an export permit shall be in writing and the prescribed form, and shall be accompanied by—

(a) the export permit holder's copy of the export permit; and

(b) a transfer fee, being one half of the annual fee paid or payable for that export permit; and

(c) written advice by the transferee that he assumes responsibility for compliance with the export permit conditions.

(3) The Minister may grant the transfer of an export permit subject to such conditions as he thinks fit, and such conditions shall be deemed to be conditions of the original grant in addition to other conditions imposed on the export permit at the time the original export permit was granted.

46H. Duration of export permit.

Subject to Section 46D, a permit shall remain in force until revoked, suspended or sooner surrendered by the export permit holder.

46I. Revocation and suspension of an export permit.

The Minister may, by notice in writing served on an export permit holder, revoke or suspend the export permit for any breach of this Act or the conditions, limitations or restrictions to which the export permit is subject.

46J. Export permit to be returned to the Minister.

(1) The Minister may, by notice in writing served on the holder of an export permit, require that the holder returns the export permit—

(a) where it has been revoked or suspended under Section 46I; or

(b) for revocation or variation of any condition, limitation or restriction to which the export is subject; or

(c) for the inclusion of any new condition, limitation or restriction in the export permit that, in accordance with the Act, may be imposed.

(2) The holder or, where an export permit has been revoked, the former holder, of an export permit who fails to return his permit within 30 days immediately after the service upon him of a notice under Subsection (1), is guilty of an offence.

Penalty: A fine not exceeding K100.00.

Default penalty: A fine not exceeding K50.00.

46K. Export permit to be kept and copies provided.

(1) The Minister shall retain the original of each export permit and each export permit application, and shall make available to any member of the public on request a copy thereof.

(2) The Minister may require a person seeking a copy of an export permit or export permit application to pay a fee based upon the reasonable costs of reproducing that export permit or export permit application.

(3) The Minister shall keep a register of all export permit applications received by him and of all export permits issued.

46L. Offences.

A person, who, being the holder of an export permit, contravenes or fails to comply with a condition, limitation or restriction to which the export permit is subject, is guilty of an offence.

Penalty: Where the person convicted of an offence is—

- (a) a corporation—a fine not exceeding K50,000.00; and
- (b) other than a corporation—a fine not exceeding K10,000.00.

Default penalty: A fine not exceeding K5,000.00.

PART VI.—POLLUTION OFFENCES.

47. Pollution generally.

(1) Subject to Section 48, a person who pollutes or causes or permits to be polluted any waters, the atmosphere, or the land is guilty of an offence.

Penalty: A fine not exceeding K5,000.

Default penalty: A fine not exceeding K2,000.

(2) For the purposes of this Act, a person shall be deemed to have polluted water, the atmosphere or the land, if he, his agent or employee—

(a) causes a direct or indirect alteration to the physical, chemical, biological or thermal condition of that water, atmosphere or land, as the case may be, so as to affect adversely its beneficial use or cause a condition which is hazardous or potentially hazardous to public health, safety or welfare or to flora or fauna; or

(b) places in or on or discharges to that water, atmosphere or land, or in a place where it is likely to gain access to it, any matter whether solid, liquid, gaseous or radio-active that is prohibited under this Act, or which does not comply with a standard prescribed for that matter; or

(c) causes, directly or indirectly—

- (i) in the case of water—any part of that water to be noxious, poisonous, impure, radio-active, unclean or detrimental to persons, flora, fauna or property; or
- (ii) in the case of land—any part of the soil or land to be noxious, poisonous, radio-active or detrimental to persons flora, fauna or property, or
- (iii) in the case of the atmosphere—that atmosphere to be noxious, poisonous, impure, radio-active, unclean or detrimental to persons, flora, fauna or property or to contain odours, smoke, dust or particular matters that are obnoxious or unduly offensive to the senses of human beings.

48. Compliance with licences.

No person shall be guilty of an offence under Section 47 if the pollution giving rise to the alleged offence was caused by the discharge, emission or deposit of an environmental contaminant in accordance with a licence held by such person or one that is exempted under Section 28.

49. Litter.

- (1) A person who throws, drops, deposits or otherwise disposes of any litter in any public place, otherwise than by placing it in a place or receptacle provided for that purpose, is guilty of an offence.

[xix]

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding one month.

- (2) A person who throws, drops, deposits or otherwise disposes of any litter in or on any privately owned place, including any place owned by the State that is not a public place, without the express permission of the owner or occupier of that place, is guilty of an offence.

[xx]

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding one month.

- (3) An inspector, a member of the Police Force or a health inspector who observes or has reasonable cause to believe that a person has thrown, dropped, deposited or otherwise disposed of any litter whether in a public or other place, otherwise than by placing it in a place or receptacle provided for that purpose, may direct that person to retrieve the litter and deposit it in an appropriate receptacle or as otherwise directed by the inspector, member of the Police Force or health inspector.

(4) A person who fails to comply with a direction under Subsection (3) is guilty of an offence.

Penalty: A fine not exceeding K50.00 or imprisonment for a term not exceeding one month.

50. Breaking of glass.

(1) Without derogating the provisions of Section 49, a person who breaks any glass in a public place and does not immediately collect and remove the broken glass from that public place or place it in a receptacle provided for litter in the public place, is guilty of an offence.

[xxi]

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding one month.

(2) An inspector, a member of the Police Force or a health inspector who observes or has reasonable cause to believe that a person has broken any glass in a public place, may direct that person to collect and remove the broken glass from that public place or place it in a receptacle provided for litter in the public place or as otherwise directed by the inspector, member of the Police Force or health inspector.

(3) A person who fails to comply with an order under Subsection (2) is guilty of an offence.

[xxii]

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding one month.

51. Notice to remove litter.

(1) Where litter is deposited in any public or private place, other than in a place or receptacle provided for that purpose, and the Director considers that the circumstances are such that the litter is or is likely to become—

(a) detrimental to the health, safety or welfare of any person; or

(b) unduly offensive to the senses of any person; or

(c) a hazard to the environment,

the Director may, by written notice served on a person he considers has the means and equipment to do so direct that person to—

(d) remove or dispose of the litter; or

(e) take such action in relation to the litter as is specified in the notice.

(2) A person on whom a notice has been served under Subsection (1) who fails, without reasonable cause, to comply with the requirements of the notice, is guilty of an offence.

[xxiii]

Penalty: A fine not exceeding K2,000.00.

(3) It is reasonable cause for not complying with the requirements of a notice served under Subsection (1) if the person on whom it is served is not in any way connected with the depositing of the litter or the premises on which it is deposited.

PART VII.—NOISE.

52. Unreasonable noise.

(1) A person is guilty of an offence under this section if he emits, or causes or permits to be emitted any noise in excess of a standard or level prescribed with respect to that type of noise.

(2) A person who emits or causes or permits to be emitted any noise which, in the circumstances of its emission, is unreasonable is guilty of an offence.

[xxiv]

Penalty: Where the person convicted of an offence is—

(a) a corporation—a fine not exceeding K10,000.00; and

(b) other than a corporation—a fine not exceeding K5,000.00.

Default penalty: A fine not exceeding K200.00.

(3) In determining whether for the purposes of Subsection (2) the emission of noise is unreasonable in the circumstances, the court shall take into account—

(a) the time, place and circumstances of the emission; and

(b) the usefulness (if any) of the activity giving rise to the emission; and

(c) the practical possibility of the noise being mitigated to a reasonable level, frequency or duration; and

(d) the malice, negligence or carelessness (if any) of the person causing or permitting the emission; and

(e) any other factor which the court considers relevant in the circumstances of the case.

53. Noise abatement notice.

(1) Where in the opinion of the Minister, unreasonable noise is being emitted regularly from any industrial, trade or domestic premises, the Minister may serve upon the owner or occupier of those premises a noise abatement notice requiring the owner or occupier to take such action as is specified in the notice to mitigate the noise, and the notice may specify a period or periods of time within which such action is to be taken.

(2) A person upon whom a noise abatement notice has been served and who does not comply with that notice is guilty of an offence.

[xxv]

Penalty: Where the person convicted of an offence is—

(a) a corporation—a fine not exceeding K10,000.00; and

(b) other than a corporation—a fine not exceeding K5,000.00.

Default penalty: A fine not exceeding K2,000.00.

(3) A person upon whom a noise abatement notice has been served may, within 14 days immediately after service of the notice upon him, apply in writing to the Minister for the notice to be varied with respect to any particular.

(4) The taking of action for an offence against Section 52 shall not preclude the Minister from serving a noise abatement notice under this section in respect of noise the subject of that action.

PART VIII.—MISCELLANEOUS.

54. Certificates of analysis, etc.

(1) On concluding an analysis or analyses for the purposes of this Act the analyst shall prepare, sign and date a certificate of analysis, setting out the results of his analysis, and deliver it to the Director.

(2) An environmental officer who makes a technical assessment for the purposes of this Act, or who records monitoring data, or other technical information shall prepare,

sign and date a report or statement of his assessment or recording and deliver it to the Director.

(3) In any proceedings for an offence against this Act where the prosecution intends to rely on the contents of a certificate of analysis, or an environmental officer's report or statement, it shall serve on the person against whom the proceedings are to be brought with and in the same manner as the summons relevant to that action, a copy of the certificate, report or statement, as the case may be.

(4) Where in any proceedings for an offence against this Act a certificate of analysis or environmental officer's report or statement has been served in accordance with Subsection (3), that certificate, report or statement, as the case may be, shall be admissible in evidence, unless the defendant not later than five days immediately before the date set down for the hearing, serves notice in writing upon the informant or prosecutor that he requires the analyst or environmental officer to be called and to give evidence.

55. Certificate, etc., sufficient evidence.

A certificate, report or statement admitted in evidence under Section 54 is sufficient evidence of the matters contained therein.

56. Formal matters of proof.

(1) Where in any proceedings for an offence against this Act it is necessary to prove whether—

- (a) a person was the holder of a licence; or
- (b) a person was the holder of a permit; or
- (c) a licence or permit was subject to a specified condition, limitation or restriction; or
- (d) a person was exempt from the licensing provisions of this Act,

a certificate in writing purporting to be signed by the Minister reciting a fact specified in Paragraph (a), (b), (c) or (d), shall be admissible in and be sufficient evidence of that fact.

(2) In any proceedings for an offence against this Act, a statement in writing purporting to be signed by the Minister stating that a particular person is or was at a particular time or during a particular period—

- (a) an inspector; or
- (b) an analyst; or

(c) an environmental officer,

shall be admissible in and be sufficient evidence of that fact.

57. Information.

(1) The Minister may by notice in writing served upon the owner or occupier of any premises, require that owner or occupier to furnish to the Minister, in writing, within 14 days immediately after the service of that notice (or such longer period as is specified in the notice) such information relating to any manufacturing, industrial or trade process carried on upon those premises, or relating to any discharge, deposit or emission or storage of environmental contaminants or the emission of any noise from those premises, as is specified in the notice.

(2) A person who, without reasonable cause, fails to comply with a requirement of a notice under Subsection (1) is guilty of an offence.

[xxvi]

Penalty: A fine not exceeding K5,000.00.

Default penalty: A fine not exceeding K2,000.00.

(3) Any information provided pursuant to a requirement under this section shall not, if the person providing the information, at the time of providing the information, objects to supplying the information on the ground that it might tend to incriminate him, be admissible as evidence against that person in proceedings for an offence against this Act.

58. Institution of proceeding.

Proceedings for offences against this Act shall be taken in any court and may be taken by any person.

59. Owner or occupier of premises liable, etc.

(1) Where an offence against this Act occurs on or from any premises used in connection with an industry or trade, the owner or occupier of those premises shall be deemed to be guilty of the offence.

(2) Where a corporation is convicted of an offence against this Act and the court by which the conviction is imposed is satisfied that the offence was committed as a result of the negligence, omission or intention of any director, manager, secretary or agent of the corporation, or that it was or ought to have been known by such director, manager or agent that the offence would be committed, in addition to the conviction and any penalty imposed upon the corporation, the court may find such director, manager, secretary or

agent guilty of the same offence as, and liable to the same penalty as imposed on, the corporation.

60. Court may order abatement action.

(1) Where a person is convicted of an offence against this Act, the court by which he is convicted may, in addition to imposing a penalty for the offence, order that the person so convicted take such action within such time as the court specifies to prevent the continuation or recurrence of the offence.

(2) The court by which the order under Subsection (1) was made, may revoke or vary that order on an application by either party to the action.

(3) A person who fails to comply with an order made or varied under this section is guilty of an offence.

[xxvii]

Penalty: Where the person convicted of an offence is—

(a) a corporation—a fine not exceeding K10,000.00;
and

(b) other than a corporation—a fine not exceeding
K5,000.00.

Default penalty: A fine not exceeding K2,000.00.

61. Compensation.

(1) Where a person is convicted of an offence against this Act and as a consequence directly or indirectly of the commission of that offence any other person (including the State) has suffered damage or injury or has incurred expense, that other person may make application to the court for an award of damages or compensation in respect of that damage or injury or expense, and the court may make an order accordingly.

(2) An application to the court under Subsection (1) may be made at the conclusion of the prosecution for the offence, or to the same court at a later time.

(3) Nothing in this Act shall affect the right which a person may have at law to restrain, or obtain damages in respect of, pollution.

62. Abatement.

(1) Where the owner or occupier of premises from which environmental contaminants are being discharged, emitted or deposited, or from which a condition of pollution is

likely to arise cannot after reasonable enquiry by the Director be located, the Minister may cause such action to be taken to abate the discharge, emission or deposit of environmental contaminants, or the condition of pollution, as he thinks fit—

(a) in the case of an emergency (of which the Minister shall be sole judge)—
immediately; and

(b) in any other case—after advertizing his intention to do so (in such reasonable form and method as he considers appropriate).

(2) Any costs incurred as a result of action taken pursuant to Subsection (1) shall be a debt owed to the State jointly and severally by the owner and occupier of the premises.

63. Notice of intention to declare protected area.

(1) Where the Minister is of the opinion that an area or segment of the environment should be protected from the discharge, emission or deposit of environmental contaminants, he may by noticed published—

(a) in the National Gazette; and

(b) at the office of the Local-level Government in whose area the subject of the notice is situated; and

(c) by a radio broadcasting service which specifically serves the area the subject of the notice; and

(d) in such other places and in such other manner as he considers appropriate,

declare his intention to declare the area a protected area.

(2) A notice referred to in Subsection (1) shall—

(a) specify the area or segment of the environment in which the discharge, emission or deposit of environmental contaminants is to be prohibited or restricted; and

(b) specify the extent to which the discharge, emission or deposit of environmental contaminants is to be prohibited or restricted; and

(c) identify the beneficial uses of the area or segment of the environment in particular need of protection; and

(d) specify how the environmental quality is to be measured and defined; and

(e) state that any person likely to be aggrieved by the declaration of the area or segment of the environment as a protected area may make representation to the Minister within 60 days of the date of publication of the notice.

64. Person likely to be aggrieved by the declaration of a protected area may make representation to the Minister.

(1) Any person likely to be aggrieved by the declaration of an area or segment of the environment as a protected area may, within 60 days of the date of publication of a notice under Section 63, make representation to the Minister.

(2) On receipt of a representation under Subsection (1) the Minister may invite the person making the representation—

(a) to provide further information; or

(b) to enter into consultation with him.

65. Declaration of protected area.

(1) The Minister may after—

(a) the expiration of 60 days following the publication of a notice under Section 63; and

(b) consideration of any representation and consultation under Section 64,

declare an area or segment of the environment, the subject of the notice, to be a protected area.

(2) A declaration made under Subsection (1) may be published—

(a) in the National Gazette; and

(b) at the office of the Local-level Government in whose area the protected area is situated; and

(c) by a radio broadcasting service which specifically serves the area in which the protected area is situated; and

(d) in such other places and in such other manner as he considers appropriate.

(3) A declaration made under Subsection (1) shall—

(a) specify the area or segment of the environment declared to be a protected area; and

- (b) specify the extent to which the discharge, emission or deposit of environmental contaminants is to be prohibited or restricted; and
- (c) identify the beneficial uses of the protected area in particular need of protection; and
- (d) specify how the environmental quality is to be measured and defined.

66. Abatement practices to be adopted.

(1) Subject to Subsection (2), the owner or occupier of premises used in connection with an industry or trade from which noise or environmental contaminants are discharged, emitted or deposited shall adopt the best practicable means available to—

- (a) restrain the discharge, emission or deposit of environmental contaminants; and
- (b) render harmless or inoffensive any environmental contaminants discharged, emitted or deposited; and
- (c) mitigate the emission of noise from the premises.

(2) A person who—

- (a) discharges, emits or deposits environmental contaminants; or
- (b) emits or causes or allows to be emitted, noise,

into the environment, shall comply with—

- (c) the prescribed standards or practices in relation to that type of environmental contaminant or noise; and
- (d) the conditions of any licence held by him.

(3) A person who uses, operates, constructs, sells, installs or offers to sell or install any machinery, vehicle or ship required by this Act to be fitted or equipped with a device for preventing or limiting the discharge or emission of environmental contaminants or noise, without such machinery, vehicle or ship being so fitted or equipped, is guilty of an offence.

[xxviii]

Penalty: Where the person convicted of an offence is—

- (a) a corporation—a fine not exceeding K10,000.00;
- and

(b) other than a corporation—a fine not exceeding K5,000.00.

Default penalty: A fine not exceeding K2,000.00.

67. Inquiry.

(1) Where the Minister orders an inquiry under Section 21(2) or 37(2), he shall appoint a person to hold the inquiry.

(2) Subject to Subsection (3), an inquiry shall be held in public and evidence shall be taken in public on oath or affirmation.

(3) Where a person holding an inquiry is satisfied that it is desirable to do so by reason of the confidential nature of any evidence, he may—

(a) direct that all or part of the evidence be given in private; and

(b) give directions as to who may stay to hear the evidence; and

(c) give directions prohibiting or restricting the reporting and publication of the evidence or any part thereof.

(4) A person holding an inquiry—

(a) shall comply with the principles of natural justice; and

(b) is not bound by the technical rules of evidence or procedure; and

(c) shall investigate and inform himself on all matters relevant to the application and admit and consider such relevant information as is available; and

(d) may summon witnesses, by instrument under his hand; and

(e) may take evidence on oath or affirmation, and administer oaths and affirmations for the purpose; and

(f) may, by instrument under his hand, require a person to produce a document, book or paper in his possession or control; and

(g) shall, within 28 days after the conclusion of the inquiry or such further period as the Minister may allow, present a report to the Minister of his findings.

(5) Before reaching a decision on an application the subject of an inquiry the Minister shall consider the report of the inquiry presented to him under Subsection (4)(g) but shall not be bound to follow any recommendations therein.

(6) A person who, when summoned or required under this section to give evidence or to produce a document, book or paper in his possession or control, fails without reasonable excuse (proof of which is on him)—

(a) to attend before the inquiry at the time and place appointed in the summons or requirement; or

(b) to be sworn or make an affirmation; or

(c) to answer any question put to him by the person holding the inquiry; or

(d) to produce the document, book or paper,

is guilty of an offence.

[xxix]

Penalty: A fine not exceeding K5,000.00.

(7) A person who, without lawful excuse (proof of which is on him) directly or indirectly hinders or obstructs an inquiry or a person holding an inquiry in the exercise or performance of its or his jurisdiction, powers, functions, duties and responsibilities is guilty of an offence.

[xxx]

Penalty: A fine not exceeding K5,000.00.

(8) In the exercise of his functions and the performance of his duty, a person holding an inquiry has the same protections and immunities as a Judge.

68. Notice.

(1) Where the Minister has received an application for a licence under Section 17(1)(b) or 18, he shall cause a notification of the application in the prescribed form to be published—

(a) in the National Gazette; and

(b) at the office of the Local-level Government in whose area the discharge, emission or deposit is to take place; and

(c) by a radio broadcasting service which specifically serves the area in which the discharge, emission or deposit is to take place; and

(d) in such other places and in such other manner as he considers appropriate.

(2) Where the Minister has received an application for a permit under Section 34, he shall cause a notification of the application in the prescribed form to be published—

(a) in the National Gazette; and

(b) in such other places and in such other manner as he considers appropriate.

69. Service.

A notice which may be served or given under this Act may be served personally or by post, and in the case of a corporation may be sent to the registered office of the corporation or to its principal place of business.

70. Application for licence or permit to be in name of person real or corporate.

An application for—

(a) a licence under Section 17(1)(b) or 18; or

(b) a permit under Section 34,

[xxxi](c) or an export permit under Section 46D,

shall be in the name of a person real or corporate.

[xxxii]**70A. Further conditions etc., to apply to permit, export permit or licence.**

(1) The Minister may, at any time—

(a) apply to a permit, export permit or licence conditions not otherwise specifically provided for in this Act; and

(b) vary or revoke any condition of a permit, export permit or licence,

in order to give effect to any obligations which apply to an International Treaty which Papua New Guinea has ratified or to which Papua New Guinea has acceded and to which effect is given by Regulation.

(2) Where the Minister takes action under Subsection (1), he shall immediately notify the holder of the permit, export permit or licence, as the case may be, of the conditions applied or of any condition varied or revoked and the provisions of this Act relating to compliance with conditions of a permit, export permit or licence shall apply with respect to any such condition applied or varied under this section.

[xxxiii]**70B. Giving false or misleading information to obtain permit etc.**

A person who gives false or misleading information to obtain a licence, permit or export permit is guilty of an offence.

Penalty: Where the person convicted of an offence is—

- (a) a corporation—a fine not exceeding K50,000.00; and
- (b) other than a corporation—a fine not exceeding K10,000.00.

Default penalty: K5,000.00.

[xxxiv]**70C. Minister to act according to treaty etc.**

When exercising his powers under this Act, the Minister shall not act contrary to any International Treaty to which Papua New Guinea has acceded or ratified and to which effect is given through Regulations.

71. Appeal.

(1) Where any person is aggrieved by a decision of the Minister in respect of an application for a licence or permit under this Act, he may in writing request the Minister responsible for the activity to which the licence or permit relates to refer the application and the decision to the National Executive Council, and that Minister may, at his discretion, do so.

(2) Where an application is referred to the National Executive Council under Subsection (1), the National Executive Council may uphold or reject the decision of the Minister, and the Minister shall comply with the directions of the National Executive Council.

72. Regulations.

(1) The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for—

- (a) prescribing fees for the issue of licences and permits; and
- (b) regulating the registration of environmental contaminants and hazardous environmental contaminants and the removal from the Register of such contaminants; and
- (c) prescribing standards or criteria for determining when a matter or thing is poisonous, noxious, impure, detrimental to health, or within any other description referred to in this Act; and

- (d) prohibiting or regulating the discharge into the environment of any matter whether liquid, solid, gaseous, radio-active or any form of electromagnetic or thermal energy; and
- (e) prohibiting or regulating the use of any specified fuel; and
- (f) prohibiting or regulating the use of any specified aerosol; and
- (g) prescribing or regulating the importing, sale, manufacture or distribution of hazardous environmental contaminants; and
- (h) prescribing the labelling, packaging, transportation, storage, advertising or use of any hazardous environmental contaminant; and
- (i) prescribing standards or levels for the emission of various types of noise and the procedure by which they are to be tested or ascertained; and
- (j) regulating or prohibiting the burning of specified substances in the open; and
- (k) prescribing air or water quality standards; and
- (l) requiring payment of a deposit at the time of purchase of any material packaged or contained in any class of packaging or container and regulating the amounts, terms and conditions of deposits; and
- (m) prescribing the standards for matter that can safely be discharged to the water, atmosphere or land surface; and
- (n) prohibiting or prescribing the use of any packaging, equipment, facility, vehicle or ship capable of causing pollution or litter, or regulating the construction, or operation of any of them so as to prevent or minimize pollution or litter; and
- (o) prohibiting the use of any equipment, facility, instrument, device, vehicle or ship capable of emitting noise that does not meet a prescribed standard and regulating the construction, installation or operation of any of them so as to prevent or minimize the emission of noise; and
- (p) prescribing maximum permissible concentration, levels or amounts of environmental contaminants in any segment or element of the environment; and
- (q) prohibiting or regulating the amount or proportion of any segment of the environment that may be removed or otherwise taken for human consumption or use having regard to the amount, concentration or level of environmental contaminant contained in them; and
- (r) prescribing the design, function or operation of any machinery, equipment, facility or vehicle in order to regulate or control the movement or discharge of environmental contaminants.

- (s) requiring the giving of special warning or alerts relating to the movement or discharge of environmental contaminants; and
- (t) regulating the establishment of new sites and the management of old sites for the disposal of environmental contaminants; and
- (u) further defining litter and receptacles to contain litter for the purposes of this Act; and
- (v) prohibiting or regulating particular activities having regard to the danger of exposure to and contact with environmental contaminants; and
- (w) prohibiting or regulating the trade in or disposal of any environmental contaminants; and
- (x) prohibiting or regulating the employment or conditions of employment of any person in work that involves the handling by that person of, or exposure of that person to, any environmental contaminant; and
- (y) providing for the protection of—
 - (i) persons from injury or illness or the risks of injury or illness; and
 - (ii) flora and fauna from damage or the risks of damage,arising out of or in the course of the handling, use or disposal of environmental contaminants; and
- (z) prescribing the requirements in relation to—
 - (i) buildings and other premises where an environmental contaminant or substance likely to cause litter is manufactured, treated, stored, sold, handled or used; and
 - (ii) vehicles in which an environmental contaminant is conveyed; and
- (za) prohibiting the use of a particular environmental contaminant for a particular purpose or in specified cases or circumstances; and
- (zb) prescribing restrictions or conditions as to the purposes for which or the means by which an environmental contaminant may be used; and
- (zc) the granting of certificates of competency in relation to the handling or use of environmental contaminants, and prohibiting the handling or use of, or any work or operation in connection with, environmental contaminants or that may lead to exposure to environmental contaminants, except by or under the supervision of a person holding such a certificate; and

(zd) the form of notification to affected parties in respect of applications for licences under this Act; and

(ze) the suppression of dust or smoke; and

(zf) giving effect to any international convention to which the State is a party or agreement between the State and any country or countries relating to the control of environmental contaminants and the protection of the environment; and

[xxxv](zg) prescribing penalties for—

(i) offences against the regulations; or

(ii) offences against the provisions of this Act where no penalty is provided in the provision,

not exceeding—

(iii) where the person convicted of the offence is a corporation—K50,000.00; and

(iv) where the person convicted of an offence is other than a corporation—K10,000.00, and default penalties not exceeding K2,000.00.

[i]The definition of "Director" was repealed and replaced by the *Environmental Contaminants (Amendment) Act 1994* (No. 16 of 1994), s1(a).

[ii]The definition of "export" was inserted by the *Environmental Contaminants (Amendment) Act 1994* (No. 16 of 1994), s1(b).

[iii]The definition of "export permit" was inserted by the *Environmental Contaminants (Amendment) Act 1994* (No. 16 of 1994), s1(b).

[iv]Section 4 amended by the *Environmental Contaminants (Amendment) Act 1994* (No. 16 of 1994), s2.

[v] **Section 5 amended by the *Environmental Contaminants (Amendment) Act 1994 (No. 16 of 1994)*, s3.**

[vi] Section 8 (penalty provision) amended by the *Environmental Contaminants (Amendment) Act 1994 (No. 16 of 1994)*, s4.

[vii] Section 2 of the *Commissioner General of Internal Revenue (Consequential Amendments) Act 1993 (No. 1 of 1993)* provides that "Chief Collector of Taxes" shall be read as "Commissioner General".

[viii] Section 30(2) (penalty provision) amended by the *Environmental Contaminants (Amendment) Act 1994 (No. 16 of 1994)*, s5.

[ix] Section 31(1) (penalty and default penalty provision) amended by the *Environmental Contaminants (Amendment) Act 1994 (No. 16 of 1994)*, s6.

[x] Section 33(1) (penalty and default penalty provision) amended by the *Environmental Contaminants (Amendment) Act 1994 (No. 16 of 1994)*, s7.

[xi] Section 33(3) (penalty provision) amended by the *Environmental Contaminants (Amendment) Act 1994 (No. 16 of 1994)*, s7.

[xii] Section 37(1) amended by the *Environmental Contaminants (Amendment) Act 1994 (No. 16 of 1994)*, s8.

[xiii] Section 37(3) amended by the *Environmental Contaminants (Amendment) Act 1994 (No. 16 of 1994)*, s8.

[xiv] Section 37(6) added by the *Environmental Contaminants (Amendment) Act 1994 (No. 16 of 1994)*, s8.

[xv]Section 2 of the *Commissioner General of Internal Revenue (Consequential Amendments) Act 1993* (No. 1 of 1993) provides that "Chief Collector of Taxes" shall be read as "Commissioner General".

[xvi]Section 43(2) (penalty and default penalty provision) amended by the *Environmental Contaminants (Amendment) Act 1994* (No. 16 of 1994), s9.

[xvii]Section 43(2) (penalty and default penalty provision) repealed and replaced by the *Environmental Contaminants (Amendment) Act 1994* (No. 16 of 1994), s10.

[xviii]Part VA (Sections 46A-46L) inserted by the *Environmental Contaminants (Amendment) Act 1994* (No. 16 of 1994), s11.

[xix]Section 49(1) (penalty provision) repealed and replaced by the *Environmental Contaminants (Amendment) Act 1994* (No. 16 of 1994), s12.

[xx]Section 49(2) (penalty provision) repealed and replaced by the *Environmental Contaminants (Amendment) Act 1994* (No. 16 of 1994), s12.

[xxi]Section 50(1) (penalty provision) amended by the *Environmental Contaminants (Amendment) Act 1994* (No. 16 of 1994), s15.

[xxii]Section 50(3) (penalty provision) amended by the *Environmental Contaminants (Amendment) Act 1994* (No. 16 of 1994), s15.

[xxiii]Section 51(2) (penalty provision) amended by the *Environmental Contaminants (Amendment) Act 1994* (No. 16 of 1994), s16.

[xxiv]Section 52(1) (penalty provision) amended by the *Environmental Contaminants (Amendment) Act 1994* (No. 16 of 1994), s17.

[xxv]Section 53 (penalty and default penalty provision) amended by the *Environmental Contaminants (Amendment) Act 1994* (No. 16 of 1994), s18.

[xxvi]Section 57(2) (penalty and default penalty provision) amended by the *Environmental Contaminants (Amendment) Act 1994* (No. 16 of 1994), s19.

[xxvii]Section 60 (penalty and default penalty provision) amended by the *Environmental Contaminants (Amendment) Act 1994* (No. 16 of 1994), s20.

[xxviii]Section 66(3) (penalty and default penalty provision) amended by the *Environmental Contaminants (Amendment) Act 1994* (No. 16 of 1994), s21.

[xxix]Section 67(6) (penalty provision) amended by the *Environmental Contaminants (Amendment) Act 1994* (No. 16 of 1994), s22.

[xxx]Section 67(7) (penalty provision) amended by the *Environmental Contaminants (Amendment) Act 1994* (No. 16 of 1994), s22.

[xxxi]Section 70(c) added by the *Environmental Contaminants (Amendment) Act 1994* (No. 16 of 1994), s13.

[xxxii]**Section 70A inserted by the *Environmental Contaminants (Amendment) Act 1994* (No. 16 of 1994), s14.**

[xxxiii] **Section 70B** inserted by the *Environmental Contaminants (Amendment) Act 1994* (No. 16 of 1994), s14.

[xxxiv] **Section 70C** inserted by the *Environmental Contaminants (Amendment) Act 1994* (No. 16 of 1994), s14.

[xxxv] Section 72(zg) was repealed and replaced by the *Environmental Contaminants (Amendment) Act 1994* (No. 16 of 1994), s23.