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The following Bill which was introduced in the National Assembly is published for general information.

*F. A. Narain,
Clerk of the National Assembly.*



GUYANA

BILL No. 20 of 1995

ENVIRONMENTAL PROTECTION BILL 1995

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DRAFT**A BILL****Intituled**

AN ACT to provide for the management, conservation, protection and improvement of the environment, the prevention or control of pollution, the assessment of the impact of economic development on the environment, the sustainable use of natural resources and for matters incidental thereto or connected therewith.

A.D.1995

Enacted by the Parliament of Guyana:-

PART I**PRELIMINARY****Short title
and comm-
encement.**

1. This Act may be cited as the Environmental Protection Act 1995 and shall come into operation on such date as the Minister may by order appoint.

**Interpret-
ation.**

2. In this Act -

- (a) "activity" means industrial or commercial activity or activity of any other nature whatsoever, and for those purposes the keeping of a substance is to be regarded as an activity;
- (b) "adverse effect" means one or more of the following -
- (i) impairment of the quality of the natural environment or any use that can be made of it;
 - (ii) injury or damage to property or to plant or animal life;
 - (iii) harm or material discomfort to any person;

- (iv) an adverse effect on the health of any person;
 - (v) impairment of the safety of any person;
 - (vi) rendering any property or plant or animal life unfit for use by human or unfit for its role in its eco-system;
 - (vii) loss of enjoyment of normal use of property; and
 - (viii) interference with the normal conduct of business;
- (c) "Agency" means the Environmental Protection Agency established under section 3;
- (d) "authorised person" includes any employee of the Agency, or any person authorised in writing by the Minister;
- (e) "contaminant" means any solid, liquid, gas, odour, sound, vibration, radiation, heat or combination of any of them resulting directly or indirectly from human activities that may cause an adverse effect;
- (f) "development consent" means the decision of the public authority which entitles the developer to proceed with the project;
- (g) "effluent" means any liquid, including particles of matter and other substances in suspension in the liquid and "trade effluent" includes any effluent which is discharged from premises used for carrying on any trade or industry; and for the purposes of this definition premises wholly or mainly used (whether for profit or not) for agricultural purposes or for scientific research or experiment shall be deemed to be premises used for carrying on a trade or industry;
- (h) "environment" or "natural environment" means all land, area beneath the land surface,

atmosphere, climate, all water, surface water, ground water, sea, seabed, marine and coastal areas and natural resources, or any combination or part thereof;

- (i) "environmental authorisation" means an environmental permit, a prescribed process licence, a construction permit or an operation permit;
- (j) "environmental control instruments" means mechanisms based on financial incentives to protect the environment and shall include environmental taxes and other charges on environmentally harmful conduct;
- (k) "environmental permit" means the permit required under section 11.
- (l) "loss or damage" includes personal injury, loss of life, loss of use or enjoyment of property and pecuniary loss, including loss of income;
- (m) "natural resources" means the living plants, animals and organisms, eco-systems, forests, waterways, soils, and other biological factors within the natural environment, and the geologic formations, mineral deposits, renewable and non-renewable assets and the habitat of the living plants, animals and organisms;
- (n) "person responsible" in relation to any project, enterprise, construction or development, includes any person who owns, operates, or exercises economic power or control over or at whose order or on whose behalf the project, enterprise, construction or development will be or, as the case may be, is being undertaken;
- (o) "pollution of the environment" and "environmental pollution" mean pollution of the environment by the release into the natural environment of any contaminant;
- (p) "prescribed process" means any process designated by the Minister in regulations as a prescribed process;

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- (q) "process" means any activity carried on by any person which is capable of causing any adverse effect on the environment;
- (r) "public authority" means any Ministry , local government authority or local democratic organ;
- (s) "regulations" means regulations made by the Minister under this Act;
- (t) "release" of a substance into any environmental medium whenever it is released directly or indirectly into that medium includes
 - (i) in relation to air, any emission of the substance into the air;
 - (ii) in relation to water, any entry (including any discharge) of the substance into water;
 - (iii) in relation to land, any deposit, keeping or disposal of the substance in or on land;
- (u) "waste" includes any matter prescribed to be waste and any matter, whether liquid, solid, gaseous or radioactive, which is discharged, emitted, or deposited in the environment in such volume, composition or manner as to cause an adverse effect;

PART II

ESTABLISHMENT AND FUNCTIONS OF AGENCY

Establishment of Agency.

3. (1) There is hereby established the Environmental Protection Agency which shall be a body corporate governed by a Board of Directors.

First Schedule
Second Schedule

(2) The First and Second Schedules shall have effect as to the matters therein provided for in relation to the Agency and the Board of Directors, respectively.

Functions of Agency.

4. (1) The functions of the Agency are -
- (a) to take such steps as are necessary for the effective management of the natural environment so as to ensure conservation, protection, and sustainable use of its natural resources;
 - (b) to promote the participation of members of the public in the process of integrating environmental concerns in planning for development on a sustainable basis;
 - (c) to co-ordinate the environmental management activities of all persons, organisations and agencies;
 - (d) to establish, monitor and enforce environmental regulations;
 - (e) to prevent or control environmental pollution;
 - (f) to co-ordinate an integrated coastal zone management programme;
 - (g) to ensure that any developmental activity which may cause an adverse effect on the natural environment be assessed before such activity is commenced and that such adverse effect be taken into account in deciding whether or not such activity should be authorised;

- (h) to establish and maintain a programme for the conservation of biological diversity and its sustainable use;
 - (i) to co-ordinate the establishment and maintenance of a national parks and protected area system and a wildlife protection management programme;
 - (j) to promote and encourage a better understanding and appreciation of the natural environment and its role in social and economic development;
 - (k) to establish and co-ordinate institutional linkages locally, nationally, regionally and internationally;
 - (l) to play a co-ordinating role in the preparation and implementation of cross-sectoral programmes of environmental contents;
 - (m) to advise the Minister on the criteria and thresholds of activity for specifying what may amount to a significant effect on the environment;
 - (n) to advise the Minister on matters of general policy relating to the protection, conservation and care of the environment and the impact of development;
 - (o) to perform such other functions pertaining to the protection of the environment as may be assigned to it by the Minister by or under this Act or any other law.
- (2) In the exercise of its functions the Agency may -
- (a) formulate and submit to the Minister policy recommendations and plans in furtherance of its functions;
 - (b) conduct surveys, investigations and monitoring of the causes, nature,

extent and prevention of harm to the environment and of pollution and assist and co-operate with other persons or bodies carrying out similar surveys or investigations;

- (c) conduct, promote and co-ordinate research in relation to any aspect of pollution or prevention thereof;
- (d) conduct investigations and inspections to ensure compliance with this Act or the regulations and investigate complaints relating to breaches of this Act or the regulations made thereunder;
- (e) provide information and education to the public regarding the need for and methods of protection of the environment, improvement of the environment where altered directly or indirectly by human activity, and the benefits of sustainable use of natural resources;
- (f) conduct and co-ordinate compilation of resource inventories, surveys and ecological analyses to monitor and obtain information on the social and biophysical environment with special reference to environmentally sensitive areas and areas where development is already taking place or likely to take place;
- (g) formulate standards and codes of practice to be observed for the improvement and maintenance of the quality of the environment and limits on the release of contaminants into the environment;
- (h) request, examine, review, evaluate and approve or reject environmental impact assessments and risk analyses and make suitable recommendations for the mitigation of adverse effects of any proposed activity on the environment;

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- (i) conduct studies and make recommendations on standards relating to the improvement of the environment and the maintenance of a sound ecological system;
 - (j) monitor and coordinate monitoring of trends in the use of natural resources and their impact on the environment;
 - (k) establish and enforce administrative penalties;
 - (l) advise the Minister on the content and applicability of environmental control instruments;
 - (m) produce sectoral guidelines on what may constitute significant effects on the environment;
 - (n) obtain expert or technical advice from any suitably qualified person on such terms and conditions as the Agency shall think fit.
- (3) In the exercise of its functions the Agency shall -
- (a) compile with the assistance of internationally recognized environmental groups a list of approved persons who have the qualifications and experience to carry out environmental impact assessments;
 - (b) produce physical accounts in accordance with modern accounting standards to record the natural capital of Guyana;
 - (c) carry out surveys and obtain baseline information on the natural resources including eco-systems and micro eco-systems, population counts, species identification, location and condition and make such surveys, studies and information available to members of the public at their

request and upon payment of the cost of photocopies;

- (d) provide general information to the public on the state of the environment by regular reports produced at least annually;
 - (e) maintain and make available to members of the public during normal working hours a register of all environmental impact assessments carried out, environmental authorisations granted and other information in accordance with section 36.
- (4) In performing its functions the Agency shall make use of current principles of environmental management, namely -
- (a) the "polluter pays" principle: the polluter should bear the cost of measures to reduce pollution decided upon by public authorities, to ensure that the environment is in an acceptable state, and should compensate citizens for the harm they suffer from pollution;
 - (b) the "precautionary" principle: where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing measures to prevent environmental degradation;
 - (c) the "strict liability" legal principle: any person who contravenes this Act or regulations shall be liable to the penalties prescribed therefor;
 - (d) the "avoidance" principle: it is preferable to avoid environmental damage as it can be impossible or more expensive to repair rather than prevent damage;

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- (e) the "state of technology" principle: measures protecting the environment are restricted by what is technologically feasible and as technology improves, the improved technology should be used to prevent and repair environmental damage.

Deference
to authority
of
Agency.

5. Without prejudice to the provisions of section 14, any person or authority under any other written law, vested with power in relation to the environment shall defer to the authority of the Agency and shall request an environmental authorisation from the Agency before approving or determining any matter in respect of which an environmental authorisation is required under this Act.

PART III

ADMINISTRATION

- Appointment of staff.** 6. (1) The Minister on the advice of the Board of Directors shall appoint -
- (a) an Executive Director, who shall be the Chief Executive Officer of the Agency; and
 - (b) such other officers, including a Secretary, as may be necessary for the administration of this Act or the regulations.
- (2) The Executive Director shall appoint all other employees as may be necessary to discharge the functions under this Act or the regulations.
- Delegation of Authority by Agency.** 7. The Agency may delegate any of its functions or powers under this Act, or the regulations, to a member of the Board of Directors, any officer of the Agency or to any other person.
- Directions by Minister.** 8. The Minister may give directions for the organisation of the Agency to enable it to discharge its functions under this Act, including the size of establishment, the employment of staff and the terms thereof, the provision of equipment and funds and the Agency shall comply with such directions.
- Delegation of powers by Minister.** 9. The Minister may, in writing, delegate any of his powers, other than the power to make subsidiary legislation, under this Act to the Executive Director or to any officer of the Agency subject to such limitations, conditions and qualifications as the Minister may think fit.

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PART IV

ENVIRONMENTAL IMPACT ASSESSMENTS

Preliminary.

10. For the purposes of this Part-

- (a) "developer" means the applicant for environmental authorisation for a project or the State initiating a project;
- (b) "environmental impact assessment" means an assessment as provided in this Part;
- (c) "project" means the execution of construction works or other installations or schemes, any prescribed process or alteration thereof, any interference with any ecosystem or any other activity in the natural surroundings or landscape including those involving the extraction of natural resources, or any project listed in the Fourth Schedule and shall include public and private projects.

Fourth Schedule

Requirement for environmental impact assessment. Fourth Schedule

11. (1) A developer of any project listed in the Fourth Schedule, or any other project which may significantly affect the environment shall apply to the Agency for an environmental permit and shall submit with such application the fee prescribed and a summary of the project including information on -

- (i) the site, design and size of the project;
- (ii) possible effects on the environment;
- (iii) the duration of the project;
- (iv) a non-technical explanation of the project.

(2) Where it is not clear whether a project will significantly affect the environment, the developer shall submit to the Agency a summary of the project which shall contain the information as required by subsection (1) and the Agency shall within

a reasonable period publish in at least one daily newspaper a decision with reasons as to whether the project -

- (a) will not significantly affect the environment, and therefore exempt from the requirement for an environmental impact assessment; or
 - (b) may significantly affect the environment and will require an environmental impact assessment.
- (3) (a) Any person who may be affected by a project exempted under subsection (2) (a) may lodge an appeal with the Environmental Assessment Board established under section 18 within thirty-five days of the date of publication of the Agency's decision, and the Environmental Assessment Board shall within a reasonable time publish a decision confirming or setting aside the Agency's decision.
- (b) Every person who commences a project before final determination of an appeal under paragraph (a) shall be guilty of an offence and shall be liable to the penalties prescribed under paragraph (d) of the Fifth Schedule.
- (4) Every environmental impact assessment shall be carried out by an independent and suitably qualified person approved by the Agency and shall -
- (a) identify, describe and evaluate the direct and indirect effects of the proposed project on the environment including -
 - (i) human beings;
 - (ii) flora and fauna and species habitats;
 - (iii) soil,
 - (iv) water;
 - (v) air and climatic factors;
 - (vi) material assets, the

Fifth Sch-
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- (vii) cultural heritage and the landscape;
natural resources, including how much of a particular resource is degraded or eliminated, and how quickly the natural system may deteriorate;
- (viii) the ecological balance and ecosystems;
- (ix) the interaction between the factors listed above;
- (x) any other environmental factor which needs to be taken into account or which the Agency may reasonably require to be included; and

(b) assess every project with a view to the need to protect and improve human health and living conditions and the need to preserve the stability of eco-systems as well as the diversity of species.

5) Every environmental impact assessment shall contain the following information -

- (a) a description of the project, including in particular -
 - (i) the geographical area involved, the physical characteristics of the whole project and the land-use requirements during the construction and operational phases, including plans, drawings, and models;
 - (ii) the main characteristics of the production process, including the nature and quantity of the materials used, plans, drawings and models;

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- (iii) an estimate, by type and quantity, of expected contaminants, residues, and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation) resulting from the operation of the proposed project;
 - (iv) the length of time of the project.
- (b) an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental factors;
- (c) a description of the likely significant effects of the proposed project on the environment resulting from -
- (i) the existence of the project;
 - (ii) the use of natural resources;
 - (iii) the emission of contaminants, the creation of nuisances and the elimination of waste,
- and a description by the developer of the forecasting methods used to assess the effects on the environment;
- (d) an indication of any difficulties (technical deficiencies or lack of knowledge or expertise) encountered by the developer in compiling the required information;
- (e) a description of the best available technology;
- (f) a description of any hazards or dangers which may arise from the project and an assessment of the risk to the environment;

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- (g) a description of the measures which the proposed developer intends to use to mitigate any adverse effects and a statement of reasonable alternatives (if any), and reasons for their rejection;
 - (h) a statement of the degree of irreversible damage, and an explanation of how it is assessed;
 - (i) an emergency response plan for containing and cleaning up any pollution or spill of any contaminant;
 - (j) the developer's programme for rehabilitation and restoration of the environment;
 - (k) a non-technical summary of the information provided under the preceding paragraphs.
- (6) Before any environmental impact assessment is begun the Agency shall at the developer's cost publish in at least one daily newspaper a notice of the project and make available to members of the public the project summary referred to in subsection (1).
- (7) Members of the public shall have twenty-eight days from the date of publication referred to in subsection (6) to make written submissions to the Agency setting out those questions and matters which they require to be answered or considered in the environmental impact assessment.
- (8) The Agency shall after consultation with the person chosen to carry out the environmental impact assessment, set the terms and scope of the environmental impact assessment taking into account any submissions made under subsection (7).
- (9) During the course of the environmental impact assessment the developer and the person carrying out the environmental impact assessment shall -

- (a) consult members of the public, interested bodies and organizations;
 - (b) provide to members of the public on request, and at no more than the reasonable cost of photocopying, copies of information obtained for the purpose of the environmental impact assessment.
- (10) The developer and the person carrying out the environmental impact assessment shall submit the environmental impact assessment together with an environmental impact statement to the Agency for evaluation and recommendations and publish a notice in and at least one daily newspaper confirming that the environmental impact assessment and environmental impact statement have been submitted to the Agency and members of the public shall have sixty days from the date of publication of such notice to make such submissions to the Agency as they consider appropriate.
- (11) The environmental impact assessment and the environmental impact statement shall be public documents and the developer and the Agency shall have such documents available for the duration of the project and five years thereafter for inspection, subject to the deletion therefrom of such information as may disclose intellectual property rights, during normal working hours at their respective offices and shall supply on request and on payment of cost of photocopying copies of such documents.
- (12) All expenses of the environmental impact assessment process (including the preparation of the preliminary and full environmental impact assessments, the environmental impact statements, and the conduct of public hearings) shall be borne by the developer.

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- (13) The Agency shall send the environmental impact assessment together with the environmental impact statement to the Environmental Assessment Board for its consideration and recommendation as to whether the environmental impact assessment and the environmental impact statement are acceptable.
- Approval or rejection of project.**
12. (1) The Agency shall approve or reject the project after taking into account
- (a) the submissions made under section 11(10) and the recommendations of the Environmental Assessment Board made under section 18(2); and
 - (b) the views expressed during the consultations under section 11(9); and
 - (c) the environmental impact assessment and environmental impact statement.
- (2) The Agency shall publish its decision and the grounds on which it is made.
- Environmental permit.**
13. (1) A decision by the Agency to issue an environmental permit for a project shall be subject to conditions which are reasonably necessary to protect the environment and each environmental permit shall contain the following implied conditions -
- (a) the Agency shall have the right to cancel or suspend the environmental permit if any of the terms or conditions of the environmental permit are breached;
 - (b) the developer shall have an obligation to use the best available technology;
 - (c) the developer shall have an obligation to comply with any directions by the Agency where compliance with such directions are necessary for the implementation of any obligations of Guyana under any

treaty or international law relating to environmental protection; and

(d) the developer shall have an obligation to restore and rehabilitate the environment.

(2) The Agency shall not issue an environmental permit unless the Agency is satisfied that

(a) the developer can comply with the terms and conditions of the environmental permit; and

(b) the developer can pay compensation for any loss or damage which may arise from the project or breach of any term or condition of the environmental permit.

Environmental authorisation as a precondition to development consent.

14. (1) A public authority shall not give development consent in any matter where an environmental authorisation is required unless such authorisation has been issued and any development consent given by any public authority shall be subject to the terms of the environmental authorisation issued by the Agency.

(2) Where an environmental authorisation is cancelled or suspended, the development consent issued by the public authority shall be suspended until and unless a new environmental authorisation is issued or the suspension of the environmental authorisation is revoked.

Cessation.

15. (1) Every person who fails to carry out an environmental impact assessment or who commences a project without obtaining an environmental permit as required under this Act or the regulations shall be guilty of an offence and shall be liable to the penalties prescribed under paragraph (d) of the Fifth Schedule.

(2) Where any project is being carried on or has been started without an environmental permit as required by this Act the Agency shall immediately serve an order in

writing to the person responsible directing him to immediately stop the project.

- (3) Where the person to whom the order is issued under subsection (2) fails to comply with the order, the Minister may in co-ordination with other appropriate governmental entities undertake such emergency response activities as are required to protect human health or the environment.

Regulations.

16. The Minister may make regulations establishing the criteria and thresholds to determine which projects may have significant effects on the environment.

Other activities.

17. (1) Where any activity by itself does not have a significant effect on the environment but the same activity or similar activities are carried out by any person in any place and cumulatively may significantly affect the environment, the Agency shall require to be carried out an environmental impact assessment of the cumulative effects of such activities by such persons.
- (2) Where any public authority adopts or alters any policy, programme or plan and such policy, programme, plan or alteration may significantly affect the environment the Agency shall require the public authority to carry out an environmental impact assessment of such policy, programme, plan or alteration.
- (3) Where an environmental impact assessment is required under this section, the procedure set out in this part shall be followed in so far as such procedure is applicable.

Environmental Assessment Board. Third Schedule.

18. (1) There is hereby established an Environmental Assessment Board, and the Third Schedule shall have effect as to the constitution of the Board and otherwise in relation thereto.

- (2) The Environmental Assessment Board shall conduct public hearings -
- (a) into all appeals submitted to it under section 11(3)(a); and
 - (b) as may be necessary into environmental impact assessments and environmental impact statements to recommend to the Agency -
 - (i) whether the environmental impact assessment should be accepted, amended or rejected;
 - (ii) whether an environmental permit should be issued by the Agency;
 - (iii) what terms and conditions should be included in the environmental permit.

PART V

PREVENTION AND CONTROL OF POLLUTION

Prevention of pollution.

19. (1) A person shall not -

- (a) undertake an activity that causes or is likely to cause pollution of the environment unless the person takes all reasonable and practicable measures to prevent or minimise any resulting adverse effect;
- (b) discharge or cause or permit the entry into the environment of any contaminant in any amount, concentration or level in excess of that prescribed by the regulations or stipulated by any environmental authorisation.

Fifth Schedule

(2) (a) Any person who contravenes subsection (1)(a) shall be guilty of an offence and shall be liable to the penalties prescribed under paragraph (f) of the Fifth Schedule;

Fifth Schedule

(b) Any person who contravenes subsection (1)(b) shall be guilty of an offence and shall be liable to the penalties prescribed under paragraph (e) of the Fifth Schedule;

(3) Where subsection (1) is contravened the person responsible for the contaminant or for the process involving the contaminant or who causes or permits a discharge in contravention of subsection (1) shall -

- (a) immediately notify the Agency of -
 - (i) the discharge;
 - (ii) the concentration and amount of contaminant;
 - (iii) the circumstances of the discharge;
 - (iv) what action the person has taken or intends to take to restore the natural environment; and

- (b) subject to the conditions of any order issued under subsection (4), restore the natural environment by -
 - (i) rescuing and restoring all plants, animals and other organisms;
 - (ii) cleaning up, removing or neutralizing the contaminant;
 - (iii) restoring the air, land and water to the condition they were in before the discharge;
 - (c) be liable to pay for the costs of an independent investigation into the discharge;
 - (d) deposit with the Agency a sum of money equal to the estimated costs of restoration and investigation;
 - (e) be liable to compensate any person who suffers any loss or damage as a result of any contravention of subsection (1);
 - (f) do everything practicable to preserve, for investigation, evidence of the effects of the discharge.
- (4) Where there is any contravention of subsection (1), the Minister may make an order directed to one or more of the following -
- (i) any person responsible for the contaminant;
 - (ii) any person responsible for the process involving the contaminant;
 - (iii) any local democratic organ or local government authority within whose boundaries the spill occurs;

- (iv) any person who is or may be adversely affected by the contaminant or whose assistance is necessary in the opinion of the Minister to prevent, eliminate, or ameliorate the adverse effects or restore the natural environment,

requiring such action as may be specified in the order in respect of the prevention, diminution or amelioration of the adverse effects and restoration of the natural environment within such period as may be specified in the order.

- (5) (a) Any person, local democratic organ, or local government authority or other body who contravenes subsection (3)(a), (b), or (f) shall be guilty of an offence and shall be liable to the penalties prescribed under paragraph (d) of the Fifth Schedule.

**F i f t h
Schedule**

- (b) Any person, local democratic organ or local government authority or other body who contravenes subsection (4) shall be guilty of an offence and shall be liable to the penalties prescribed under paragraph (e) of the Fifth Schedule.

**F i f t h
Schedule**

**Information
on pollu-
tion con-
trol faci-
lity.**

20. (1) The Agency may by notice in writing require the owner or operator of any sewage treatment plant, industrial waste treatment facility or any facility for the disposal of solid waste or for the abatement of air pollution or any other facility for controlling pollution, to submit to the Agency at such intervals as the Agency may specify in the notice, information relating to any of the following-

- (a) the performance of the facility;
- (b) the quantity and quality of the effluent discharged,

and the owner or operator shall comply

with the requirements of the notice.

- (2) Any person who fails to comply with the requirements of a notice under subsection (1) shall be guilty of an offence and shall be liable to the penalties prescribed under paragraph (a) of the Fifth Schedule.

**F i f t h
Schedule.**

**Permits:
general
provisions.**

21. (1) No person shall -
- (a) construct, alter, extend or replace any plant, structure, equipment, apparatus, mechanism or thing that may discharge or from which may be discharged a contaminant into any part of the natural environment except under and in accordance with a construction permit issued by the Agency; or
 - (b) alter a process or rate of production with the result that a contaminant may be discharged into any part of the natural environment or the rate or manner of discharge of a contaminant into any part of the natural environment may be altered except under and in accordance with an operation permit issued by the Agency.
- (2) Subsection (1) does not apply to -
- (a) routine maintenance carried out on any plant, structure, equipment, apparatus, mechanism or thing; or
 - (b) any plant, structure, equipment, apparatus, mechanism or thing that may be a source of contaminant of a class exempted therefrom by the regulations.
- (3) The Agency may require an applicant for a construction permit to submit any plans, specifications and other information related to the plant, structure, apparatus, mechanism, or thing in respect of which the application for a permit is

made.

- (4) The Agency may require an applicant for an operation permit to submit any plans, specifications and other information related to any methods, processes or devices of the plant, structure, equipment, apparatus, mechanism or thing in respect of which the application for a permit is to be issued and any other information concerning the levels, concentrations or properties of the contaminant which may be discharged.
- (5) The Agency may require an applicant, either by himself or through an independent agent, to carry out and report on any tests or experiments relating to the plant, structure, equipment, apparatus, mechanism or thing or to the methods, processes or devices to be employed to control or prevent the discharge of any contaminant into any part of the natural environment.
- (6) The Agency shall not issue a construction or operation permit unless -
 - (a) the Agency includes in the permit such conditions as are reasonably necessary to protect the environment; and
 - (b) the Agency considers that the applicant will be able to comply with the conditions of the permit.
- (7) Where there may be a substantial effect on the environment no construction permit or operation permit shall be granted unless an environmental permit is issued under Part IV.
- (8) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable to the penalties prescribed under paragraph (c) of the Fifth Schedule.

F i f t h
Schedule

(9) Any person who fails to comply with -

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Schedule

(a) any material term or condition of a construction or operation permit shall be guilty of an offence and shall be liable to the penalties prescribed under paragraph (c) of the Fifth Schedule;

(b) any other term or condition of a construction or operation permit shall be guilty of an offence and shall be liable to the penalties prescribed under paragraph (b) of the Fifth Schedule;

F i f t h
Schedule

Prescribed
processes.

22. (1) No person shall, except under and in accordance with a prescribed process licence, carry on a prescribed process.

(2) A prescribed process licence may apply to the general execution of the process or to the carrying on of a process at specified premises or by means of specified plant or apparatus irrespective of where it is operated and shall contain such conditions as may be necessary to prevent an adverse effect.

(3) An application for a prescribed process licence shall be made to the Agency in the manner prescribed by the regulations.

(4) A prescribed process licence shall not be granted unless an environmental permit is issued under Part IV.

(5) Where there is any adverse effect as a result of the discharge of any contaminant used in a prescribed process, and, from the available evidence, and in the circumstances it is likely that the prescribed process caused the adverse effect, then it shall be presumed that the prescribed

process caused the adverse effect unless the person responsible for the prescribed process proves that the prescribed process was operated at all times in accordance with the environmental permit and prescribed process licence and there was no interruption or interference with the prescribed process at the time of discharge of the contaminant.

(6) In considering whether it is likely that a prescribed process caused an adverse effect, the court shall take into account the following factors -

- (a) the operational process;
- (b) the equipment and facility used;
- (c) the type and concentration of materials used;
- (d) the time and place of the adverse effect;
- (e) the nature and extent of the adverse effect;
- (f) any other circumstances deemed relevant by the court.

(7) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable to the penalties prescribed under paragraph (f) of the Fifth Schedule.

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Schedule**

Conditions of permits and licences. 23. There shall be included in any construction or operating permit and any prescribed process licence such conditions as may be prescribed by the regulations and such additional conditions as the Agency considers appropriate.

Alteration or transfer of permitted process. 24. (1) Where the holder of a prescribed process licence proposes -

- (a) to make any relevant change in the manner in which he carries on

the prescribed process or in the amount of any substance utilised, produced or released by it; or

- (b) to transfer the licence to another person,

subsection (3) shall apply.

- (2) A change is relevant for the purposes of subsection (1) if it is a change capable of affecting either the amount or nature of any substance released from the process or any other characteristic of any such release or such change may lead to a harmful alteration to or may have an adverse effect on the environment.

- (3) Where subsection(1) applies -

(a) the person carrying on the prescribed process shall notify the Agency of the proposed change or transfer;

(b) on being notified of the proposed change or transfer the Agency shall determine whether or not such change would require any amendment of the licence and, if so, what amendment or whether it would require a new licence under section 21, and the Agency shall notify the said person of its determination with respect to the proposed change or transfer;

(c) an environmental impact assessment shall be carried out under Part IV if such change may have a significant effect on the environment.

- (4) Any person who contravenes subsection 3(a) shall be guilty of an offence and shall be liable to the penalties prescribed under paragraph (b) of the Fifth Schedule.

Revocation or variation of prescribed process, cancellation or suspension of environmental authorisation.

25. (1) The Agency may at any time by notice in writing to the person carrying on the prescribed process, revoke a prescribed process licence or impose such conditions as the Agency considers appropriate in addition to or in place of the existing conditions, with effect from such date as the Agency may specify provided that the revocation or variation shall not give rise to any additional adverse effect.
- (2) If the Agency is of the opinion that -
- (a) the holder of an environmental authorisation obtained the authorisation improperly; or
 - (b) the holder of an environmental authorisation is contravening any material term or condition of the environmental authorisation,
- the Agency shall cancel the environmental authorisation provided that if the Agency considers it is contrary to the public interest to cancel the environmental authorisation, the Agency may suspend the environmental authorisation instead.
- (3) A suspension under this section may be for a specified period or until the fulfillment of specific conditions or until further order of the Agency.
- (4) Before the Agency acts under subsection (2), the Agency shall -
- (a) notify the holder of the environmental authorisation in writing of its proposed action specifying the reason for the proposed action; and
 - (b) allow the holder of the authorisation at least seven days within which to make written submissions to the Agency in relation to the Agency's proposed action.

- Enforcement notices.**
26. (1) If the Agency is of the opinion that a person is contravening any condition of any environmental authorisation, or is likely to contravene any such condition, the Agency may serve on him an enforcement notice.
- (2) An enforcement notice shall -
- (a) state the opinion of the Agency regarding the contravention or likely contravention referred to in subsection (1);
 - (b) specify the matters constituting the contravention or the matters making it likely that the contravention will arise, as the case may be;
 - (c) specify the steps that must be taken to remedy the contravention or to remedy the matters making it likely that the contravention will arise, as the case may be; and
 - (d) specify the periods within which those steps must be taken.
- Prohibition notices.**
27. (1) Subject to the provisions of this section, where it appears to the Agency that any activity in any area is such as to pose -
- (a) a serious threat to natural resources or the environment; or
 - (b) risk of serious pollution of the environment or any damage to public health,
- the Agency shall serve on the person responsible for the activity, a prohibition notice.
- (2) A prohibition notice shall -
- (a) state the Agency's opinion in respect of the activity in question;
 - (b) specify the use or threat involved;

- (c) specify the offending activity and require such steps as may be specified in the notice to be taken within such period as may be so specified to ameliorate the effect of the activity and, where appropriate, to restore the natural resources and environment to their condition before the activity took place.
- (3) The Agency shall in the prohibition notice order the immediate cessation of the offending activity if it is of the opinion that the circumstances giving rise to the notice are such as to warrant an order to that effect or where any threat under subsection (1) is likely to have consequences which are irremediable or immediate, and shall specify in the notice the period within which an appeal against its decision to order cessation may be made pursuant to section 28.
- (4) Where an appeal is made against a prohibition notice in which the cessation of an offending activity is ordered, the notice shall remain in effect pending the final determination or withdrawal of the appeal.
- (5) The person referred to in subsection (1) shall be guilty of an offence if such person continues or allows the continuation of the activity while a prohibition notice is in effect or after the dismissal of an appeal to the Environmental Appeals Tribunal against that notice, and shall be liable to the penalties prescribed under paragraph (f) of the Fifth Schedule.
- (6) Where the person to whom a notice is issued under subsection (1) fails to comply with the prohibition notice, then, the Minister, in co-ordination with other approved governmental entities may undertake such emergency response activities as are required to protect human health or the environment.

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Schedule

- (7) A prohibition notice may be served whether or not the activity is subject to any environmental authorisation.

Appeals.

28. Any person who is not satisfied with a decision of the Agency or the Environmental Assessment Board may appeal against that decision.

Environmental Appeals Tribunal.

29. Appeals shall be made to the Environmental Appeals Tribunal, the establishment and jurisdiction of which are provided for in Part IX.

PART VI

FINANCIAL ASSURANCE

Preliminary.

No. 1 of 1995.

30. In this Part -
- (a) "bank" has the meaning assigned to it by section 2 of the Financial Institutions Act 1995;
 - (b) "financial assurance" means one or more of
 - (i) cash, in the amount specified in the environmental authorisation;
 - (ii) a letter of credit from a bank, in the amount and terms specified in the environmental authorisation;
 - (iii) a guarantee in the form; terms and amount specified in the environmental authorisation from any person whose long term unsecured obligations are rated equally with a bank by an internationally recognised credit rating agency;
 - (iv) a performance bond in the form and terms specified in the environmental authorisation;
 - (c) "works" means an activity, project, prescribed process, facility, thing, undertaking or site in respect of which an environmental authorisation is issued.
31. (1) The Agency may include in any environmental authorisation a requirement that the person to whom that environmental authorisation is issued shall provide financial assurance to the State for any one or more of the following -
- (a) the performance of any action or compliance with any condition

Financial assurance.

30°

specified in any environmental authorisation;

- (b) the provision of alternate water supplies to replace those that the Agency has reasonable grounds to believe are or are likely to be contaminated or otherwise interfered with by the works to which the environmental authorisation relates; and
 - (c) measures appropriate to prevent adverse effects upon and following the cessation or closing of the works.
- (2) A requirement under subsection (1) shall specify the amount of financial assurance and may provide that the financial assurance may be provided, reduced or released in stages specified in the environmental authorisation.
 - (3) The Agency may amend an environmental authorisation to change or include a requirement as to financial assurance contained in that environmental authorisation.
 - (4) An environmental authorisation shall not be effective until any requirements for financial assurance contained in that environmental authorisation have been fully complied with.
 - (5) The Minister may make regulations as to the circumstances under which financial assurance must be required by the Agency, the terms and conditions of the financial assurance and the effect of failure to provide financial assurance and for matters connected therewith or incidental thereto.

PART VII

INVESTIGATIONS, PROSECUTIONS, CIVIL PROCEEDINGS

- Prosecutions. 32. (1) Prosecutions in respect of offences under this Act shall be brought by the Agency or by any person authorised by the Minister in a court of summary jurisdiction.
- (2) A court that convicts a person of an offence under this Act, in addition to any other remedy and to any other penalty imposed by law, may make an order prohibiting the continuation or repetition by the person of the act or omission for which the person was convicted.

- General offences. 33. (1) Any person who -
- (a) contravenes any condition contained in any enforcement notice;
 - (b) fails to give information required by the Agency within the time specified by the Agency,

Fifth Schedule shall be guilty of an offence and shall be liable to the penalties prescribed under paragraph (d) of the Fifth Schedule.

- (2) Any person who makes a statement which he knows to be false or misleading in a material particular, or recklessly makes a statement which is false or misleading in a material particular, where the statement is made -

- (a) in purported compliance with a requirement to furnish any information imposed by or under this Act shall be guilty of an offence and shall be liable to the penalties prescribed under paragraph (e) of the Fifth Schedule.

- Fifth Schedule
- (b) for the purpose of obtaining the grant or transfer of an environmental authorisation for himself or any other person or the amendment of a prescribed process licence shall be

**F i f t h
Schedule**

**Specific
offences,
litter,
noise.**

**F i f t h
Schedule**

**F i f t h
Schedule**

guilty of an offence and shall be liable to the penalties prescribed under paragraph (e) of the Fifth Schedule.

34. (1) (a) Any person who throws down, abandons, drops or otherwise deposits or leaves anything in any manner whatsoever in circumstances as to cause, or contribute to, or tend to lead to litter shall be guilty of an offence and shall be liable to the penalties prescribed under paragraph (a) of the Fifth Schedule.

- (b) Any person responsible for any function which results in any litter shall be guilty of an offence and shall be liable to the penalties prescribed under paragraph (b) of the Fifth Schedule

- (2) Any person -

- (a) other than a person referred to in paragraph (b), who is responsible for any noise which results in an adverse effect; or
- (b) who is responsible for any function which creates noise that results in any adverse effect or for any premises at which the function takes place,

shall be guilty of an offence and shall be liable in respect of the first and second mentioned persons to the penalties prescribed under paragraphs (a) and (b), respectively, of the Fifth Schedule.

**F i f t h
Schedule**

**Powers of
authorised
persons.**

35. (1) Any authorised person may exercise any of the powers specified in subsection (2) for the purpose of discharging or, as the case may be, assisting in the discharge of the functions of the Agency.
- (2) The powers of the person referred to in subsection (1) are -
- (a) at any reasonable time (or, in a

situation in which in his opinion there is an immediate risk of a significant adverse effect on or pollution of the environment, at any time) to enter premises which he has reason to believe it is necessary for him to enter;

- (b) on entering any premises by virtue of paragraph (a) to take with him -
 - (i) any person duly authorised by the Agency; and
 - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
- (c) to make such examination and investigation as may in any circumstances be necessary, and to direct that those premises or any part of them, or anything should be left undisturbed for so long as is reasonably necessary for such examination or investigation;
- (d) to take such measurements and photographs and make such recordings as he considers necessary; for the purpose of any examination or investigation under paragraph (c);
- (e) to take samples of any articles or substances found in or on any premises which he has power to enter, and of the air, water or land in, on, or in the vicinity of, the premises;
- (f) in the case of any article or substance found in or on any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause pollution of the environment, to cause it to be dismantled or subjected to any process or test;
- (g) in the case of any such article or substance mentioned in paragraph (f),

to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely -

- (i) to examine it and do to it anything which he has power to do under paragraph (f);
 - (ii) to ensure that it is not tampered with before his examination of it is completed;
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under this Act or any other proceedings relating to an environmental authorisation, an enforcement notice or a prohibition notice;
- (h) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under paragraph (c) to answer such questions as the authorised person thinks fit to ask and to sign a declaration of the truth of his answers;
- (i) to require the production of, or where the information is recorded in computerised form the furnishing of extracts from, any records which it is necessary for him to see for the purpose of an examination or investigation under paragraph (c) and to inspect, and take copies, of any entry in the records;
- (j) to require any person to afford him such facilities and assistance within that person's control or in relation to which that person has responsibilities as are necessary to

enable the authorised person to exercise any of the powers conferred on him by this section.

- (3) The Minister may by regulations make provision as to the procedure to be followed in connection with the taking of, and the dealing with, samples under subsection (2) (e).
- (4) Any person claiming the right to enter any premises shall, if required to do so, produce to the owner or occupier of such premises the document authorizing him in that behalf.
- (5) A person exercising his duties under this section shall not be liable in any civil or criminal proceedings for anything done in the performance thereof if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.
- (6) No answer given by a person in pursuance of a requirement imposed under subsection (2) (h) shall be admissible in evidence against that person in any proceedings.

**Registers
of
information**

36. (1) It shall be the duty of the Agency to maintain, open to the public, registers containing particulars of -
 - (a) each application for an environmental authorisation made to the Agency, including the name and address of the person making the application, and the location at which any activity is proposed to be or is undertaken pursuant to the environmental authorisation;
 - (b) each environmental authorisation granted by the Agency, and the terms and conditions included therein;
 - (c) each cancellation, revocation, variation or transfer of an environmental authorisation;

section 26;

- (e) each prohibition notice served under section 27;
 - (f) each incident or occurrence causing or threatening serious or material environmental harm that comes to the notice of the Agency;
 - (g) each order made under section 19;
 - (h) prosecutions and other enforcement action under this Act;
 - (i) any annual return required under subsection (6);
 - (j) information supplied under subsection (7).
- (2) The Minister may make regulations prescribing other information to be included in the register and prescribing fees.
- (3) The Agency shall ensure that information required to be recorded in the register is recorded in the register as soon as practicable, but, in any event, within sixty days, after the information becomes available to the Agency.
- (4) The register must be kept available for inspection by any member of the public during ordinary office hours at the principal office of the Agency.
- (5) A member of the public may obtain a copy of any part of the register subject to payment of the determined or prescribed fee, if any.
- (6) The holder of an environmental authorisation shall -
- (a) in each year lodge with the Agency, before the date prescribed for that purpose, an annual return containing the information required by the Agency under the environmental

authorisation or by notice in writing; and

(b) in each year pay to the Agency before the date prescribed any annual fee prescribed by the Minister in regulations;

(7) Any person responsible for an activity which is the subject of any permit or prescribed process licence under this Act shall maintain and submit to the Agency in accordance with regulations made for this purpose records of the type, composition and quantity of contaminant released and the Agency shall maintain a register thereof.

(8) Any person who fails to comply with subsection (6) or (7) shall be guilty of an offence and shall be liable to the penalties prescribed under paragraph (b) of the Fifth Schedule.

**F i f t h
Schedule**

**Investiga-
tion of
offences.**

37. (1) Any person who has information that an offence has been committed under this Act or the regulations shall report that information to the Agency for investigation.

(2) Any person who wilfully fails to make a report required under this section shall be guilty of an offence and shall be liable to the penalties prescribed under paragraph (b) of the Fifth Schedule.

**F i f t h
Schedule**

(3) The Agency shall investigate every report made under subsection (1) and where there is sufficient evidence that an offence has been committed, the Agency shall institute legal proceedings or report the matter to the police, as may be appropriate, and in either case shall notify the person who made the report.

**Obstruction
of autho-
rised
persons.
F i f t h
Schedule**

38. Every person who assaults, obstructs or hinders an authorised person in the execution of his duty under this Act or the regulations shall be guilty of an offence and shall be liable to the penalties prescribed under paragraph (c) of the Fifth Schedule.

Damage to
environ-
ment.

39. (1) Every person who causes material environmental harm by polluting the environment intentionally or recklessly and with the knowledge that material environmental harm will or might result is guilty of an offence and shall be liable to the penalties prescribed under paragraph (f) of the Fifth Schedule.

F i f t h
Schedule

(2) Every person who causes material environmental harm by polluting the environment is guilty of an offence and shall be liable to the penalties prescribed under paragraph (e) of the Fifth Schedule.

F i f t h
Schedule

(3) Every person who causes serious environmental harm by polluting the environment intentionally or recklessly and with the knowledge that serious environmental harm will or might result is guilty of an offence and shall be liable to the penalties prescribed under paragraph (h) of the Fifth Schedule.

F i f t h
Schedule

(4) Every person who causes serious environmental harm by polluting the environment is guilty of an offence and shall be liable to the penalties prescribed under paragraph (f) of the Fifth Schedule.

F i f t h
Schedule

(5) Environmental harm is to be treated as material environmental harm if -

(i) it consists of an environmental nuisance of a high impact or on a wide scale; or

(ii) it involves actual or potential harm to the health or safety of human beings that is not trivial, or other actual or potential environmental harm (not being merely an environmental nuisance) that is not trivial.

(6) Environmental harm is to be treated as serious environmental harm if it involves actual or potential harm to the health or safety of human beings that is of a high

impact or on a wide scale, or other actual or potential environmental harm (not being merely an environmental nuisance) that is of a high impact or on a wide scale.

- Continuing offences.** 40. Where a person is convicted of an offence under this Act or the regulations, then, if the contravention in respect of which he was convicted is continued after he was convicted he shall be guilty of a further offence and liable on conviction to a further fine of one-fifth of the maximum penalty prescribed for that offence for each day on which the offence continues.
- Offences by bodies corporate.** 41. Where an offence under any provision of this Act or the regulations committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other officer of the body corporate or a person who was purporting to act in such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- Proof of offences.** 42. In any prosecution of an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the defendant, whether or not the employee or agent is identified or prosecuted for the offence.
- Orders of court.** 43. (1) Where an offender has been convicted of an offence under this Act the court shall impose a fine and may impose a term of imprisonment prescribed therefor in the Fifth Schedule.
- F i f t h Schedule** (2) Where an offender has been convicted of an offence under this Act or the regulations, in addition to any fine, imprisonment, or other sanction that may be imposed the court may, after considering the nature of the offence and the circumstances surrounding its commission, make an additional order having any or all of the following effects
- (a) prohibiting the offender from doing

any act or engaging in any activity that may result in the continuation or repetition of the offence;

- (b) directing the offender to take such action as the court considers appropriate to remedy or avoid any harm to the environment that results or may result from the act or omission that constituted the offence;
- (c) directing the offender to publish, at the offender's cost, in the manner prescribed, the facts relating to the conviction;
- (d) directing the offender to notify, at the offender's own cost and in the manner prescribed, any person aggrieved or affected by the offender's conduct, of the facts relating to the conviction;
- (e) directing the offender to post such bond or pay such amount of money into court as will ensure compliance with any order made pursuant to this section;
- (f) directing the offender to submit to the Agency, on application made by it within three years after the date of conviction, such information with respect to the activities of the offender as the court considers appropriate in the circumstances;
- (g) directing the offender to compensate the Agency, in whole or in part, for the cost of any remedial or preventative action taken by or caused to be taken on behalf of the Agency as a result of the act or omission that constituted the offence;
- (h) directing the offender to perform community service, subject to such reasonable conditions as may be imposed therein;

- (i) requiring the offender to comply with such other reasonable conditions as the court considers appropriate in the circumstances for securing the offender's good conduct and for preventing the offender from repeating the same offence or committing other offences.
- (3) Where an offender fails to comply with an order made under subsection (2)(c) directing the publication of facts relating to the offence, the Agency may publish the facts in compliance with the order and recover the costs of publication from the offender.
- (4) Where the court makes an order under subsection (2)(g) directing an offender to pay costs or the Agency incurs publication costs under subsection (3), the costs constitute a debt due to the Government and may be recovered as such.
- (5) An order made under subsection (2) comes into force on the day on which it is made or on such other day as the court may determine.
- Additional fine.** 44. Where an offender had been convicted of an offence under this Act, the court may, where it is satisfied that as a result of the commission of the offence the offender acquired any monetary benefits or that monetary benefits accrued to the offender, order the offender to pay, notwithstanding the maximum amount of any fine that may otherwise be imposed under this Act or the regulations, an additional fine in an amount equal to the court's estimation of the amount of those monetary benefits.
- Compensation for loss of property.** 45. (1) Where an offender has been convicted of an offence under this Act, the court may, at the time of passing the sentence and on the application of the person aggrieved, order the offender to pay to that person an amount by way of satisfaction or compensation for loss of or damage to property suffered by that person as a result of the commission of the offence.

- (2) Where an amount that is ordered to be paid under subsection (1) is not paid forthwith, the applicant may, by filing the order, enter as a judgment, in the court in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the offender in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings.

**F i x e d
penalties.**

46. Where any authorised person or officer has reason to believe that a person has committed an offence for which penalties are prescribed under the Fifth Schedule he may give that person a notice offering him the opportunity to discharge any liability to conviction for that offence by payment to the Agency of a sum of money which amounts to two-thirds of the minimum prescribed penalty within twenty-eight days of the date of the notice.

**F i f t h
Schedule**

Injunction.

47. (1) Where, on the application of the Agency, it appears to the High Court that a person has done, or is about to do or is likely to do any act or thing constituting or directed toward the commission of an offence under this Act, the court may issue an injunction ordering any person named in the application -
- (a) to refrain from doing any act or thing that appears to the court may constitute or be directed toward the commission of an offence under this Act; or
- (b) to do any act or thing that it appears to the court may prevent the commission of an offence under this Act.

**Civil pro-
ceedings.**

48. (1) Any person who has suffered loss or damage as a result of the commission by any other person of any offence under this Act or any conduct that is contrary to this Act or the regulations may, in the High Court, sue for the recovery from the person who committed the offence or engaged in the conduct an amount equal to the loss or damage proved to have been suffered by the

person and an amount to compensate for the costs of any investigation in connection with the matter and of proceedings under this section.

- (2) Any person who suffers or is about to suffer loss or damage as a result of conduct that is contrary to any provision of this Act or the regulations may seek an injunction from the High Court ordering the person engaged in the conduct -
- (a) to refrain from doing any act or thing that it appears to the Court causes or will cause the loss or damage; or
- (b) to do any act or thing that it appears to the Court prevents or will prevent the loss or damage.

**O t h e r
p r o c e e d i n g s
a n d r e m e d i e s
n o t
a f f e c t e d .**

49. (1) Nothing in this Act shall prevent the prosecution of any person for an offence under any other law.
- (2) No civil remedy for an act or omission is suspended or affected by reason only that the act or omission is an offence under this Act and nothing in this Act shall be construed so as to repeal, remove, or reduce any remedy available to any person under any other law.

**P r o t e c t i o n
o f o f f i c e r s
o f A g e n c y .**

50. Any officer or other employee of the Agency, any person acting under the direction or authority of any such officer or other employee or any other person, not being a member of the Agency, exercising or purporting to exercise any function conferred by or under this Act, shall be entitled the protection afforded by the Justices Protection Act.

Cap. 5:07.

PART VIIIESTABLISHMENT AND JURISDICTION OF
ENVIRONMENTAL APPEALS TRIBUNAL

Establish-
ment and
j u r i s -
d i c t i o n
o f
T r i b u n a l .

51. (1) A Tribunal to be known as the Environmental Appeals Tribunal is hereby established for the purpose of exercising the jurisdiction conferred upon it by this Act or by any other written law.
- (2) The Tribunal shall consist of a Chairman and such other members, including a Vice-Chairman, as may be appointed under section 52.
- (3) The Tribunal shall be a superior court of record and have an official seal which shall be judicially noticed, and shall have in addition to the jurisdiction and powers conferred on it by this Act all the powers inherent in such a court.
- (4) The Tribunal shall have the power to enforce its own orders and judgements, and the same power to punish contempts as the High Court of Justice.
- (5) The Tribunal shall have jurisdiction to hear and determine appeals -
- (a) from the refusal of the grant of a construction or operation permit under section 21 or a prescribed process licence under section 22;
 - (b) against the conditions attached to any construction or operation permit or prescribed process licence;
 - (c) against the revocation or variation of a construction or operation permit or prescribed process licence;
 - (d) against an enforcement notice or a prohibition notice;
 - (e) against the refusal of an environmental permit under section 13;

- (f) against the requirement of an environmental permit;
- (g) against the refusal of an environmental authorisation or the cancellation or suspension thereof;
- (h) in respect of such other matters as may be prescribed by the Minister or arise under this Act or any other written law where jurisdiction in the Tribunal is specifically provided.

(6) A Registrar of the Tribunal and such other officials, clerks and employees as may be required shall be appointed by the Minister.

**Constitu-
tion
of Tribunal**

52. (1) The Tribunal shall be comprised of a full time Chairman and four other members including a Vice Chairman, each of whom may be appointed to serve in a full time, part-time or periodic capacity as may be required to fulfill the objects of this Act.
- (2) The Chairman and Vice Chairman of the Tribunal shall each be an attorney-at-law of not less than ten years standing, and shall be appointed by the President.
- (3) The members of the Tribunal other than the Chairman and Vice Chairman, shall be appointed by the President from among such persons as appear to the President to be qualified by virtue of their knowledge of or experience in environmental protection and conservation, engineering, the natural sciences, or the social sciences.
- (4) All members of the Tribunal shall hold office under such requirements and conditions of service and for such term, not less than two years, as may be determined by the President and set forth in the terms of reference at the time of their appointment and shall be eligible for reappointment.
- (5) Notwithstanding that his term of office has expired, any member of the Tribunal

may, with the permission of the President acting on the advice of the Chairman of the Tribunal, continue in office for such period after the expiry of his term as may be necessary to deliver judgment, or to do any other thing in relation to proceedings that were commenced before such member prior to the expiry of his term of office.

- (6) Any member of the Tribunal may, at any time by notice in writing to the President, resign his office.
- (7) The President may remove from office any member of the Tribunal for inability, misbehaviour or on the ground of any employment or interest which is incompatible with the functions of a member of the Tribunal.
- (8) Where any member of the Tribunal is ill, or otherwise unable to act, or where his office is vacant, the President may appoint a person to act in the stead of such member during his illness, or incapability, or until the office is filled, as the case may be.
- (9) No defect in the qualification or appointment of any member of the Tribunal shall vitiate any proceedings thereof.

Salary, allowances, and conditions of service. 53.

- (1) There shall be paid to each member of the Tribunal, and to a person appointed to act in or perform the functions of any member of the Tribunal such salary or remuneration and such allowances as may be prescribed by order by the President.
- (2) Such other conditions of service shall be applicable to the Chairman, Vice-Chairman and other members of the Commission as may be prescribed by order by the President.
- (3) The salary, remuneration, allowances and the other conditions of service of the Chairman, Vice-Chairman, and of any other member of the Tribunal shall not be altered to his disadvantage after his appointment to the Tribunal or during his

tenure of office.

Procedure
and juris-
diction of
Tribunal

54. (1) The jurisdiction and powers of the Tribunal may be exercised by the Chairman or the Vice-Chairman, and one other member selected by the Chairman or Vice-Chairman, as the case may be, for the purpose of any case or proceeding which may be brought before the Tribunal.
- (2) Unless rules made under this section otherwise provide, fourteen clear days notice shall be given to the appellant and to the respondent of the date fixed for the hearing of a matter by the Tribunal.
- (3) The Chairman of the Tribunal, when present, shall preside, and, in the absence of the Chairman, the Vice-Chairman shall preside,
- (4) All appeals to the Tribunal shall be heard in public and any appellant, complainant or respondent may appear before the Tribunal in person or be represented by an attorney-at-law.
- (5) In relation to the attendance and examination of witnesses, the production and inspection of documents, the enforcement of its orders, the entry on and inspection of property, and other matter necessary or proper for the due exercise of its jurisdiction, the Tribunal shall have all such powers, rights and privileges as are vested in the High Court on the occasion of an action.
- (6) A summons signed by the Registrar of the Tribunal shall have the same force and effect as any formal process capable of being issued in any action taken in the High Court for enforcing the attendance of witnesses and compelling the production of documents.
- (7) In any matter before the Tribunal, the Tribunal may order that written arguments and a citation of authorities be submitted to the Tribunal in addition to or, with the consent of the parties, in place of an

oral hearing.

- (8) The decision of the Tribunal shall be that of the majority of the members present, but the opinion of the presiding member shall prevail on any matter arising in the course of any proceedings which, in his opinion, is a question of law.
- (9) The decision of the Tribunal in any proceedings shall be delivered by the presiding member and any member may provide a concurring or dissenting opinion to the decision of the Tribunal.
- (10) The Tribunal may, subject to the approval of the President, make rules not inconsistent with this Act governing the carrying on of the business of the Tribunal and the practice and procedure in connection with appeals to the Tribunal and other proceedings, and the regulating of any matters relating to the costs of proceedings before the Tribunal.

Notices of 55. appeals.

- (1) This section applies to every appeal to the Tribunal.
- (2) The appeal shall be instituted by filing with the Registrar of the Tribunal a notice of appeal and serving a copy thereof on the Secretary of the Agency or other respondent.
- (3) Any appeal instituted under this section shall be filed within twenty-eight days of the service on, the person seeking to appeal the decision of the Authority or other respondent or within such other time as may be prescribed by rules made under section 54(10).
- (4) Notwithstanding subsection (3), an appeal may be instituted out of time if the Tribunal is satisfied that there was a reasonable cause for not appealing within the time limit and that the appeal was filed thereafter without unreasonable delay.

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- (5) The notice of appeal shall describe the specific dispute and specify the grounds of appeals, and shall be in such form as may be prescribed by rules of the Tribunal.
- (6) If on the hearing of the appeal the appellant desires to go into any ground of appeal which was not specified in the notice of appeal, and the omission of that ground from the notice was in the opinion of the Tribunal not wilful or unreasonable, the Tribunal shall not by reason of anything in subsection (5) be precluded from allowing the appellant to go into that ground or taking it into consideration.
- (7) Immediately after receiving the notice of appeal, or within such other time as may be prescribed by rules of the Tribunal, the Agency or other respondent shall forward to the Tribunal copies of all documents relevant to the decision appealed from.

Hearing and determining of appeals.

- 56. (1) The onus of proving that the decision complained of is excessive or wrong is on the appellant.
- (2) In appeals involving the Agency, there shall be a presumption of regularity with regard to findings of fact by the Agency, and such findings shall not be reversed unless the appellant affirmatively demonstrates that there is no substantial evidence supporting such findings of fact.
- (3) Subject to subsection (4), the Tribunal may dispose of an appeal by -
 - (a) dismissing it;
 - (b) allowing it;
 - (c) allowing it and modifying the decision or action of the Agency; or
 - (d) allowing it and referring the decision or action back to the Agency for reconsideration.
- (4) Subject to rules made under section 54(10) the Tribunal may make an order for the

payment of costs to the successful party in relation to the whole of the proceedings before it, or any part thereof including costs incurred in the summoning and attendance of necessary witnesses.

- (5) The decision of the Tribunal is final on a question of fact; an appeal shall lie on any question of law to the Court of Appeal upon entry of a final judgment by the Tribunal.

**Statement
of case for
opinion of
Court of
Appeal.**

57. (1) The appellant or the Agency or other complainant or respondent, if dissatisfied with the decision of the Tribunal as being erroneous in point of law, may, within twenty-one days after the delivery of the decision or within such other time as may be prescribed, appeal against such decision by -
- (a) filing with the Registrar a notice in writing, in the prescribed form, identifying the specific point or points of law alleged to be in error and requesting the Tribunal to state and sign a case for the opinion of the Court of Appeal; and
- (b) serving a copy of the said notice on the Secretary of the Agency or other respondent or appellant in the underlying action, as the case may be.
- (2) The case shall set forth the facts and the determination of the Tribunal relevant to the specific point or points of law alleged to be in error, and the party requiring it shall transmit the case, when stated and signed, to the Court of Appeal within twenty-one days after receiving the same.
- (3) At or before the time when the party transmits the case to the Court of Appeal, the party requiring it shall send notice in writing of the fact that the case has been stated on his application, together with a copy of the case, to the other party or parties.

- (4) The Court of Appeal shall hear and determine any question or questions of law arising on the case, and shall reverse, affirm or amend the determination in respect of which the case has been stated, or shall remit the matter to the Tribunal with the opinion of the Court of Appeal thereon.
- (5) The Court of Appeal may cause the case to be sent back to the Tribunal for amendment on a point of law, and thereupon the case shall be amended accordingly, and judgement shall be delivered after it has been amended.

PART IX

MISCELLANEOUS

- Regulations. 58. The Minister may make regulations for the purpose of giving effect to the provisions of this Act, and in particular but without prejudice to the generality of the foregoing, such regulations may contain provisions in relation to-
- (a) standards and codes of practice with respect to the protection and rehabilitation of the environment and the conservation of natural resources;
 - (b) the quantity, condition or concentration of substances that may be released into the environment;
 - (c) the restriction or prohibiting of ozone depleting substances;
 - (d) the establishment of ambient air quality standards, an air pollution monitoring system and index, and the manufacture use and emission of air contaminants;
 - (e) the reduction of litter and the discharge of waste generally, and the fees payable in relation thereto;
 - (f) the design, construction, operation, maintenance and monitoring of facilities for the control of pollution and the disposal of waste;
 - (g) the protection of particular species of prescribed fauna and flora;
 - (h) classifying contaminants and sources of contaminants including the designation of certain contaminants as hazardous;
 - (i) requiring the filing of terms of returns concerning any matter regulated by or under this Act or regulations;
 - (j) protecting the coastal and marine resources;

- (k) prohibiting or regulating and controlling the discharge of any contaminant or contaminants into the natural environment from any source of contaminant or any class thereof;
- (l) prescribing maximum permissible amounts, concentrations or levels of any contaminant or combination of contaminants, and any class of either of them;
- (m) prescribing the maximum permissible concentration or level in water of any contaminant either generally or with respect to any part of the waters of Guyana specified in the regulations;
- (n) governing the location of waste disposal sites, establishing classes of waste disposal sites, and designating parts of Guyana in which no waste disposal sites, or any class thereof, shall be established or operated;
- (o) prohibiting the dumping of wastes into the marine environment;
- (p) the method of service of any document or class of documents given or served under this Act or the regulations;
- (q) governing and regulating the management of waste and prescribing standards for waste management systems and for the location, maintenance and operation of waste disposal sites, or any class thereof;
- (r) the form and manner of, and the fees payable in connection with an application for any prescribed process licence or permit that may be granted by the Agency under this Act;
- (s) the designation of any process as a prescribed process and the grant, refusal, revocation or suspension of any prescribed process licence that may be issued by the Agency and the terms, conditions or restrictions subject to which such

prescribed process licences may be granted;

- (t) the fees chargeable to the Agency for services rendered by the Agency, its employees or agents in carrying out the provisions of any enactment under which the Agency exercises functions;
- (u) prohibiting or halting the emission of sounds or vibrations or prescribing maximum levels of sounds and vibrations and the procedures for determining the levels of sounds or vibrations that are emitted;
- (v) the quality of fuels, additives and lubricants that may be imported or used for vehicles, generating electricity, industrial processes or incineration;
- (w) defining standard, refillable, returnable, non-refillable or non-returnable containers or packaging and requiring the payment of any deposit at the time of purchase of any material;
- (x) requiring or authorising the placement of notices or marks on products, containers, packaging or label on product containers or packaging to indicate matters of environmental concern;
- (y) any other matter relating to the prevention and control of environmental pollution;
- (z) any other matter required by this Act to be prescribed.

Act binds the State.

59. (1) This Act and the regulations shall bind the State.
- (2) Nothing in this Act shall be construed as rendering the State liable to prosecution.

Ethical considerations.

60. If any representative of the Agency, including any member of the Board of Directors or Environmental Assessment Board or any officer or employee of the Agency directly or

indirectly demands or accepts any fee, perquisite, bribe, gratuity, recompense or reward, whether pecuniary or otherwise, from any person on account of anything done or to be done (or omitted or to be omitted) by such representative, officer or employee in any way relating to his office or employment, or if any representative, officer or employee attempts to make any collusive agreement to neglect his duty or to conceal or connive at any act or omission whereby any provision of this Act or other law may be eroded or violated, such representative, officer, or employee shall be guilty of an offence and shall be liable to the penalties prescribed under paragraph (d) of the Fifth Schedule.

**F i f t h
Schedule.**

GAHEF.

61. The provisions of the Guyana Agency for Health Sciences, Education, Environment and Food Policy Order 1988, in so far as they relate to the environment and other matters for which provision is made in this Act, shall cease to have effect.

**No. 23 of
1988.**

FIRST SCHEDULE s.3THE AGENCY

- Seal of the Agency.** 1. (1) The seal of the Agency shall be kept in the custody of the Executive Director or any person designated in writing by the Executive Director and shall be authenticated by the signature of the Executive Director.
- (2) Every document purporting to be an instrument duly executed under seal of the Agency shall be received in evidence and deemed, without proof to be so executed unless the contrary is proved.
- (3) All documents, other than those required by law to be under seal of the Agency may be signified under the hand of the Executive Director.
- Protection of Agency.** 2. No act done or proceeding taken under this Act shall be questioned on the ground of any omission, defect or irregularity not affecting the merits of the matter in question.
- Protection of Executive Director.** 3. (1) Subject to paragraph (2) no action, suit, prosecution or other proceedings shall be brought or instituted personally against the Executive Director in respect of any act done *bona fide* in the execution of his duties.
- (2) Where the Executive Director is exempt from liability by reason only of subsection (1), the Agency is liable to the extent that it would be if the Executive Director was a servant or agent of the Agency; so, however, that if in any case the Agency is not liable for any of the above mentioned acts, then paragraph (1) does not operate to exempt the Executive Director as therein stated.
- Headquarters of Agency** 4. The headquarters of the Agency shall be in Georgetown.

- Funds and resources of Agency.** 5. (1) The funds and resources of the Agency shall consist of -
- (a) such sums as may be provided by Parliament;
 - (b) revenue obtained under this Act or the regulations including fixed penalties paid under section 46;
 - (c) such moneys or other assets as may accrue to, or vest in the Agency by way of grants, subsidies, bequests, donations or gifts;
 - (d) all other sums or property that may in any manner become payable to or vested in the Agency.
- (2) The expenses of the Agency including the remuneration of its officers and employees shall be paid out of the funds and resources of the Agency.
- Charging of fees for services rendered.** 6. (1) Subject to the provisions of this Act or the regulations the Agency may charge fees in respect of any services rendered by it under this Act or the regulations.
- Accounts and Audit.** 7. (1) The financial year of the Agency shall end on the thirty-first day of December.
- (2) The Agency shall keep proper accounts and other records in respect of its operations and the accounts shall be audited annually by the Auditor General.
 - (3) All books of account kept by the Agency shall be subject to examination and audit at any time by the Auditor General.
 - (4) The members, officers and employees of the Agency shall grant to the Auditor General access to all books, documents, cash and securities of the Agency and shall give him on request all such information as may be within their knowledge in relation to the operation of the Agency.
- Report** 8. (1) The Agency shall not later than six months after the end of each financial year

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submit a report to the Minister containing

- (a) an account of its transactions throughout the preceding financial year in such detail as the Minister may direct; and
 - (b) a statement of the accounts of the Agency audited in accordance with paragraph 7.
- (2) A copy of the report together with a copy of the Auditor General's report shall be printed and laid before the National Assembly.

SECOND SCHEDULE

s.3

BOARD OF DIRECTORS

- Composi - tion.** 1. The Board of Directors (in this Schedule referred to as "the Board") shall consist of not less than seven nor more than eleven persons, a majority of whom shall be knowledgeable and with experience in matters relating to the natural environment or in environmental conservation, and the rest of whom shall be knowledgeable and with experience in corporate management or other related expertise, appointed for one year by the Minister.
- Chairman, Vice - Chairman.** 2. The Minister may appoint
- (a) one of the members of the Board to be chairman of the Board; and
 - (b) another member of the Board to be vice-chairman.
- Functions.** 3. The functions of the Board are to -
- (a) oversee the operations of the Agency;
 - (b) approve recommendations by the Executive Director on the organisation of the Agency and the appointment of senior staff;
 - (c) appoint working groups, sub-committees or bodies as needed to enable the Board of Directors to carry out its functions;
 - (d) approve environmental policies;
 - (e) propose environmental laws or regulations to the Minister;
 - (f) approve budget, workplan and programmes;
 - (g) approve the financial and annual reports;
 - (h) provide guidance on matters related to the protection of the environment.
- Meetings.** 4. The Board shall meet at least once in each month and at such other times as the Chairman determines is necessary for the efficient

discharge of its functions.

Procedure. 5. The Board may determine its own procedure and may, subject to the approval of the Minister, make rules governing such procedure, and prescribe such forms as are considered necessary.

Removal of member of Board. 6. (1) The Minister may remove a member of the Board if that member -

- (a) becomes incapable of carrying out his duties;
- (b) becomes bankrupt or compounds with his creditors;
- (c) is convicted of any offence;
- (d) is guilty of misconduct;
- (e) is absent, except on leave granted by the Board, from all meetings of the Board held during two consecutive months, or during any three months in any period of twelve months;
- (f) fails to comply with paragraph 7;
- (g) fails to carry out satisfactorily any of his functions under this Act or the regulations:

Provided that a member shall not be removed under this subparagraph unless he has been given a reasonable opportunity to be heard.

(2) It shall be an implied term of the appointment of a member of the Board that the appointment shall terminate if he is convicted of any offence under this Act or of any other offence, the commission of which involves dishonesty.

(1) Any member of the Board who has any interest, directly or indirectly, in any matter before the Board -

(a) shall disclose the nature of his interest to the Board; and

- (b) shall not take part in any deliberation or decisions of the Board with respect to that matter.
- (2) A disclosure under this section shall be recorded in the minutes of the Board.

THIRD SCHEDULE s.18ENVIRONMENTAL ASSESSMENT BOARD

- Composition of Board.** 1. The Environmental Assessment Board (in this Schedule referred to as "the Board") shall consist of not less than three nor more than five members, appointed by the Minister.
- Chairman and Vice-Chairman.** 2. The Minister shall designate a chairman and a vice-chairman from among the members of the Board.
- Term of Members.** 3. The members of the Board shall be appointed for a term not exceeding two years to serve in a part-time or periodic capacity.
- Quorum.** 4. Three members of the Board constitute a quorum.
- Remuneration.** 5. The members of the Board shall be paid such remuneration and expenses as may be determined by the Minister.
- Practice of the Board.** 6. (1) The Board may determine its own procedure and may, subject to the approval of the Minister, make rules governing such procedure.
- (2) All hearings before the Board shall be in public and the parties to the proceedings shall be entitled to be heard in person or by counsel.
- (3) Seven days' notice of all hearings shall be given by advertisement in one daily newspaper.
- (4) (a) After the conclusion of the hearing, the Board shall make its report in writing.
- (b) Any member not agreeing with the majority may record his views.
- (c) No member of the Board shall participate in the report of the Board unless he was present throughout the hearing and heard the evidence and submissions of the parties.

- (d) The report of the Board shall be a public document and shall be available to members of the public upon payment of the reasonable cost of photocopying.

Protection
of members

7. No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Board in respect of an act done *bona fide* in execution of this Act.

Declaration
of interest

8. (1) Any member of the Board who has any interest, directly or indirectly, in any matter before the Board -
- (a) shall disclose the nature of his interest to the Board; and
 - (b) shall not take part in any deliberation or decisions of the Board with respect to that matter.
- (2) A disclosure under this section shall be recorded in the minutes of the Board.

FOURTH SCHEDULE ss.10.11PROJECTS

1. The construction of any hotel, guest house or inn above ten rooms.
2. Installation for hydro-electric energy production.
3. Construction of roads, harbours, and airfields.
4. Dams and other installations designed to hold liquid or store it on a long-term basis.
5. Installation for the treatment of waste water, industrial or domestic waste.
6. The importing of any waste matter whether hazardous or not.
7. The release, use or keeping of any genetically modified organisms.

FIFTH SCHEDULE

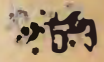
SS. 11, 15, 19, 20, 21
22, 24, 27, 33, 34, 36, 37
38, 39, 43, 60

PENALTIES

Where the offender is an individual:

ParagraphPrescribed Penalties

- (a) a fine of not less than ten thousand dollars nor more than fifty thousand dollars.
- (b) a fine of not less than thirty thousand dollars nor more than eighty thousand dollars.
- (c) a fine of not less than sixty thousand dollars nor more than one hundred and fifty thousand dollars.
- (d) a fine of not less than seventy thousand dollars nor more than three hundred thousand dollars and imprisonment for three months.
- (e) a fine of not less than seventy-five thousand dollars nor more than five hundred thousand dollars and imprisonment for six months.
- (f) a fine of not less than three hundred thousand dollars nor more than seven hundred and fifty thousand dollars and imprisonment for one year.
- (g) a fine of not less than four hundred thousand dollars nor more than one million dollars and imprisonment for five years.
- (h) a fine of not less than eight hundred thousand dollars nor more than two million dollars and imprisonment for five years.



Where the offender is a body corporate:

<u>Paragraph</u>	<u>Prescribed Penalties</u>
(a)	a fine of not less than twenty thousand dollars nor more than one hundred thousand dollars.
(b)	a fine of not less than one hundred twenty thousand dollars nor more than one hundred sixty thousand dollars.
(c)	a fine of not less than one hundred twenty thousand dollars nor more than three hundred thousand dollars.
(d)	a fine of not less than one hundred forty thousand dollars nor more than six hundred thousand dollars.
(e)	a fine of not less than one hundred fifty thousand dollars nor more than one million dollars.
(f)	a fine of not less than six hundred thousand dollars nor more than one million five hundred thousand dollars.
(g)	a fine of not less than eight hundred thousand dollars nor more than two million dollars.
(h)	a fine of not less than one million six hundred thousand dollars nor more than four million dollars.

EXPLANATORY MEMORANDUM

The Bill, as stated in the Long Title, provides for the management, conservation, protection and improvement of the environment. It provides for the prevention and control of pollution and for the sustainable use of our natural resources.

Part II provides for the creation of the Environmental Protection Agency, a body corporate governed by a Board of Directors. It specifies the functions of the Agency, what powers it may exercise, and the principles of environmental management it must follow. The Agency's functions include management of the natural environment promoting public participation in development, preventing pollution, monitoring and enforcing regulations, and providing advice to the Minister. Other persons or authorities shall not authorise activities regulated by this Act unless the relevant environmental authorisation has been issued by the Agency.

Part III deals with administrative matters regarding the appointment of directors and the delegating of functions.

Part IV sets out the procedure for applying to the Agency for an environmental permit and the procedure for carrying out an environmental impact assessment. It specifies the matters to be covered in the environmental impact assessment and the information to be provided. There is a mechanism for public consultation and a system for appealing to the Environmental Assessment Board, established under this part against either a grant or a refusal to grant an environmental permit.

Part V prohibits pollution and provides a system for notifying the Agency if there is any discharge in breach of the Act. The Minister may make an order requiring action to be taken to prevent further harm and to restore the natural environment. This Part requires permits for construction and operation of plants and gives the Agency the right to information. For an activity which the Minister designates as a prescribed process there are stricter information and operational requirements. The Agency has power to suspend or cancel an environmental authorisation which was

improperly obtained or where there is a sufficiently serious breach of the authorisation. This Part also gives the Agency power to issue prohibition notices to stop serious pollution or damage to public health and provides for appeals to the Environment Appeals Tribunal.

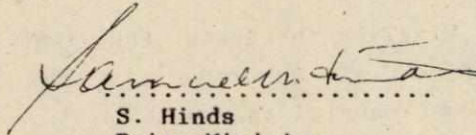
Part VI gives the Agency the right to require a developer to provide financial assurance to the State and states what constitutes financial assurance.

Part VII prescribes the investigative powers of an authorised person and the registers the Agency has to maintain. It creates a general duty not to damage the environment and prescribes the penalty for a continuing offence. The Part empowers the court, in addition to the power to the power of imposition of a fine and imprisonment, to order the offender to prevent further harm to, or to repair damage to, the environment; to pay compensation or supply or publish information. It allows an offender to pay a fixed penalty and avoid a trial for an offence. The Part provides for civil proceedings for the recovery of damage to property and for injunction against illegal acts.

Part VIII deals with the establishment and jurisdiction of the Environmental Appeals Tribunal which shall be a superior court of record with jurisdiction to hear and determine appeals regarding the refusal of the grant of a construction or operation permit, against the revocation or variation of a construction or operation permit, against an enforcement notice or prohibition notice, and such other matters as may be prescribed by the Minister or arise under the Act.

The Tribunal shall comprise a chairman and four other members, including a vice-chairman, the chairman and vice-chairman being attorneys-at-law of not less than ten years standing. An appellant or the Agency, if dissatisfied with the decision of the Tribunal as being erroneous in point of law may appeal against such decision to the Court of Appeal.

Part IX gives the Minister wide-ranging power to make regulations, including regulations establishing emission standards, pollution levels, procedures, codes of practice, fees, recycling and the protection of the fauna and flora. The Act and the regulations bind the state.



S. Hinds
Prime Minister.