



**ORGANISATION OF EASTERN CARIBBEAN STATES**  
**ENVIRONMENT & SUSTAINABLE DEVELOPMENT UNIT**

**OECS Model**  
**Environmental Framework Legislation**

**FINAL DRAFT**

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# **ENVIRONMENTAL MANAGEMENT ACT [YEAR]**

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[THE STATE]

**ENVIRONMENTAL MANAGEMENT ACT**

**Act No. – of [Year]**

AN ACT to provide for [the allocation of administrative responsibilities for environment management, the undertaking and coordination of environmental management and related activities, the incorporation of international treaty obligations with respect to the environment into national law and related matters].

BE IT ENACTED by [...] as follows:

PART I

PRELIMINARY

**Citation and Commencement**

1. (1) This Act may be cited as the Environmental Management Act [Year].

(2) This Act comes into force on the day fixed by [the Governor General] by Order published in the *Gazette*, [but the [Governor General] may fix different dates for the coming into force of different parts of this Act].

**Interpretation**

2. In this Act, unless the context otherwise requires:

“authorised officer” means an officer designated as such pursuant to section 9;

“Board” means the Board of Trustees of the Fund established by section 41;

“Cabinet” has the meaning assigned to it by [the Constitution/Interpretation Act];

“Council” means the National Environmental Council established by section 6;

“Declaration” means the St George’s Declaration of Principles for Environmental Sustainability 2001;

“Department” means the Department of the Environment referred to in section 5;

“Director” means the Director of the Department;

“environment” means the components of the earth, including:

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

“environmental audit” means a systematic evaluation of environmental information about an organisation, facility or site to verify whether and to what extent it conforms to specified audit criteria;

“civil society organisations” includes all community, non-governmental and other organisations not directly linked to government and not engaged in generating profits that accrue to individual persons or bodies corporate;

“Fund” means the Environmental Trust Fund established by section 40;

“hazardous substance” means any substance designated as a hazardous substance pursuant to section 25(1);

“Minister” means the Minister to whom responsibility for the environment is assigned;

“multilateral environmental agreement” means an agreement between three or more States governing the management of aspects of natural resources or the environment;

“Permanent Secretary” means the Permanent Secretary of the Ministry to which responsibility for the environment is assigned;

“pollutant” means any substance, thing or man-made phenomenon designated as a pollutant pursuant to section 11(2);

“pollution” includes the release or deposit of any pollutant or waste onto land or into the air or water, including the sea, so as to cause any direct or indirect alteration of the physical, thermal, chemical, biological or radioactive properties of any part of the environment or to cause harm to human health or affect the quality of the environment;

“renewable energy” means energy that is derived from a source that is not depleted by the extraction of energy or the process used for extraction of the energy;

“Tribunal” means an Administrative Dispute Resolution Tribunal appointed pursuant to section 10(4);

“waste” includes any solid, semi-solid, liquid or gaseous refuse, residue or scrap material or unwanted surplus matter produced on any premises and not intended to be put to any further use on those premises.

## **Purposes**

3. The purposes of this Act are to provide for:
- (a) the allocation and coordination of administrative responsibilities for environmental management within [the State];
  - (b) the prevention and mitigation of pollution of the environment, including the control of hazardous substances, the management of wastes and response to environmental accidents, for the purposes of protecting human health and maintaining the quality of the environment;
  - (c) the conservation of energy and the development of renewable energy resources;
  - (d) the integration of environmental management and monitoring;
  - (e) the implementation of obligations assumed by [the State] under multilateral environmental agreements by facilitating their incorporation into national law;
  - (f) the provision of stable, adequate, secure and sustainable funding to finance the management of the environment in [the State]; and
  - (g) the enforcement of the law relating to the foregoing.

## **PART II**

### **ADMINISTRATION**

## **Duties of the Minister**

4. It is the duty of the Minister under this Act to:
- (a) coordinate with the other Ministers collectively responsible for the government of [the State] to secure consistency and continuity in the implementation of this Act and any other legislation related to environmental management;
  - (b) protect and promote the interests of [the State] in the negotiation of environmental treaties and ensure that [the State] meets its international obligations with respect to the environment;



- (c) develop and promote national environmental policy so as to ensure the integration of environmental concerns into national decision-making at all levels;
- (d) oversee the execution of environmental policy and the administration of this Act by the Department to which responsibility for the administration of this Act is assigned by section 5; and
- (e) encourage and facilitate the participation of private persons, communities and non-governmental organisations in environmental management.

### **Functions, duties and powers of the Department**

5. (1) The [Department of Environment] of the Ministry responsible for environmental management must perform the functions and duties imposed on the Department by this Act and such other duties consistent with those functions as the Minister may from time to time direct.

(2) Without prejudice to the generality of subsection (1), the functions of the Department are to:

- (a) administer this Act within [the State];
- (b) advise the Minister with respect to the formulation of environmental policy and undertake programmes and projects to implement the environmental policy of the Government;
- (c) monitor the state of the environment and compile, analyse and disseminate environmental data and information, including but not limited to preparing such periodic or other reports that the Government is required to produce under any multilateral environmental agreement to which [the State] is a party; and
- (d) coordinate and facilitate the integration of the work of other Ministries, departments of Government, statutory authorities and non-governmental organisations to achieve the purposes of this Act.

(3) All pollution permits, statutory notices and other documents authorised to be issued by the Department under this Act must be signed by the Director or by an officer to whom this duty is delegated by the Director pursuant to section 8.

### **Constitution and functions of the Council**

6. (1) A [National Environmental Council] is established to advise the Minister and the Department on any matter on which the Minister or the Director may require advice.

(2) The Council established by subsection (1) consists of:

- (a) the Permanent Secretary as Chairperson;
- (b) the following public officers, or senior officers of their respective Departments nominated by them, as *ex officio* members:
  - (i) [The Director of the Department of Environment];
  - (ii) [The Director of the Forestry Department];
  - (iii) [The Director of the Fisheries Department];
  - (iv) [The Director of the Physical Planning Department];
  - (v) [The Director of the Public Health Department];
  - (vi) [The Director of the National Parks Authority];
  - (vii) [The Director of the Water Resources Management Authority];
  - (viii) [The Director of the Solid Wastes Management Authority];
  - (ix) [Etc.]
- (c) a representative of [the body known as] [the National Trust];
- (d) [two] other persons from civil society organizations or the private sector knowledgeable in matters relevant to environmental management, appointed by the Minister.

(3) The members of the Council appointed under subsection (2)(d) may be appointed for a period of three years but are eligible for reappointment.

(4) The appointment of any member of the Council under subsection 2(d) must be notified in the *Gazette*.

(5) The members of the Council hold office on such conditions with respect to remuneration and allowances as the Minister may determine.

(6) The validity of any proceedings of the Council is not affected by any vacancy in its membership or by any defect in the appointment of any of its members.

(7) The Council may co-opt any person to assist it in dealing with any matter, if it is satisfied that the person's qualifications and experience are likely to help the Council, and any person so co-opted is entitled to take part in the Council's deliberations regarding that matter, but may not vote and must take no part in any other proceedings of the Council.

(8) The Council may appoint from amongst its members committees of a general or special nature to carry out any of its functions which in the opinion of the Council would be better managed by means of such committees.

(9) The Permanent Secretary must appoint a member of the staff of the Ministry to serve as secretary to the Council.

(10) The Council must meet as often at such times and places and on such days as are necessary or expedient for transacting its business, provided always that it meets at least [once] in every calendar year, and may regulate its own procedure.

(11) All expenses incurred by the Council in the discharge of its functions, unless otherwise provided for, are to be defrayed from the Fund.

### **Inter-agency collaboration**

7. (1) Where, in order to discharge its functions, the Department requires the co-operation and assistance of another Ministry, department of Government or statutory authority, the Department may consult with that other Ministry, department of Government or statutory authority, which must render all possible assistance to the Department.

(2) Where the co-operation of the Department would facilitate the carrying out of any public business that is the responsibility of another Ministry, department of Government or statutory authority, the Ministry, department of Government or statutory authority responsible may consult the Department and, when consulted, the Department must render all possible assistance.

(3) The Cabinet may require the Minister to submit for its approval, with or without modifications, administrative schemes for:

- (a) the proper apportionment of environmental management functions between the Department and other Ministries, departments of Government or statutory authorities; and
- (b) the proper apportionment of the duties necessary for the performance of such functions between officers of the Department and officers of other Ministries, departments of Government or statutory authorities.

(4) An administrative scheme approved pursuant to subsection (3) may be altered or revoked by a revised scheme prepared by the Minister and submitted to and approved by Cabinet, with or without modifications.

(5) An approved administrative scheme must be published in the *Gazette* and takes effect on the date of publication.

### **Delegation of Powers**

8. (1) The Director may by instrument in writing and subject to such conditions, directions, reservations or restrictions as he or she thinks fit, delegate to any other public officer any power or duty conferred or imposed by this Act on the Director, other than this power of delegation.

(2) Anything done by a delegate pursuant to a power or duty delegated under this section has the same force and effect as if it had been done by the Director.

### **Authorised Officers**

9. (1) In order to administer and enforce this Act, the Director may, after consultation with the organisations which are affected or pursuant to an approved administrative scheme, designate personnel from other governmental organisations as authorised officers, who may be co-opted by the Department from time to time to time, as is necessary or expedient for the purposes of this Act.

(2) In addition to the Director and other officers of the Department and persons designated as authorised officers pursuant to subsection (1), it is declared that every police officer, [forest officer, fisheries officer, public health inspector, development control or building inspector, etc.] is *ex officio* an authorised officer for the purposes of enforcing this Act.

### **Administrative Dispute Resolution Tribunals**

10. (1) The [Governor General] must constitute a panel of not less than six or more than nine persons, not being persons currently employed by Government, who are qualified for appointment to Administrative Dispute Resolution Tribunals, by virtue of their training or experience in the fields of [law, environmental management, natural science, public health, engineering or public administration].

(2) A member of the panel constituted pursuant to subsection (1) serves for a term of three years and is eligible for reappointment, but may at any time resign from the panel by letter in writing addressed to the [Governor General], or may at any time be removed by the [Governor General] on the grounds of disability, misbehaviour or conflict of interests.

(3) The appointment of any person to the panel constituted pursuant to subsection (1) and the termination of any member of the panel, whether by death, resignation, removal, effluxion of time or otherwise, must be notified in the *Gazette*.

(4) The Minister must appoint an Administrative Dispute Resolution Tribunal of three persons, one of whom is designated as Chairperson, drawn from the panel constituted pursuant to subsection (1), from time to time as is necessary for the purpose of hearing any appeal to the Minister made under this Act.

(5) The Chairperson of a Tribunal must be an Attorney-at-law of not less than five years standing.

(6) A Tribunal remains in existence until it has discharged the function for which it was appointed.

(7) The members of a Tribunal may be paid such remuneration and allowances, if any, as the Minister determines.

(8) All expenses incurred by Tribunals in the discharge of their functions, unless otherwise provided for, are to be defrayed from the Fund.

### PART III

#### POLLUTION CONTROL

##### **Pollution Control Regulations**

**11.** (1) The Minister may by Regulations prescribe for matters required or permitted to be prescribed under this Part and make such other provision as is necessary or convenient for giving effect to this Part.

(2) Without prejudice to the generality of subsection (1), the Minister must by such Regulations designate as a pollutant any substance, thing or man-made phenomenon (including energy, noise, vibration, electro-magnetic or ionizing radiation, odour or temperature variation) which, in a specified quantity or concentration or condition, is likely to cause harm to human health or affect the quality of the environment.

(3) Regulations made under this section must be published in the *Gazette* and come into force on the date of publication.

##### **Registration of existing sources of pollution**

**12.** (1) On the coming into force of Regulations made under section 11, any person who carries on an existing activity or process that may cause or result in the production of a pollutant, on a continuous or intermittent basis, must give notice of that fact to the Department as soon thereafter as prescribed by the Regulations.

(2) After the coming into force of Regulations made under section 11, any person who proposes to commence any activity or process that may cause or result in the production of a pollutant, on a continuous or intermittent basis, must give notice of that fact to the Department forthwith.

(3) The Department must compile a register of sources of pollution, which must be open to inspection by the public at its office during ordinary business hours, on payment of the prescribed search fee, if any.

##### **Pollution standards**

**13.** (1) The Minister may by Regulations prescribe different standards for the deposit, release or escape of pollutants on or into land, water or the air or within different geographical areas.

(2) Notwithstanding any law to the contrary, after the commencement of this Act, no person may deposit or release or allow the escape of pollutants into the environment in a quantity or concentration or condition in excess of the prescribed pollution standard applicable to the receiving environment, without a pollution permit issued by the Department under and in accordance with this Act.

(3) For the avoidance of doubt, it is declared that the release of a hazardous substance into the environment is absolutely prohibited.

#### **Time to be allowed for compliance**

**14.** (1) If, on the coming into force of any Regulations made under this Part, any person is engaged in any existing activity or process that, on a continuous or intermittent basis, causes or results in the deposit or release of any pollutant into the environment in excess of the prescribed standard, the Department must allow that person a reasonable time to upgrade their plant or equipment to comply with the prescribed standard.

(2) In determining the amount of time that it is reasonable to allow for the upgrading of plant and equipment pursuant to subsection (1), the Department may extend favourable treatment to establishments which are small or medium sized enterprises, as defined by [the Regulations].

#### **Liability for historical pollution**

**15.** (1) If any part of the environment is found to have been polluted before the coming into force of this Act, the Department may, by notice served on that person, require any person who the Director finds to have been solely or partly responsible for causing or allowing that pollution to take place, to take such measures to clean up or rehabilitate the environment as are specified in the notice.

(2) When the Director finds that more than one person was responsible for such pollution, liability for undertaking the clean up or rehabilitation measures required pursuant to subsection (1) must be shared between those persons on a *pro rata* basis.

(3) If any person fails or refuses to comply with a requirement imposed by the Director pursuant to subsection (1), within the period of time allowed for compliance specified in the notice, the Department may undertake the necessary clean up or rehabilitation measures, either directly or by employing contractors, and may recover the costs of so doing, or a proportional contribution to those costs, from that person as a civil debt in a court of competent jurisdiction.

(4) A person who the Director has found to be solely or partly responsible for pollution under this section may appeal against that finding to the High Court no later than 28 clear days after the date of service of the notice given under subsection (1).

### **Pollution permits**

**16.** (1) The Department may by permit authorise the deposit or release of a pollutant on or into land, water or the air in quantities or concentrations in excess of the prescribed standard, subject to such conditions as it thinks fit, including the payment of such fees and charges as may be prescribed.

(2) In deciding whether to grant a permit pursuant to subsection (1), the Department may adopt and take into account ambient environmental standards and the cumulative impact on those standards of the grant of any pollution permit.

(3) The Department must compile and maintain a register of pollution permits that is open to inspection by the public at its office during ordinary business hours, on payment of the prescribed search fee, if any, and must provide members of the public with copies of entries in the register on payment of the cost of making copies.

### **Applications for pollution permits**

**17.** (1) Any person who releases or proposes to release any pollutant into the environment in an amount or concentration or conditions in excess of the allowable standard must apply to the Department for a pollution permit in the manner prescribed by the Regulations.

(2) The Department may at any time give notice to a person who has failed to apply voluntarily for a pollution permit, requiring that person to immediately cease polluting the environment and to make an application for a pollution permit within [10] days of the date of service of the notice.

(3) An application for a pollution permit must be submitted to the Department at least [90] days before the date on which the applicant proposes to commence releasing any pollutant into the environment.

(4) An application for a pollution permit must be made in the prescribed form and must be accompanied by:

- (a) in the case of a point-source of pollution, such plans and other particulars as are necessary to describe the premises or plant or equipment from which the pollutant is to be released into the environment, identifying the point of release or, in the case of mobile plant and equipment the place at which it will be in operation;
- (b) in the case of a non-point source of pollution, such plans and other particulars as are necessary to describe the situation and extent of the land or water on or over which the pollutant is to be released into the environment;

- (c) in any case where the pollutant to be released will result from a process or activity, a general description of that process or activity;
- (d) in any case where any other statutory consent is required for undertaking that process or activity, proof that the required consent has been obtained;
- (e) any proposals for the reduction, re-use, recycling or treatment of noise, wastes, effluents and emissions generated by that process or activity; and
- (f) particulars of the type, volume and rate of release of the pollutant into the environment.

(5) Every application submitted to the Department under this section must be accompanied by proof of payment of the application fee and proof of publication of the notice of intention to apply for a pollution permit published in accordance with section 18.

(6) If the information supplied by the applicant in support of the application is inadequate for the purposes of evaluating an application, the Department may in writing request the applicant to provide such other information as is reasonably required for evaluating the application and, in the event that such supplementary information is requested, the application will be treated for the purposes of section 19(1) as having been received on the date when the supplementary information is received by the Department.

(7) The applicant may identify any of the information provided to the Department in connection with an application as a trade secret or confidential business information and, if in the opinion of the Director the applicant has shown a reasonable basis for this claim, the Department must not release or disclose any such information to any other person.

(8) If the Director rejects a claim that information provided in connection with an application is a trade secret or confidential business information, the applicant may appeal in writing against that decision to the Minister within [21] days of the date of the decision, setting out the grounds upon which the appeal is made.

(9) When the Director rejects a claim that information provided in connection with an application is a trade secret or confidential business information, the Department must not release or disclose any such information to any other person until the time allowed for appealing to the Minister pursuant to subsection (8) has elapsed, without an appeal having been made, or the appeal has been determined.

### **Publicity for applications**

**18.** (1) At least [14] days prior to making an application for a pollution permit, the applicant must publish in a newspaper in general circulation in [the State] a notice of intention to make such an application:



(a) stating:

- (i) the name of the applicant;
- (ii) the location of the premises from which the pollutant is to be released;
- (iii) the general nature of the process to be conducted on the premises giving rise to the pollution;
- (iv) the pollutant to be released; and
- (v) the receiving environmental medium into which the pollutant is to be released; and

(b) advising members of the public of their right to make objections in writing against the application in accordance with subsection (2).

(2) When a notice has been published in accordance with subsection (1), any member of the public whose interests are likely to be affected by the grant of a pollution permit may, within [21] days of the publication of the notice, make an objection in writing to the Department against the application, stating:

- (a) his or her name and address;
- (b) his or her interest in the matter; and
- (c) the nature and grounds of his or her objection to the application.

### **Determination of applications**

**19.** (1) Within [60] days of receiving an application for a pollution permit, the Department must consider the application and either:

- (a) grant a pollution permit to the applicant, either unconditionally or subject to such conditions as it thinks fit; or
- (b) notify the applicant in writing that the application is refused, giving its reasons for refusal.

(2) In considering an application for a pollution permit [or the renewal or transfer of a pollution permit], the Department must have regard to:

- (a) the applicable environmental quality standards, if any;
- (b) the background concentration of pollutants in the environment;

- (c) the desirability of preserving the quality of the environment at the existing level or restoring the quality of the environment to a higher level;
- (d) the desirability of ensuring that the best practicable available treatment or control of substances released into the environment is employed;
- (e) the combined effects of the proposed release of a pollutant into the environment and other existing releases into the environment; and
- (f) the desirability of making provision for future releases of pollutants into the environment.

(3) In considering an application for a pollution permit the Department must also consider any objection made in accordance with section 18(2) and may consult such other governmental organisations and persons as it deems necessary for assessing the merits of the application and any objection to it.

(4) Where an application for a pollution permit is refused by the Department, or is granted by the Department subject to conditions, the applicant may, within [28] days from receipt of notice of the decision, appeal in writing against that decision to the Minister, setting out the grounds upon which the appeal is made.

### **Referral of applications to Cabinet**

**20.** (1) The Minister may give directions to the Department requiring that a particular application or all applications of any particular class or in respect of any particular area specified in the direction must be referred to the Cabinet for determination.

(2) Any directions given by the Minister to the Department pursuant to subsection (1) must be published in the *Gazette*.

(3) Where an application is referred to the Cabinet under this section, the Department must notify the applicant in writing that the application has been referred to the Cabinet, specifying the reason why has been referred to Cabinet.

(4) The provisions of section 19(1) apply, with any necessary modifications, in relation to the determination of an application by the Cabinet as they apply in relation to the determination of an application by the Department.

(5) On the determination of any application referred to the Cabinet under this section, the Minister must inform the Department and the applicant of the Cabinet's decision and the reasons for that decision, by notice in writing under the hand of the Permanent Secretary.

(6) The provisions of section 58 apply *mutatis mutandis* to an appeal to the High Court against the determination of an application by Cabinet under this section.

### **Term of pollution permits**

**21.** (1) Subject to the provisions of this Part with respect to the suspension, modification, revocation and surrender of pollution permits, a pollution permit continues in force for the period specified therein and for any period for which the permit is renewed under subsection (2).

(2) The Department may, on application of the permit holder made not later than [30] days before the expiry thereof, renew a pollution permit for a period not exceeding the period for which it was originally granted, but, when renewing a pollution permit, the Department may vary, delete or add to the conditions contained therein.

### **Transfer of pollution permits**

**22.** (1) A pollution permit granted under this Part is not transferable by the permit holder to any other person without the prior consent in writing of the Director.

(2) Where a pollution permit has been transferred in breach of the provisions of subsection (1), the Director may suspend the permit until the requisite consent is granted.

(3) If, having regard to all the circumstances, the Director decides not to grant consent for the transfer of a pollution permit, the Director may revoke the permit pursuant to section 23(3)(c).

### **Modification, suspension, revocation and surrender of pollution permits**

**23.** (1) If it appears to the Director that it is expedient, having regard to a change in circumstances, including but not limited to changes in environmental conditions or pollution control technology, that any pollution permit should be modified, the Director may by notice in writing served on the permit holder modify the permit to the extent that it thinks fit.

(2) A person who has incurred expenditure in carrying out work rendered abortive by the modification of a pollution permit under subsection (1), or has otherwise suffered loss or damage directly attributable to such modification, is entitled to adequate compensation from the [Crown/State] in respect of that expenditure, loss or damage.

(3) The Director may, by notice in writing served on the permit holder, suspend or revoke a pollution permit where the permit holder:

- (a) fails to pay any amount payable under this Act or the pollution permit;
- (b) fails to fulfil any of the conditions of the pollution permit; or
- (c) does not comply with the provisions of this Act or any regulations made hereunder or any other written law.

(4) Where the Director is satisfied that any such default may result in irremediable damage to or irreversible degradation of the environment, the Director may suspend the pollution permit forthwith, for a period not exceeding [60] days.

(5) The Director must not revoke a pollution permit on the ground of any such default unless the Director has:

- (a) by notice served on the permit holder, given not less than [30] days notice of its intention to cancel the pollution permit on that ground;
- (b) in the notice, specified a reasonable date before which the permit holder may submit in writing any representation which the permit holder wishes the Director to consider; and
- (c) taken into account -
  - (i) any action taken by the permit holder to remedy such default or, where the default cannot be remedied, any action taken by the permit holder to prevent the recurrence of similar defaults; and
  - (ii) any representation submitted to the Director by the permit holder pursuant to paragraph (b).

(6) Where the Director decides to modify, suspend or revoke a pollution permit, the permit holder may, within [28] days from service of the notice of modification, suspension or revocation, as the case may be, appeal in writing against that decision to the Minister, setting out the grounds upon which the appeal is made.

(7) At any time when a pollution permit is in force, the permit holder may, by giving to the Director one month's prior notice in writing, surrender it, and upon surrender of the permit by the permit holder the Director must cancel it by instrument in writing.

(8) On the revocation or surrender of a pollution permit, the rights of the permit holder cease, but the cancellation of the pollution permit does not affect any liability incurred by the permit holder before the revocation or surrender and any legal proceedings that might have been commenced or continued against the permit holder may be commenced or continued, notwithstanding the revocation or surrender of the pollution permit, as if it had not been cancelled.

## **Pollution charges**

**24.** (1) The holder of a pollution permit is liable for the payment of pollution charges with respect to the release of any pollutant into the environment.

(2) In the case of each pollution permit, the following pollution charges are payable, in the amount prescribed by regulations:

- (a) a pollution permit fee for every year during which the permit is in force, based on the costs to the Department of supervising permits granted to different categories of permit holders, paid annually in advance [15] days prior to the start of the year to which it relates; and
- (b) a pollution levy, calculated on the basis of the amount of each pollutant released into the environment measured as specified by the Department, paid [quarterly] in arrears within [15] days after the end of the [quarter] to which the payment relates.

(3) All revenues from pollution charges are payable into the Fund.

(4) If the Director is satisfied that, while a pollution permit is in force, the permit holder has expended money on scientific research or on new plant or equipment designed or intended to reduce the release of pollutants into the environment, the Director may allow the permit holder to offset part or all of the costs of such expenditure against the amount of the pollution levy payable.

(5) When the Director rejects a claim for an offset allowance made pursuant to subsection (4), reasons must be given in writing for the decision, and the permit holder may appeal within [28] days of the date of the decision to the Minister in writing, setting out the grounds of appeal.

## **Hazardous substances**

**25.** (1) The Minister may by Regulations:

- (a) designate specific substances as hazardous substances; and
- (b) prescribe procedures for the safe storage, handling, use and disposal of such substances.

(2) Upon the coming into force of Regulations made under this section, any person who is engaged in carrying on an existing activity or process, or who proposes to commence and carry on an activity or process that involves the storage, handling, use or disposal of any hazardous substance must apply to the Department for a permit to do so.

(3) Any permit granted by the Department pursuant to subsection (2) may be granted subject to such terms and conditions as the Director thinks fit.

(4) The Department must compile and maintain a register of hazardous substance permits that is open to inspection by the public at its office during ordinary business hours,

on payment of the prescribed search fee, if any, and must provide members of the public with copies of entries in the register, on payment of the cost of making copies.

### **Performance standards**

**26.** (1) The Minister may by Regulations prescribe performance standards with respect to the generation and release into the environment of pollutants from mobile or immobile machines and equipment, including but not limited to automobiles, construction plant and equipment and home and garden appliances.

(2) In this section, the expression “home and garden appliances” includes but is not limited to electricity generators, refrigeration equipment, water-pumps, air-conditioning units, security alarms, brush-cutters and lawn-mowers.

(3) In Regulations made under this section a reasonable period of time must be allowed between the introduction of the standards and their enforcement to accommodate the upgrading or depreciation and replacement of existing machines and equipment.

(4) Upon the coming into force of Regulations made under this section, the importation into [the State] of any machine or equipment that does not comply with the prescribed performance standards is prohibited.

### **Waste Management**

**27.** (1) The Minister may by Regulation establish appropriate standards and procedures for the handling of wastes (including the collection, transportation, temporary storage and transfer of wastes), the re-use and re-cycling of wastes, the treatment of wastes and the disposal of wastes into the environment, including separate provisions with respect to any wastes designated in the Regulations as hazardous wastes.

(2) Regulations made under subsection (1) may provide for:

(a) the grant by the Department of:

- (i) permits authorising any person to carry on activities relating to the handling of wastes, subject to such terms and conditions as the Director thinks fit;
- (ii) licences authorising the operation of any facility for the recycling or treatment of wastes or the disposal of wastes into the environment, including landfill or incineration operations, subject to such terms and conditions as the Director thinks fit;

- (b) the clean-up of existing waste disposal sites, the monitoring of waste disposal operations and the aftercare of closed landfill sites; and
- (c) the regulation or prohibition of:
  - (i) the import or export of wastes;
  - (ii) the disposal into the environment of any wastes suitable for reuse or recycling;
  - (iii) any specific method of waste disposal; or
  - (iv) the development of contaminated land.

(3) The Minister may by order provide for the operation of compulsory deposit-refund schemes to promote the reuse or recycling of wastes.

### **Transboundary movement of wastes and hazardous substances**

**28.** (1) Subject to the [Customs Act], no person must import into or land and unload in [the State], or load for export or export from [the State], any waste or hazardous substance, or any product or substance derived from any such waste or hazardous substance, without approval granted by the Department in accordance with this section.

(2) An application for such approval shall be submitted to the Department in such form, giving such particulars and supported by such evidence as the Director determines, accompanied by the prescribed fee.

(3) The Department may refuse to grant such approval where, in the Director's opinion, this is reasonably required for the purpose of preventing any risk of pollution of the environment or harm to human health arising from any waste or hazardous substance being imported or exported.

(4) The Department may grant any such approval, subject to such terms and conditions as the Director thinks fit, in relation to individual consignments or a series of consignments to the same person, but not in relation to consignments or classes of consignments generally.

### **Spills and accidental releases**

**29.** (1) The Director may require any person who owns or controls any premises, vehicle or vessel on which any pollutant or hazardous substance is stored, used or transported, to prepare a contingency plan to deal with any spill or accidental release of that pollutant or hazardous substance.

(2) Any contingency plan prepared pursuant to subsection (1) must set out the counter-measures to be adopted in the event of a spill or accidental release of the pollutant or

hazardous substance and the steps to be taken to clean-up the environment afterwards and must be submitted to the Director for approval, after consultation with [the Director of the National Emergency Management Agency and] such persons who he or she thinks fit, with or without amendments.

(3) When any spill or accidental release of a pollutant or hazardous substance occurs, the person who owns or controls the premises, vehicle or vessel on which the incident takes place must immediately notify the Department [and the National Emergency Management Agency] of the incident, implement the approved contingency plan, if any, and take and take such other measures as are necessary or expedient to minimize any resulting threat to human health or the environment.

(4) If, after investigating the incident, it appears to the Director that such action is necessary, the Department may undertake such emergency response measures as it thinks necessary or expedient to protect human health and the environment, either directly or by coordinating the activities of the competent governmental and non-governmental organisations or by employing contractors, and may recover the costs of so doing from the person who owns or controls the premises, vehicle or vessel concerned, as a civil debt in the court of competent jurisdiction.

## PART IV

### ENVIRONMENTAL MANAGEMENT & MONITORING

#### **National Environmental Management Strategy**

**30.** (1) In furtherance of its duty under section 5(2)(d), the Department must prepare and submit to the Minister, not later than [six months] after the commencement of this Act or such other time as the Minister may by Order direct, a National Environmental Management Strategy.

(2) A National Environmental Management Strategy prepared in accordance with subsection (1) must include as a minimum a description of the environment in [the State], an analysis of environmental issues of national significance and the environmental management strategies prescribed at the national level to address these issues.

(3) At any time after the adoption of a National Environmental Management Strategy pursuant to subsection (1), the Minister may by Order direct that the Department must revise the National Environmental Management Strategy.

#### **Strategic Environmental Impact Assessment**

**31.** (1) Where any Ministry, department of Government or statutory authority proposes to adopt or alter any policy, plan or programme, and it appears to the Director that the proposed policy, plan or programme or alteration thereto may significantly affect the environment, the Director may require the Ministry, department of Government or statutory authority which



proposes to adopt or alter the policy, plan or programme to carry out a strategic environmental impact assessment of the said policy, plan or programme or alteration thereto.

(2) For the avoidance of doubt, it is declared that the provisions of this section do not apply to the carrying out of any development project for which planning permission is required under the [Town and Country Planning Act/Physical Planning and Development Act], to which the environmental impact assessment provisions of that Act apply.

### **Environmental Management Systems**

**32.** (1) The Department must render any assistance required by the [Bureau of Standards] with respect to the development and implementation of national standards for environmental management.

(2) The Department must promote the adoption and implementation of the environmental management standards promulgated by the International Standards Organisation and, in particular, must lend assistance to the [Bureau of Standards] with regard to certification and auditing procedures.

(3) In consultation with other Ministries, departments of Government and statutory authorities, the Department must develop a programme to ensure that all Ministries, departments of Government and statutory authorities and Government-owned or controlled corporations attain ISO 14001 certification within [10] years after the coming into force of this Act.

### **Environmental Monitoring**

**33.** (1) For the purpose of enforcing any of the provisions of this Act or any Regulations made under this Act, the Department may require any person to carry out at their own expense such environmental monitoring activities as are specified by the Department and to submit such environmental monitoring reports as may be required by the Department from time to time.

(2) The Department must coordinate the activities of all Ministries, departments of Government and statutory authorities in relation to:

- (a) the continuous or periodic collection, collation and analysis of data concerning the state of the terrestrial and marine environment, including but not limited to air and water quality; and
- (b) the continuous or periodic sampling and analysis of effluents, emissions and discharges into the environment.

(3) The Department must, not later than [three] months after the end of each calendar year, submit an annual report on its environmental monitoring activities to the Minister and

every such report must be laid in [Parliament] and made available for sale to the public, in electronic or printed form, at a reasonable price.

## **Environmental Auditing**

**34.** The Minister may by Regulations establish or adopt appropriate standards and procedures for the carrying out of environmental audits and set out the circumstances in or under which environmental audits must be carried out on any premises, the qualifications of persons by whom such audits may be carried out, and the measures that the Department may take with respect to the findings of such audits.

## **PART V**

### **ENERGY**

## **Conservation of energy**

**35.** (1) In collaboration with other Ministries, government departments, statutory authorities, civil society organisations and the private sector, as appropriate, the Department must promote the use of energy in ways that take into account human health, the environment in general and the atmosphere in particular, through less polluting and more efficient means of production, transmission, distribution and use of energy.

(2) Without limiting the generality of subsection (1), the Department must:

- (a) evaluate and, as appropriate, promote cost-effective policies and programmes to improve energy efficiency and energy conservation;
- (b) promote the research, development and use of improved energy efficient technologies and conservation practices, giving special attention to the rehabilitation and modernization of power systems;
- (c) promote the development of scientific, planning and management capacities to develop, produce and use increasingly efficient and less polluting forms of energy;
- (d) promote appropriate energy efficiency and emission standards aimed at the development and use of technologies that minimize adverse impacts on the environment;
- (e) promote education and awareness raising programmes concerning energy efficiency and environmentally sound energy systems; and
- (f) promote labelling programmes for products to provide consumers with information on opportunities for energy efficiency.

## **Alternative energy**

- 36.** (1) In collaboration with other Ministries, government departments, statutory authorities, civil society organisations and the private sector, as appropriate, the Department must evaluate and promote the use of new and renewable sources of energy and energy efficient technologies and systems through the application of economic instruments and the rationalisation and simplification of regulatory regimes.
- (2) Without limiting the generality of subsection (1), the Department must:
- (a) review current energy supply mixes to determine how the contribution of environmentally sound energy systems as a whole, particularly new and renewable energy systems, could be increased in an economically efficient manner;
  - (b) cooperate in identifying and developing environmentally sound and cost effective energy sources to promote the availability of increased energy supplies;
  - (c) promote the research, development and use of technologies and practices for environmentally sound energy systems, including new and renewable energy systems; and
  - (d) coordinate energy plans sub-regionally and regionally and study the feasibility of efficient distribution of environmentally sound energy from new and renewable energy sources.

## **PART VI**

### **MULTILATERAL ENVIRONMENTAL AGREEMENTS**

#### **Negotiation of and accession to agreements**

- 37.** In the performance of his or her statutory duty under section 4(b), the Minister must endeavour, as far as practicable, to ensure that [the State]:
- (a) becomes and remains a party to multilateral environmental agreements relating to the subject-matter of this Act;
  - (b) collaborates with other member states of the Organisation of Eastern Caribbean States and the Caribbean Community to develop and strengthen sub-regional and regional negotiating mechanisms for multilateral environmental agreements;
  - (c) cooperates with other member states of the Organisation of Eastern Caribbean States and the Caribbean Community as far as practicable in formulating common positions in the negotiation and implementation of multilateral environmental agreements;

- (d) establishes appropriate mechanisms to facilitate the exchange of information relating to the negotiation, implementation and compliance with multilateral environmental agreements;
- (e) fully integrates the principles contained in the Declaration into the negotiation and implementation of multilateral environmental agreements; and
- (f) adopts and implements measures beyond the provisions of multilateral environmental agreements, where this is necessary for the purpose of meeting the needs of the Declaration, while maintaining compliance with other treaties to which [the State] is a party.

### **Incorporation of international obligations into national law**

**38.** (1) The multilateral environmental agreements specified in the [Schedule] have the force of law in [the State].

(2) The Minister may make Regulations subject to affirmative resolution of Parliament for the purpose of meeting [the State's] national obligations under any of the multilateral environmental agreements specified in the [Schedule].

(3) Without limiting the generality of subsection (2), Regulations made under this section may prescribe specific offences under this Act and provide that any person who commits such an offence is liable:

- (a) on summary conviction to a fine of not more than [...] dollars and imprisonment for [.....months]; or
- (b) on conviction on indictment to a fine of not more than [...] dollars and imprisonment for [...] years.

(4) The Minister may from time to time amend the [Schedule] by way of Notice laid before [Parliament].and published in the *Gazette*.

### **Implementation of agreements**

**39.** (1) Unless provision to the contrary is made by Regulations made under section 38(2), the Department functions as the national agency for the implementation of the multilateral environmental agreements specified in the [Schedule].

(2) The Director must designate persons to issue certificates or permits, to prepare reports and to carry out any other duties or exercise any other powers required for the implementation of [the State's] obligations under the multilateral environmental agreements specified in the [Schedule].

## PART VII

### ENVIRONMENTAL TRUST FUND

#### **Establishment and purposes of the Fund**

**40.** (1) There is established a fund called the Environmental Trust fund which is vested in the Board.

(2) The purpose of the Fund is to provide stable, adequate, secure and sustainable funding to finance the management of the environment in [the State].

#### **Board of Trustees of the Fund**

**41.** (1) The Governor General must appoint a Board of Trustees for the Fund, consisting of seven members, as follows:

- (a) a Chairperson, appointed by the Governor General acting in his or her own deliberate judgement from amongst outstanding persons with qualifications and experience in financial management, having an interest in the environment;
- (b) two persons representative of environmental non-governmental organisations incorporated in [the State], appointed by the Governor General after consultation with such persons or bodies as he or she thinks fit;
- (c) two other persons, appointed by the Governor General after consultation with the Governor of the Eastern Caribbean Central Bank, who are representative of:
  - (i) regional or international environmental non-governmental organisations which are active in [the State]; or
  - (ii) regional or international donor or lending organisations which provide resources to the Fund;
- (d) two representatives of the Government, nominated by the Minister responsible for finance.

(2) The Chairperson and other members of the Board hold office for such period, not exceeding three years in the first instance, under such terms and conditions of service as the Governor General may fix in the instrument of appointment, but are eligible for reappointment.

(3) A member of the Board may at any time resign from office by giving notice in writing to the Governor General, but a member who is absent without leave for three consecutive meetings of the Board is deemed to have resigned from office.

(4) A member of the Board may be removed from office at any time if he or she is declared bankrupt or for disability, neglect of duty or misconduct, proved to the satisfaction of the Governor General.

(5) The appointment of any member of the Board and the termination of office of any member, whether by death, resignation, removal, lapse of time or otherwise, must be published in the *Gazette* and at least one newspaper in general circulation in [the State].

### **Status, functions and powers of the Board**

**42.** (1) The Board is a body corporate, with perpetual succession and a common seal, and is capable of acquiring, holding and disposing of real and personal property, and of suing and being sued, and of doing and suffering all things that bodies corporate may lawfully do and suffer.

(2) The functions of the Board are to -

- (a) collect all revenue payable into the Fund or ensure that such revenue is collected promptly and efficiently and paid over into the Fund;
- (b) allocate monies amongst beneficiaries of the Fund for purposes which are eligible for funding in accordance with the provisions of the [xx] Schedule;
- (c) ensure that monies disbursed to beneficiaries of the Fund are utilised properly and efficiently for the purposes for which they have been allocated;
- (d) generally manage the Fund in accordance with the provisions of this Act and any other laws in force; and
- (e) perform any other function consistent with its functions under this Act that the Governor General may direct.

### **Meetings of the Board**

**43.** (1) The Board must meet at least once in each quarter of the calendar year, at such times and in such places as the Board considers necessary or expedient for the efficient performance of its functions.

(2) The Chairperson may at any time call a special meeting of the Board and must call such a meeting within seven days of the receipt of a request for a special meeting addressed to the Chairperson and signed by any three members of the Board.

(3) A quorum for an ordinary or special meeting of the Board consists of any four members, but if a member is disqualified from taking part in the deliberations and decision of the Board in respect of any matter pursuant to subsection (6), the attendance of that member

must be disregarded for the purposes of constituting a quorum for deliberation on and deciding that matter.

(4) If for any reason the Chairperson is unable to preside at a meeting of the Board, the members present may elect another member to preside over that meeting.

(5) Decisions of the Board must be adopted by a majority of the votes of the members present, but in the case of an equality of votes on any matter, the person presiding at the meeting has a second or casting vote in respect of that matter.

(6) A member of the Board must at the commencement of a meeting inform the Chairperson of any matter on the agenda for the meeting in which he or she has, directly or indirectly, personally or by his or her spouse or domestic partner, parent, child, brother or sister, business associate, company or organisation, any pecuniary or business interest, and that member must vacate the meeting room upon the relevant matter coming up for discussion and decision, and the fact that the member who has such an interest has left the room must be noted in the minutes of the meeting.

(7) The validity of any proceedings of the Board is not affected by any vacancy in its membership or by any defect in the appointment of any of its members.

(8) The Board may co-opt any person to assist it in dealing with any matter, if it is satisfied that the person has qualifications and experience that are likely to help the Board, and any person so co-opted is entitled to take part in the proceedings of the Board regarding that matter, but may not vote and must take no part in any other proceedings of the Board.

(9) Minutes in proper form of every meeting of the Board must be kept by the Corporate Secretary, confirmed by the members at the next subsequent meeting of the Board and signed by the Chairperson and Corporate Secretary once confirmed.

(10) Subject to subsection (11), a decision of the Board is valid even though a meeting of the Board was not convened, if -

- (a) proper notice of the proposed decision was given to all the members of the Board; and
- (b) the decision is assented to by letter, telegram, facsimile, electronic mail transmission or similar means, by a majority of the members of the Board.

(11) If any member has assented to a decision of the Board made under subsection (10) by telegram, facsimile, electronic mail transmission or similar means, the member's assent must be subsequently authenticated by his or her signature, as soon as may be practicable.

(12) Subject to the foregoing, the Board may regulate its own procedure.

## **Staff of the Board**

**44.** (1) The Board may employ at such remuneration and on such other terms and conditions as it thinks fit, including the payment of pensions, gratuities or other like benefits by reference to their service, such officers and employees as the Board considers necessary for the purposes of carrying out its functions.

(2) The Board must employ a suitably qualified person to perform the duties of Corporate Secretary to the Board.

## **Resources of the Fund**

**45.** The resources of the Fund consist of:

- (a) such amounts as may be appropriated annually or for special purposes by Parliament for the use and operations of the Fund;
- (b) such sums as may be collected pursuant to this Act or any other written law which provides for the imposition and collection of a tax, charge or fee payable into the Fund;
- (c) such amounts as may be provided to the Fund by foreign states, or regional or international organisations or lending agencies, to further the objects and purposes of this Act;
- (d) such monies earned or accruing from any investment made pursuant to section 47; and
- (e) any other sums or amounts to which the Fund may make a lawful claim.

## **Use of Fund monies**

**46.** (1) Subject to subsection (2), the Trustees are authorised to utilise any monies standing to the credit of the Fund to defray:

- (a) all the expenditure incurred by the Council and by any Tribunal in carrying out its functions;
- (b) all the expenditure incurred by the Board with respect to grants to beneficiaries for the purposes set out in the [xx] Schedule;
- (c) all the expenses incurred by the Board in carrying out its functions under this Act, including the remuneration of members and staff of the Board; and
- (d) all other liabilities properly incurred by the Board.



(2) Contributions to the Fund may be designated for specific purposes or made subject to specific conditions, in which case such contributions must be preserved and utilised solely for the designated purpose.

### **Investment of Fund Monies**

**47.** All monies comprised in the Fund not required immediately to defray the expenses and liabilities provided for by section 46 may be invested by the Board from time to time in securities approved generally by the Minister of Finance.

### **Exemption from taxes**

**48.** The Fund and the Board are exempt from the payment of any stamp duty, customs duty, value added tax, motor vehicle tax, fee, charge assessment, levy, impost or other tax whatsoever, on any income, expenditure or asset of the Fund or the Board.

### **Rules for operating the Fund**

**49.** For the purpose of regulating and controlling the operation of the Fund, the Board may make Rules with respect to:

- (a) the bank into which revenues of the Fund are to be paid and the designation of any such bank account;
- (b) the method to be adopted in making payments out of the Fund; and
- (c) generally as to matters necessary for the proper keeping and control of the Fund.

### **Accounts and audit**

**50.** (1) The Board must keep proper accounts and records with respect to the Fund, in accordance with generally accepted accounting practices, of all monies received and expended and record the matters in respect of which such sums were received and expended.

(2) The accounts of the Fund must be audited annually by independent auditors appointed by the Board, with the approval of the Governor General.

(3) The members and staff of the Board must grant to any auditor appointed to audit the accounts of the Fund access to all books, documents, cash and securities of the Fund and must give to the auditor on request all such information as may be within their knowledge in relation to the operations of the Fund.

(4) An auditor appointed under this section has the power to summon and examine all persons whom the auditor thinks fit to examine for the purposes of obtaining information in connection with the examination and audit of the accounts of the Fund and respecting all

other matters and things whatever necessary for the due performance of the functions vested in the auditor.

(5) Any person summoned pursuant to subsection (4) who, without reasonable excuse, does not obey the summons is liable on summary conviction to a fine of [.....] dollars, or, in default of payment, to imprisonment for one month.

### **Annual reports**

**51.** (1) The financial year of the Fund is [.....].

(2) Not later than three months after the end of each financial year, the Board must submit to the Minister a report containing:

- (a) a written statement on the activities of the Board throughout the preceding financial year; and
- (b) the auditor's report on the accounts of the Fund audited in accordance with section 50.

(3) The Minister must cause a copy of every such annual report of the Board to be laid in [Parliament].

## **PART VIII**

### **ENVIRONMENTAL INFORMATION**

#### **National Environmental Information System**

**52.** (1) The Department must carry out such surveys and collect, collate and analyse such data and information as is necessary or expedient for environmental management purposes and establish and maintain a National Environmental Information System.

(2) The information in the National Environmental Information System may be kept in documentary form or in an electronic data and retrieval system, or partly in documentary form and partly in an electronic data and retrieval system, as the Director thinks fit.

#### **Registers**

**53.** (1) The Department must maintain such registers as may be necessary or convenient for recording particulars of:

- (a) any application made under this Act;
- (b) any permit issued under this Act;

(c) any enforcement proceedings taken under this Act; and

(d) any other matter that may be prescribed by Regulations made under this Act.

(2) The Minister may by regulations prescribe the particulars to be recorded in a register required to be kept under this section and the form in which the register must be kept.

(3) Every entry in a register must be made within [7] days of the date on which the decision, notice or event to which it relates was made, filed, issued or done.

### **Access to information**

**54.** (1) The Department must make any information in the National Environmental Information System available to any person who wants access to that information, on payment of a reasonable charge for such information having regard to the costs of its collection, collation, analysis, storage and retrieval.

(2) Any person is entitled, during ordinary business hours, to have access to the information recorded on a register maintained by the Department free of charge and to take copies of such information on payment of the cost of making copies.

### **State of the Environment Report**

**55.** (1) No later than [3] months after the end of every calendar year, the Director must submit to the Minister a report including:

- (a) an assessment of the state of the environment, with particular reference to any significant events or changes occurring during the year under review;
- (b) a description of the activities of the Department during the year under review, including an assessment of the effectiveness of co-ordination between the Department and other Ministries, departments of Government and statutory authorities to which environmental management functions and duties have been allocated pursuant to section 7(3); and
- (c) a list of any other reports prepared under this Act by the Department or any other entity during the year under review, including but not limited to reports prepared in accordance with section 39(2).

(2) The Minister must cause a copy of every such annual report of the Department to be laid in [Parliament] and made available for sale to the public at a reasonable price.

## PART IX

### IMPLEMENTATION & ENFORCEMENT

#### **Administrative appeals**

**56.** (1) Every appeal to the Minister under this Act must be referred by the Minister to a Tribunal for determination in accordance with the provisions of section 57.

(2) Within [7] days of the date of receipt of written notice of an appeal, the Minister must appoint a Tribunal to resolve the dispute, in accordance with the provisions of section 10(4).

#### **Resolution of administrative disputes**

**57.** (1) Within [7] days of the date of their appointment, the Tribunal must set a date for a preliminary meeting with the parties to the dispute to give procedural directions to facilitate resolution of the dispute, taking into account the convenience of the parties.

(2) In every case, the order for directions given by the Tribunal must specify the dates by or before which written submissions and other documents relating to the dispute must be filed with the Tribunal and served by each party on the other and the date on which the parties must appear before the Tribunal for a hearing of the matter.

(3) If a visit to the site that is the subject of the dispute is requested by either party, the order for directions must also specify a date, before the date set for hearing of the matter, on which the site visit will take place.

(4) On the day and at the place specified by the Tribunal in the order of directions for the hearing, the Tribunal must hear the administrative dispute, if both parties are present.

(5) If either of the parties does not appear at the first hearing, the Tribunal must postpone the hearing and send out a written notice setting a new date for the hearing, upon which the matter will proceed, whether or not both parties are present.

(6) Unless both parties consent to the hearing being open to the public, every hearing of an administrative dispute by the Tribunal is closed to the public.

(7) Each of the parties is entitled to be represented by an Attorney-at-Law at the preliminary meeting and the hearing, but either party who intends to do so must give notice to the other party, failing which the other party is entitled to ask for an adjournment to enable him or her to obtain legal representation also.

(8) The Tribunal has control of the procedure to be adopted at the hearing, but must adhere to the principles of fair hearing and due process.

(9) In the event that the outcome of the matter depends upon the interpretation of the law, the Chairperson of the Tribunal can, at any stage of the proceedings, state the question of law that has arisen or, on completion of the proceedings, state the whole or any part of the decision of the Tribunal, in the form of a special case for the opinion of the High Court.

(10) The Tribunal, having considered all the evidence and having heard the parties, must prepare and deliver its decision on the administrative dispute in writing, but is not required to deliver that decision at the close of the hearing and may reserve its decision until it has had time to further consider the matter.

(11) A Tribunal appointed to hear and determine an administrative dispute under this Act must deliver its decision no later than [3] months after the date of its appointment.

(12) Nothing in this section must be construed as precluding any person, in a proper case, from [making a complaint to the Ombudsman or] seeking judicial review or redress for an infringement of their fundamental rights and freedoms under the Constitution in a court of competent jurisdiction.

### **Appeal to the Court**

**58.** (1) An appeal against a decision of a Tribunal under section 57 lies to the High Court only on a point of law and with the leave of a judge of that court.

(2) On hearing an appeal from a decision of a Tribunal in any matter, the High Court may confirm, vary or amend the decision of the Tribunal or set aside the decision of the Tribunal and make such order as the court thinks fit.

### **Powers of entry, search and seizure**

**59.** (1) An authorised officer may at any reasonable time enter any premises or into any vehicle or on to any vessel for the purposes of carrying out any provision or requirement of this Act or any Regulations made under this Act.

(2) A person authorised under subsection (1) to enter any premises must, if so required by the owner or occupier of the premises, produce evidence of his or her authority before entering, and is not entitled to admission as of right to any premises which is occupied, unless twenty-four hours notice of intended entry is given to the occupier.

(3) If the Director has reason to believe that a contravention of the provisions of the Act or any Regulations made under this Act has occurred or is about to occur, and the circumstances are such that giving notice of the intended entry would defeat the purpose for which entry is sought, any authorised officer may enter any premises under a warrant issued by a Justice of the Peace.

(4) In the course of any entry under this section, the authorised officer may carry out any inspection or survey, seize any equipment or article being used in the commission of an

offence, review and copy any documents or other records, take photographs or other audio or visual recordings, and take samples of air, water, soil or other material found on or in the premises, vehicle or vessel.

(5) Any person who obstructs an authorised officer acting in the exercise of his or her power under this section is liable on summary conviction a fine of [.....] dollars and [.....] months imprisonment.

### **Sampling and testing**

**60.** (1) When a sample is taken pursuant to section 59(4), the person taking the sample must:

- (a) notify the person in charge of the premises, vehicle or vessel from which the sample was obtained of his or her intention to submit the sample for analysis or examination;
- (b) divide the quantity into three parts, causing each part to be marked and sealed in such manner as the nature of the sample permits;
- (c) deliver one of the parts to the person in charge of the premises, vehicle or vessel from which the sample was obtained;
- (d) retain one of the parts for future comparison or verification; and
- (e) submit the third part for analysis or examination as soon as may be practicable.

(2) Every sample taken in accordance with subsection (1) must be submitted to a designated scientific laboratory for analysis or examination in accordance with accepted forensic procedures.

### **Scientific Evidence**

**61.** (1) The Minister must by Order appoint at least one scientific laboratory in [the State] as a designated scientific laboratory for the purposes of this Act.

(2) A certificate signed by the person in charge of a designated scientific laboratory appointed under subsection (1), stating that a substance has been analysed or examined and stating the results of the analysis or examination, is admissible in any proceeding under this Act as sufficient evidence of the matters in the certificate and of the correctness of the results of the analysis or examination.

(3) A certificate must not be admitted into evidence under subsection (2) in a proceeding for an offence under this Act unless the defendant has been given a copy of the certificate together with reasonable notice of the intention to produce the certificate as evidence in the proceedings.

(4) In any proceedings for an offence against this Act, the defendant cannot adduce evidence in rebuttal of a certificate issued by a designated scientific laboratory in relation to any matter of which the certificate is evidence unless, within [14] days after a copy of the certificate is given to the defendant in accordance with subsection (3), or such further time as the court may allow, the defendant gives to the prosecutor notice in writing of the intention to adduce such rebuttal evidence.

## **Service of documents**

**62.** (1) Subject to the provisions of this section, any notice or other document required or authorised to be served under this Act, or under any regulation, order, direction or other instrument in writing made under this Act, may be served either:

- (a) in the case of a natural person:
  - (i) by delivering it directly to the person on whom it is to be served; or
  - (ii) in a case where an address for service has been furnished by the person on whom it is to be served, by delivering it or sending it by registered mail to that person at that address; or
  - (iii) by such means of substituted service as are recognised or authorised by the Rules of [the Eastern Caribbean Supreme] Court; and
- (b) in the case of a body corporate, by serving it in accordance with the process for effecting service on a company incorporated under the [Companies Act].

(2) Where the Notice or other document is required or authorised to be served on any person as having an interest in any land, and the name of that person cannot be ascertained after reasonable enquiry, or as an owner or occupier of the premises, the Notice or other document is deemed to be duly served if, being addressed to “the owner” or “the occupier” of the specified premises, it is:

- (a) delivered or sent to the premises by registered mail and is not returned to the sender; or
- (b) affixed conspicuously to some building or fixed object on those premises.

(3) Where a notice or other document to be served under this Act must be served on more than one person, the fact that it was not duly served on any of those persons does not invalidate any action or other proceedings against any other of those persons.

## **Offences**

**63.** (1) No person must contravene any provision of this Act or of any regulations or orders, or the terms and conditions of any permit or other documentary authorisation granted or agreement made, under this Act.

(2) Unless a different or other penalty or punishment is specifically prescribed, a person who contravenes subsection (1) is guilty of an offence against this Act and is liable on summary conviction to:

- (a) a fine of [...] dollars and imprisonment for [...] months imprisonment for a first offence; or
- (b) to a fine of [...] dollars or imprisonment for [...] months for a second or further offence; and
- (c) in the case of a continuing offence, to a further penalty of [...] dollars for each day during which the offence continues.

(3) In addition to any penalty which the court may impose pursuant to subsection (2), the court may also order a person convicted of an offence under this Act to:

- (a) remedy any environmental condition or damage to the environment arising out of the offence and specify a date by or before which such remedial activities must be completed; and
- (b) pay compensation to the [Crown/State] for any economic benefit gained or any amount of money saved by them as a result of contravention of this Act.

(4) For the avoidance of doubt it is declared that all fines and compensation payable to the [Crown/State] with respect to the commission of offences under this Act are payable into the Consolidated Fund.

## **Acceptance of compensation for offences**

**64.** (1) When any person is reasonably suspected of having committed an offence against this Act, the Director or any authorised officer to whom the Director has delegated this power in writing may accept from that person, on behalf of the Department, a sum of money by way of compensation therefor, in substitution for any proceedings.

(2) Compensation may be accepted pursuant to subsection (1) only where the person suspected of the offence has expressed, in the prescribed form, his or her willingness to settle the matter out of court and the sum of money payable does not exceed the maximum fine for the offence.



(3) On payment of the sum of money set as compensation the suspected person, if in custody, must be discharged and no further proceedings may be taken against that person in respect of the suspected offence.

### **Prosecution of offences**

**65.** (1) The Director or any other authorised officer may summon before the courts and prosecute any person reasonably suspected of the commission of any offence against this Act, whether punishable on summary conviction or indictment.

(2) For the avoidance of doubt, it is declared that the power conferred on the Director and authorised officers by subsection (1) is in addition to and not in substitution for any power conferred by law on the [Director of Public Prosecution].

(3) In the conduct of any proceedings pursuant to subsection (1), the Director or authorised officer may be assisted or represented by an Attorney-at-Law.

### **Private party actions**

**66.** (1) Any person who is aggrieved by a violation of this Act may, with the leave of the court, institute proceedings in a court of competent jurisdiction against any other person who he or she reasonably suspects is responsible for that violation.

(2) The court may grant leave to institute proceedings pursuant to subsection (1) to any person or group of persons who has a specific interest in the claimed violation of the Act or any other person or group of persons who can satisfy the court that the proceedings are justifiable in the public interest.

(3) In any proceedings brought under this section, the burden of proof is on the person who institutes the proceedings.

(4) In the event that the court awards costs to the person against whom the proceedings are brought, the person who instituted the proceedings is liable for payment of the costs awarded.

(5) The [Director of Public Prosecutions] may intervene in any proceedings instituted by any person under this section, as of right.

### **Liability of company officers**

**67.** (1) When an act or omission that is offence under this Act or any Regulations made under this Act has been committed by a company incorporated under the [Companies Act], any individual who was at the material time a director or officer of that company may be found personally liable for that offence, in addition to or in substitution for any liability to

which the company is subject, if that act or omission was done with his or her knowledge, consent or acquiescence, or if he or she did not exercise reasonable diligence to prevent the commission of that offence.

(2) In any proceedings against a director or officer of a company pursuant to subsection (1), the onus of proving that the offence was committed without his or her knowledge, consent or acquiescence or despite the exercise of reasonable diligence on his or her part is on the accused.

### **Reservation of civil remedies**

**68.** Nothing in this Act takes away or interferes with the right of the [Crown/State] or any other person to sue for and recover, at common law or otherwise, compensation for or in respect of damage or injury caused by an offence under this Act.

### **Penalties under the Act not substituted for others**

**69.** Nothing in this Act must be construed to prevent anyone being prosecuted under any other law for an act or omission that constitutes an offence under this Act or Regulations made under this Act, or from being liable under that other law to a higher punishment or penalty than is provided by this Act, provided that no one must be punished twice for the same offence.

## **PART X**

### **MISCELLANEOUS**

#### **Public participation**

**70.** (1) In the performance of its functions under this Act, the Department must adopt procedures by which it achieves broad public participation in decision-making, including but not limited to procedures for:

- (a) consulting with interested persons, groups and organisations with about matters with the potential to affect the communities in which they live and work; and
- (b) enabling civil society organisations and members of the public in general to make objections and representations with respect to matters in which the public has a significant interest.

(2) In the performance of its functions and the exercise of its powers, the Department must at all times act in an objective, transparent and non-discriminatory manner.

#### **Regulations**

**71.** (1) The Minister may make regulations, subject to negative resolution, for giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations for:

- (a) the form of any application, notice or other document required to be made, issued or served under this Act;
- (b) the payment of fees or any other charges payable under this Act;
- (c) the payment of any compensation payable under this Act and the manner of applying for such compensation;
- (d) the amendment of the Schedules to this Act; and
- (e) prescribing any thing required by this Act to be prescribed.

(3) Any regulations made under this Act may prescribe specific offences and provide that any person who commits such an offence is liable:

- (a) on summary conviction to a fine of not more than [...] and, if the offence is a continuing offence, to a further fine of [...] for each day during which the offence continues, and to imprisonment for [...] months; or
- (b) on conviction on indictment to a fine of not more than [...] and, if the offence is a continuing offence, to a further fine of [...] for each day during which the offence continues, and to imprisonment for [...] months.

(4) Any Regulations made under this Act must be published in the *Gazette* and come into force on the date of publication.

## **Fees and charges**

**72.** Any fees payable with respect to any application made or permit or other documentary authorisation granted or other charges payable pursuant to this Act or the Regulations are to be paid into the Fund.

## **Acts done in good faith**

**73.** No person authorised by or under this Act to carry out any function or exercise any power or perform any duty may be held personally liable in any court for or in respect of any act or matter done, or omitted to be done, in good faith in the exercise or discharge of that function or power or duty.

### **Amendments, savings and repeals**

**74.** [Amendments, savings and repeals]

### **Act binds the [Crown/State]**

**75.** This Act binds the [Crown/State]

## **SCHEDULES**