

CHAPTER 204

THE ENVIRONMENTAL PROTECTION AND POLLUTION CONTROL ACT

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CHAPTER 204

ENVIRONMENTAL PROTECTION AND POLLUTION CONTROL	<i>No</i>
	12 of 1990
An Act to provide for the protection of the environment and the control of pollution; to establish the Environmental Council and to prescribe the functions and powers of the Council; and to provide for matters connected with or incidental to the foregoing.	13 of 1994 12 of 1999

[23rd July, 1990]

**PART I
PRELIMINARY**

1. This Act may be cited as the Environmental Protection and Pollution Control (amendment) Act, 1999, and shall be read as one with the Environment Protection and Pollution Control Act, in this Act referred to as the principal Act..	Short title Cap. 204
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2. In this Act, unless the context otherwise requires-	Interpretation
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"abatement" means the reduction or removal of environmental pollution to permitted or prescribed levels;

"Advisory Committee" means the Standing Technical Advisory Committee constituted under section *twenty-one*;

"Chairman" means the Chairman of the Council, appointed under section *four*;

"committee" means a committee constituted by the Council under section *nine*;

"conservation" means the sustainable management and use of natural resources and the environment so that they continue to provide the required benefits to man and other living things;

"contaminant" means a substance or physical agent, or a combination of substances and physical agents that may contribute to or create a condition of pollution;

"Council" means the Environmental Council established by section *three*;

"Deputy Director" means the Deputy Director of the Council, appointed under section *nineteen*;

"Director" means the Director of the Council, appointed under section *nineteen*;

"Director of Public Prosecutions" means the person appointed Director of Public Prosecutions under article <i>fifty-six</i> of the Constitution;	Cap.1
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"ecological system" means a living functional system which contains all organisms including man, their environments and the relationships that exist between them;

"environment", except as otherwise defined in PART IX, means land, water, air and other external influences and conditions which affect the development and life of all organisms including man;

"inspector" means the person appointed inspector under section *eighty-three*;

"Inspectorate" means the Environmental Inspectorate established under section *eighty-one*;

"member" means a member of the Council;

"permit" means a document authorising activities as specified under this Act.

"person" means an individual, partnership, corporation or association;

"pollution" means the presence in the environment of one or more contaminants in such quantities and for such duration and under such conditions as may cause discomfort to or endanger the health, safety and welfare of persons, or which may cause injury or damage to plant or animal life or property, or which may interfere unreasonably with the normal enjoyment of life or use of property or conduct of business;

"pollutor" means a person who contributes to or creates a condition of pollution;

"Secretary" means the Secretary of the Council, appointed under section *twenty*;

"standards" means the limits of pollution prescribed under this Act and any regulations made under this Act; and

"Vice-Chairman" means the Vice-Chairman of the Council appointed under section *four*.

(As amended by Act No.12 of 1999)

PART II

THE ENVIRONMENTAL COUNCIL

3. There is hereby established the Environmental Council which shall be a body corporate with perpetual succession and a common seal, capable of suing and of being sued in its corporate name, and with power, subject to this Act, to do all such acts and things as a body corporate may lawfully do or perform.

Establishment of
Environmental
Council

4. (1) The Council shall consist of the following members appointed by the Minister: Composition of Council

(a) the Chairman;

(b) a representative from each of the following Ministries or organisations:

- (i) the Ministry responsible for environment and natural resources;
- (ii) the Ministry responsible for mines and minerals development;;
- (iii) the Ministry responsible for government and housing;
- (iv) the Ministry responsible for labour and social security;
- (v) the Ministry responsible for education;
- (vi) the Ministry responsible for health
- (vii) the Ministry responsible for energy and water development;
- (viii) the Ministry responsible for food, agriculture and fisheries;
- (ix) the Zambia Wildlife Authority;
- (x) the Chamber of Mines;
- (xi) the Zambia Association of Chambers of Commerce and Industry;
- (xii) the a non-governemntal organisation concerned with the conservation of nature designated by the Chairperson of that organisation;
- (xiii) the National Institutte for Sciencetific and Industrial Research;
and
- (xiv) the Zambia Bureau of Standards.

(2) The members shall appoint a Vice-Chairman from amongst themselves.

(3) Where any member, except the Chairman, Vice-Chairman and a member referred to in paragraph (xxv) of subsection (1) is unable to attend any meeting of the Council his ministry or organisation as the case may be, may in writing nominate another person to attend in his stead and such person shall be deemed to be a member for the purpose of that meeting.

(As amended by Act No.12 of 1999)

5. (1) A member shall hold office for a period of three years and shall be eligible for re-appointment but shall not hold office for more than two terms. Tenure of office and vacancies

(2) Any member referred to in paragraph (a) of subsection (1) of section *four* may resign upon giving one month's notice in writing to the Minister and may be removed by the Minister at any time.

(3) The members referred to in paragraph (b) of subsection (1) of section *four* may resign upon giving one month's notice to the Ministry or authority which appointed him and may be removed by the Ministry or authority which appointed him at any time.

(4) The office of a member shall become vacant-

- (a) if he is declared to be of unsound mind;
- (b) if he is an undischarged bankrupt;
- (c) if he is detained, or his freedom of movement is restricted under any law in force in Zambia for a period in excess of six months;
- (d) if he is sentenced to a term of imprisonment for a period in excess of six months;
- (e) if he is convicted of an offence involving dishonesty;
- (f) upon resignation or removal under subsection (2) and (3);
- (g) if he ceases to be a representative of the organisation or Ministry that appointed him; or
- (h) if he is absent without reasonable cause from three consecutive meetings of the Council of which he had notice.

(As amended by Act No.12 of 1999)

6. (1) Subject to the other provisions of this Act, the functions of the Council shall be to do all such things as are necessary to conserve the environment and prevent control pollution, so as to provide for the health and welfare of persons, animals, plants and the environment.

Functions of
Council

(2) Without prejudice to the generality of subsection (1), the Council may-

- (a) advise the Government on the formulation of policies relating to sustainable management of natural resources and the environment;
- (b) recommend measures aimed at preventing and controlling pollution resulting from industrial processes or otherwise;
- (c) advise on any aspect of conservation;

- (d) advise on the need to conduct and promote research analysis, surveys, studies, investigations and training, of personnel, in the field of environmental conservation, prevention and control of pollution ;
- (e) receive and review reports and make recommendations to the Government on environmental matters;
- (f) conduct studies and make recommendations on standards relating to the improvement of the environment and the maintenance of a sound ecological system;
- (g) co-ordinate the activities of all Ministries and other bodies concerned with the management of the environment, prevention and control of pollution;
- (h) advise on co-operation between national and international organisations on environmental matters;
- (i) advise on the need for, and embark upon, general educational programmes for the purpose of creating an enlightened public opinion regarding the environment and an awareness of an individual and the public on their role in the management and improvement of the environment;
- (j) identify projects or types of projects, plans and policies for which environmental impact assessment are necessary and undertake or request others to undertake such assessments for consideration by the Council;
- (k) consider and advise, on all major development projects at an initial stage and for that purpose the Council may request information on the major development projects;
- (l) monitor trends in the use of natural resources and their impact on the environment;
- (m) identify, promote and advise on projects which further or are likely to further conservation for sustainable development and improvement of the environment;

- (n) hold seminars, symposia and prepare studies on matters relating to sustainable management and use of the natural resources and the environment;
- (o) request for information on projects proposed, planned or in progress by any person anywhere in Zambia;
- (p) request for information on the quantity, quality and management methods of natural resources and environmental conditions from any individual or organisation anywhere in Zambia;
- (q) provide support for environmental conservation and improvement by way of grants or loans, the provision of accommodation, equipment and the common use thereof;
- (r) advise on the effects of any sociological or economic development on the environment;
- (s) publicise all relevant information on any aspect of the environment;
- (t) carry out any other activities relating to the management of the environment, prevention and the control of pollution which are necessary or conducive to the better performance of its functions under this Act.

(3) The Council may, subject to such terms and conditions as it considers fit, delegate in writing any of its functions under this Act to the Director, any member, the Inspectorate or the Secretary.

(4) The Minister may give to the Council such general or specific directions with respect to the discharge of its functions as he may consider necessary and the Council shall give effect to those directions.
(As amended by Act No.12 of 1999)

7. (1) Subject to the other provisions of this Act, the Council may regulate its own procedure.

Proceedings of
Council

(2) The Council shall meet for the transaction of business at least once in every three months at such places and at such times as the Chairman

may determine.

(3) Upon giving notice of not less than fourteen days, a meeting of the Council may be called by the Chairman and shall be called if not less than seven members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice a special meeting may be called upon giving a shorter notice.

(4) Half of the members shall form a quorum at a meeting of the Council.

(5) There shall preside at any meeting of the Council, the Chairman or in his absence, the Vice-Chairman or in the absence of both the Chairman and the Vice-Chairman, such member as the members present may elect for the purpose of that meeting.

(6) A decision of the Council on any question shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his deliberative vote.

(7) The Council may invite any person, whose presence is in its opinion desirable, to attend and participate in the deliberations of a meeting but that person shall have no vote.

(8) The validity of any proceedings, act or decision of the Council shall not be affected by any vacancy in its membership or by any defect in the appointment of any member or because any person not entitled to do so took part in the proceedings.

(9) The Council shall cause to be kept minutes of the proceedings of every meeting of the Council and of every meeting of any committee constituted by the Council.

8. (1) The seal of the Council shall be such device as may be determined by the Council and shall be kept by the Secretary.

Seal of Council

(2) The Council may use a wafer or rubber stamp in lieu of the seal.

(3) The affixing of the seal shall be authenticated by the Chairman or the Vice-Chairman, and the Secretary or one other person authorised in that behalf by a resolution of the Council.

(4) Any contract or instrument which, if entered into or executed by a person not being a body corporate would not be required to be under seal, may be entered into or executed without seal on behalf of the Council by the Director or any other person authorised in that behalf by a resolution of the Council.

(5) Any document purporting to be a document under the seal of the Council or issued on behalf of the Council shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

9. (1) The Council may, for the purpose of performing its functions under this Act, constitute any committee the Chairman of which shall be a member of the Council and may delegate to that committee any of its functions.

Committee of
Council

(2) The Council may appoint as members of a committee established under subsection (1), persons who are or are not members of the Council and those persons shall hold office for such period as the Council may determine.

(3) Subject to any specific or general directions of the Council, any committee established under subsection (1) may regulate its own procedure.

10. (1) If any person is present at a meeting of the Council or a committee of the Council at which any matter in which that person or his spouse is directly or indirectly interested in a private capacity is the subject of consideration he shall, as soon as practicable after the commencement of the meeting, disclose that interest and shall not, unless the Council or committee otherwise directs, take part in any consideration or discussion of, or vote on, any question touching that

Disclosure of
interest

matter.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

11. No action or other proceedings shall lie or be instituted against any member or any member of a committee for, or in respect of, any act or thing done or omitted to be done in good faith in the exercise or purported exercise of his functions under this Act.

Immunity of members

12. (1) No person shall, without the consent in writing given by or on behalf of the Council, publish or disclose to any person, otherwise than in the course of his duties the contents of any document, communication or information whatsoever, which relates to, and which has come to his knowledge in the course of, his duties under this Act.

Prohibition of publication or disclosure of information to unauthorised persons

(2) Any person who knowingly contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding seven thousand five hundred penalty units or to imprisonment for a term not exceeding two years, or to both.

(3) If any person having information which to his knowledge has been published or disclosed in contravention of subsection (1) unlawfully publishes or communicates any such information to any other person, he shall be liable, upon conviction, to a fine not exceeding seven thousand five hundred penalty units or to imprisonment for a term not exceeding two years or to both.

(As amended by Act No. 13 of 1994)

13. A member of the Council or Committee shall be paid such remuneration or allowance as the Minister may determine.

Remuneration of member of Council

14. (1) The funds of the Council shall consist of such moneys as may-

Funds of Council

(a) be appropriated by Parliament for the purposes of the Council;

(b) be paid to the Council by way of fees, grants or donations; and

(c) otherwise vest in or accrue to the Council.

(2) The Council may-

(a) accept moneys by way of grants or donations from any source in Zambia and, with the approval of the Minister, from any source outside Zambia;

(b) with the approval of the Minister, raise by way of loans or otherwise, such moneys as it may require for the discharge of its functions;

(c) in accordance with regulations made under this Act, charge and collect fees in respect of consultancy and other services provided by the Council and the Standing Technical Advisory Committee; and

(d) charge and collect fees in respect of programmes, seminars and environmental impact assessments conducted by the Council.

(3) There shall be paid from the funds of the Council-

(a) the salaries and allowances and loans to the staff of the Council;

(b) such reasonable travelling and subsistence allowances for members or members of any committee of the Council when engaged on the business of the Council and at such rates as the Minister may determine;

(c) grants or loans for the support of environmental conservation, protection and improvement; and

(d) any other expenses incurred by the Council in the performance of its functions.

15. The Council may invest in such manner as it considers fit any of its funds which it does not immediately require for the performance of its functions.

Investment of funds

16. The financial year of the Council shall be the period of twelve months ending on 31st December in each year. Financial year

17. The Council shall cause to be kept proper books of account and other records relating to its accounts. Accounts

18. (1) As soon as practicable but not later than six months after the expiry of each financial year, the Council shall submit to the Minister a report concerning its activities during such financial year. Annual report

(2) The report of the Council shall include information on the financial affairs of the Council and there shall be appended to it-

(a) an audited balance sheet;

(b) an audited statement of income and expenditure; and

(c) such other information as the Minister may require.

(3) The Minister shall, not later than fourteen days after the sitting of the National Assembly next after receipt of the report referred to in subsection (1), lay it before the National Assembly.

PART III

ADMINISTRATION

19. (1) Subject to the approval of the Minister, the Council shall appoint on such terms and conditions as it may determine, a Director who shall be the chief executive officer of the Council and who, subject to the control of the Council, shall be responsible for the overall management and administration of the Council. Director and Deputy Director

(2) Subject to the approval of the Minister, the Council may appoint a Deputy Director who-

- (a) shall assist the Director in the performance of his duties under the Act; and
- (b) shall discharge the functions of the Director whenever the office of the Director is vacant or the Director is absent or is for any other cause unable to discharge the functions of his office.

(3) The Director or in his absence the Deputy-Director, shall attend meetings of the Council and may attend meetings of any committee established by the Council and may address the meetings, but shall not vote on any matter:

Provided that the person presiding at any such meeting, may for good cause, require the Director or Deputy-Director as the case may be, to withdraw from the meeting.

(4) The provisions of sections *ten* and *eleven* shall apply with necessary modifications to the Director and Deputy-Director.

20. (1) The Council shall appoint a Secretary on such terms and conditions as the Council may determine.

Secretary and other staff

(2) The Secretary shall be responsible for the administration of the day to day affairs of the Council under the general supervision of the Director.

(3) The Council may appoint, on such terms and conditions as it may determine, such other staff as it considers necessary for the performance of its functions under this Act.

21. (1) The Council shall constitute a Standing Technical Advisory Committee whose members shall be experts in fields relevant to the environment, pollution, pesticides and toxic substances, noise, ionising radiation, hazardous wastes, and waste management.

Standing Technical Advisory Committee

(2) The members of the Advisory Committee shall be appointed, by the Council on such terms and conditions as it may determine.

(3) The functions of the Advisory Committee shall be to advise the

Council and the Minister on-

- (a) the formulation and periodic revision of standards and regulations for pollution control relating to water, air, solid wastes, hazardous wastes, pesticides and toxic substances, noise emission and ionising radiation;
 - (b) the methods and equipment to be used for the monitoring and control of pollution in the environment, particularly water, air, solid wastes, hazardous wastes, pesticides and toxic substances, noise and ionising radiation;
 - (c) sound natural resources conservation, including the creation of natural resources preserves for the propagation and maintenance of stocks of all indigenous species and their germ plasm;
 - (d) sustainable land use practices;
 - (e) methods and procedures of rehabilitation of derelict land; and
 - (f) any other matter referred to it by the Council.
- (As amended by Act No.12 of 1999)

PART IV

WATER

22. In this Part, unless the context otherwise requires-

Interpretation

"aquatic environment" means all surface and ground waters, but does not include water in installations and facilities for industrial effluent, sewage collection and treatment;

"discharge" means spilling, leaking, pumping, pouring, emitting, emptying or dumping;

"effluent" means waste water or other fluid of domestic, agricultural, trade or industrial origin, treated or untreated, and discharged directly or indirectly into the aquatic environment;

"licence" means a licence to discharge effluent issued under section *thirty-one*;

"pollutant" means any substance or energy, which if it enters or is discharged into water may cause discomfort to, or endanger the health, safety and welfare of persons, or may cause injury or damage to plant or

animal life or property, or which may interfere unreasonably with the normal enjoyment of life or property or use of property or conduct of business, and those objects or substances as may inadvertently obstruct or divert the natural flow of a water course when discharged or dumped into it;

"sewage" means waste water generated by residential and commercial establishments;

"sewage system" includes sewage treatment plants;

"waste water" means water which has been used for domestic, commercial, agricultural, trading or industrial purposes and as a result of such uses may cause water pollution when discharged into the aquatic environment;

"water pollution" means the introduction, directly or indirectly of pollutants into an aquatic environment.

23. The Council shall-

Responsibilities of
Council

- (a) establish water quality and pollution control standards;
- (b) determine conditions for the discharge of effluents into the aquatic environment;
- (c) formulate rules for the conservation of fishing areas, aquatic areas, drinking water sources and reservoirs, recreational and other areas, where water may need special management;
- (d) identify areas of research and initiate or sponsor research in the effects of water pollution on the environment, human beings, flora and fauna;
- (e) order or carry out investigations of actual or suspected water pollution including the collection of data;
- (f) take steps or authorise any works to be carried out which appear to be necessary to prevent or abate water pollution from natural causes or from abandoned works or undertakings;
- (g) lay down the analytical methods by which water quality and pollution control standards can be determined and establish or appoint laboratories for the analytical services required by the Inspectorate;
- (h) initiate and encourage international co-operation in the control of water pollution, in particular with those neighbouring

- countries with which Zambia shares river basins;
- (i) collect, maintain and interpret data from industries and local authorities on the pre-treatment, nature and levels of effluents;
 - (j) collect, maintain and interpret data on water quality and hydrology which is relevant to the granting of licences under this Part;
 - (k) enforce rulings made under this Part; and
 - (l) do all such things as appear to be necessary for the monitoring and control of water pollution.
- (As amended by Act No.12 of 1999)*

24. No person may discharge or apply any poisonous, toxic, erotoxic, obnoxious or obstructing matter, radiation or other pollutant or permit any person to dump or discharge such matter or pollutant into the aquatic environment in contravention of water pollution control standards established by the Council under this Part.

Prohibition of water pollution

25. (1) Owners or operators of irrigation schemes, sewage system, industrial production plants, workshops or any other undertaking which may discharge effluent shall submit to the Inspectorate such information about the quantity and quality of such effluent.

Duty to supply information to Inspectorate

(2) The inspectorate may require an owner or operator of irrigation schemes, sewage system, industrial production plants, workshops or any other undertaking which the Inspectorate has reasonable grounds to believe may cause or causes the discharge of effluent into the aquatic environment to submit all information relating to the quantity and quality of effluent as the Inspectorate may require.

(3) The Inspectorate may order an owner or operator referred to under this section, at his expense, to instal such metering devices, and to have such samples taken and analysed, and to keep such records, as the Inspectorate may require.

26. The owner or operator of a trade or industrial undertaking who wishes to discharge into an existing sewage system effluent from his plant shall obtain written permission to do so from the local authority operating or supervising the sewage system.

Permission to discharge effluent into sewage system

27. (1) The local authority operating or supervising a sewage system

Conditions for

may impose conditions under which any effluent can be accepted or may prescribe methods of pre-treating the effluent prior to acceptance into the system.

acceptance of effluent

(2) A local authority may vary the conditions of acceptance of an industrial or trade effluent, but a variation shall not be made unless the authority gives six months' notice.

28. Any person who discharges any effluent into a sewage system in contravention of the conditions imposed by the local authority, shall be guilty of an offence.

Offence relating to effluent

29. (1) An effluent may be mixed for treatment prior to discharge or for conveying to a common point of discharge.

Treatment of effluent

(2) No person shall withdraw water from a water course or any other source for the purpose of diluting any effluent to make it acceptable except under a licence issued by the Inspectorate.

30. (1) No local authority operating a sewage system or owner or operator of any industry or trade shall discharge effluent into the aquatic environment without a licence.

Licence to discharge effluent

(2) The owner or operator of an undertaking discharging an effluent before the commencement of this Act or whom the Inspectorate so requests shall apply for a licence within twelve months after the commencement of this Act.

(3) The Inspectorate may grant a licence for the discharge of effluent under this Part.

31. (1) Any person intending to erect, instal or develop a new industrial or trade plant, an agricultural scheme or an undertaking likely to discharge effluent shall inform the Inspectorate of his intention during the early planning stage.

Application for licence for new undertaking etc., likely to discharge effluent

(2) The Inspectorate may, without undue delay after the receipt and

consideration of the information submitted under subsection (1), require any person referred to in that subsection to apply for a licence.

(3) The application for a licence under this section shall be submitted to the Inspectorate not less than six months prior to the commencement of the discharge of effluent.

32. An extension of an existing industrial or trade plant, or agricultural scheme or other undertaking shall be deemed to be new if the extension-

(a) will increase the effluent of the existing plant either in the quantity or concentration of pollutants;

(b) will discharge its effluent into a different water course; or

(c) will introduce a new type of pollutant into the environment.

Circumstances under which extension deemed new

33. (1) The Inspectorate, may or may not grant a licence after considering the details of-

(a) the possible effects on the quality of an affected water course or other source;

(b) the existing licences affecting the same water course or other source; and

(c) the water requirements of riparian residents, human settlements and agricultural schemes which depend on the water course.

Grant or refusal of licences

(2) If a licence is not granted, the notice of refusal shall state the reasons for the refusal.

34. Regulations made under section *ninety-six* shall prescribe the contents of an application and the conditions for a licence to discharge effluent.

Contents of application and conditions of licence

PART V

AIR

35. In this Part, unless the context otherwise requires-

Interpretation

"air pollution" means a condition of the ambient air arising wholly or partly from the presence of one or more pollutants in the air that endangers the health, safety or welfare of persons or that interferes with the normal enjoyment of life or property or that endangers animal life or that causes damage to plant life or property;

"ambient air" means the atmosphere surrounding the earth, but does not include the atmosphere within a structure or within any underground space;

"air quality" means the concentration, prescribed under this Part, of a pollutant in the atmosphere at the point of measurement;

"emission standard" means the amount, specified under this Part, of pollutant emitted from a specific source

"licence" means a licence to emit pollutants into the ambient air;

"operator" in relation to works, industry undertaking or business, means the person having the control of the works, undertaking or business;

"pollutant" means any substance or energy which if it enters or is discharged into the ambient air is likely to render the air offensive or harmful to human, animal or plant life;

"stationary source" means any source of emission of one or more pollutants other than a motor vehicle, ship, train, aircraft or other similar vehicle or conveyance.

36. The Council shall-

- (a) establish ambient air quality and emission standards and guidelines;
- (b) on the advice of the Advisory Committee, specify the analytical methods for monitoring air contaminants and establish laboratories for analytical services needed by the Inspectorate;
- (c) identify areas of research and initiate or sponsor research on the effects of air pollutants on human beings, the environment, flora and fauna;
- (d) order or carry out investigations of actual or suspected air pollution including the collection of data;

Responsibilities of Council

- (e) initiate and encourage international co-operation in matters of air pollution, especially with neighbouring countries;
- (f) order any industry or other source of air pollution to file such returns and provide such information as the Council may require;
- (g) enforce rulings made under this Part; and
- (h) do all such things as appear necessary for the monitoring and control of air pollution.

(As amended by Act No.12 of 1999)

37. (1) The Council may, with the approval of the Minister, declare by statutory instrument any area to be a controlled area for the purposes of this Part. Controlled areas

(2) The Council may, with the approval of the Minister and within a controlled area, prescribe emission standards from industrial or business activities, from burning liquids or solid fuels.

38. (1) When establishing or prescribing emission standards the Council shall consider- Emission standards

- (a) the rate of emission, concentration and nature of the pollutants emitted; and
- (b) the best practicable technology available in controlling pollutants during the emission process.

(2) The emission standards prescribed by the Council under this Part shall be published in the *Gazette* at least ninety days before the date upon which they shall come into effect.

39. No person may emit any pollutants which cause air pollution in contravention of emission standards established or prescribed by the Council under this Part. Air pollution prohibited

40. (1) In the case of an emergency involving very hazardous pollutants, the Inspectorate shall take and advise on appropriate measures to be taken for the management of persons and the environment. Emergency situations

(2) No suit, prosecution or other legal proceedings shall lie or be instituted for or in respect of any act or thing done or omitted to be done in good faith by any inspector in the exercise or purported exercise of his duties under this section.

41. The Inspectorate may request an owner or operator of an operation Information

of which the Inspectorate has reasonable grounds to believe results in the emission into the ambient air of any air contaminant, to submit all information relating to those emissions as the Inspectorate may require.

regarding emissions into ambient air

42. An owner or operator of an undertaking, industry or business emitting or likely to emit a pollutant which is likely to cause air pollution or whom the inspectorate so requests, shall apply to the inspectorate for a permit or licence.

Permit or licence to emit pollutants

(As repealed and replaced by Act No.12 of 1999)

43. (1) A person who intends to erect or instal a new industrial plant or develop a new industrial process which is likely to cause air pollution shall inform the Inspectorate during the planning stages, and shall apply for a licence.

Application for licence for new sources of emission

(2) The application for a licence shall be submitted to the Inspectorate not less than six months prior to the commencement of operations.

44. (1) A change or extension to an existing plant, undertaking or process shall be considered new if the change-

Circumstances under which extension deemed new

(a) increases the emission of the existing plant in quantity or concentration of pollutants; or

(b) introduces a new type of pollutant into the ambient air.

(2) No owner or operator or individual who operates a motor vehicle, ship, train, aircraft or other similar conveyance shall-

(a) operate in a manner that will cause air pollution in contravention of the established emission standards;

(b) import any machinery, equipment, device or similar thing that will cause emission into the ambient air in contravention of prescribed emission standards.

45. (1) The Inspectorate may or may not grant a licence after considering the details of-

Grant or refusal of licences

(a) the possible effects on the quality of ambient air of the area;

(b) the existing licences affecting the same air resource;

(c) the requirements of residents, human settlements and other industrial or commercial activities; and

(d) the comments from the local authority and other concerned organisations.

(2) If a licence is not granted, the notice of refusal shall state the reasons for the refusal.

46. Regulations made under section *ninety-six* shall prescribe the contents of an application and the conditions for a licence or permit issued under this Part.

(As amended by Act No.12 of 1999)

Contents of application and conditions for licence or permit

PART VI

WASTES

47. In this Part, unless the context otherwise requires-

Interpretation

"collection" means the act of removing waste, or materials which have been separated for the purpose of recycling, from a storage point;

"disposal" means the storing, handling, processing, treatment and utilisation and final location of waste to avoid undesirable effects on the environment;

"hazardous waste" means waste which is poisonous, corrosive, irritant, explosive, inflammable, toxic or harmful to man, animal, plant or the environment;

"licence" means a licence issued under this Part to transport waste or operate a waste disposal site or plant, or to generate or store hazardous wastes;

"waste management" means the collection, transportation and disposal of waste.

"disposal site" means the land or water area on which waste disposal facilities are physically located;

"waste" means garbage, refuse, sludges and other discarded substances resulting from industrial and commercial operations and from domestic and community activities but does not include waste water as defined in Part IV; and

"storage" means the interim containment of waste after generation and prior to collection for ultimate recovery or disposal.

(As amended by Act No.12 of 1999)

48. The Council shall give specific or general directions to District Councils regarding their function relating to the collection and disposal of waste operations under the Local Government Act.

Control of local authorities'
Cap. 281

49. The Council shall-

Responsibilities of
Council

- (a) formulate and provide standards on the classification and analysis of wastes and formulate and advise on standard disposal methods and means;
- (b) regulate the handling, storage, transportation, segregation and destruction of any hazardous waste;
- (c) control the export and generation of hazardous waste;
- (d) provide for the monitoring and regulation of any waste disposal sites;
- (e) publicise the correct means of storage, collection and disposal of any class of wastes;
- (f) monitor the contamination and degradation of the environment arising from the operation of any disposal site;
- (g) monitor the safety and health of workers at disposal sites;
- (h) provide for members of the public to make representations to the Council on any matter arising from this Part where the matter may have an influence on the health or aesthetic value of their surroundings;
- (i) initiate and undertake research into problems relating to the collection, storage, transportation and disposal of any class of waste;
- (j) maintain statistical data on the nature, quantity and volume of waste generated, and on sites and waste processing where waste disposal is taking or has taken place;
- (k) provide technical and advisory services on waste management to waste operators;
- (l) enforce rulings made under this Part; and
- (m) do all such things as appear to be reasonably necessary for the monitoring and control of waste.

(As amended by Act No.12 of 1999)

50. (1) No person shall discharge waste so as to cause pollution in the environment.

Prohibition against
disposal of waste

(2) No person shall transport waste to any site other than-

- (a) in accordance with a licence;
- (b) to a disposal site established in accordance with a licence.

(3) A person shall not operate a waste disposal site or plant or generate or store hazardous waste without a permit or licence..
(As amended by Act No.12 of 1999)

51. (1) The Inspectorate may, on application, grant a licence to generate or store hazardous waste or to transport or operate a waste disposal site or plant subject to such conditions as it may impose.

Licences

(2) If a licence is not granted the notice of refusal shall state the reasons.
(As amended by Act No.12 of 1999)

52. (1) Any person intending to operate a waste disposal site or plant or generate or store hazardous waste or whom the Inspectorate so requests shall apply in writing to the Inspectorate for a licence.

Application for licence

(2) An application for a licence made under subsection (1) shall only be granted after consultation with the relevant local authorities:

Provided that where a local authority makes the application, the application shall be granted with the approval of the town and country planning authority.
(As amended by Act No.12 of 1999)

53. Any person who owns or operates a waste disposal site or plant or generates hazardous wastes before the commencement of this Act shall apply for a licence within six months after the commencement of this Act.

Application for licence for existing disposal site or plant

54. The Council shall by an order made by a court immediately stop any hazardous waste generation, handling, transportation, storage and disposal activity which presents an imminent and substantial danger to health and the environment.

Cessation of activity relating to hazardous waste

55. Regulations made under section *ninety-six* shall prescribe the contents of an application and the conditions for a licence issued under this Part.

Contents of application and conditions for licence

56. (1) No person shall import any hazardous waste into Zambia.

Import, export and transportation of hazardous waste

(2) No hazardous waste shall be exported to any country without a permit from the Council and the consent of the receiving country.

(3) No hazardous waste shall be transported within or through Zambia without a permit from the Council.

PART VII

PESTICIDES AND TOXIC SUBSTANCES

57. In this Part, unless the context otherwise requires-

Interpretation

"container" means a package, can, bottle, bag, barrel, drum, tank or other container, excluding spray applicator tanks, used to enclose a pesticide or toxic substance;

"label" means any legend, word, mark, symbol or design applied or attached to, included in, belonging to, or accompanying, any pesticides or toxic substances;

"manufacturer" means an establishment engaged in the mechanical or chemical transformation of materials or substances into new products, as pesticides and toxic substances;

"package" means a container, wrapping, covering or holder in which a pesticide or toxic substance is wholly or partly packed;

"pesticide" means a substance or mixture of substances or organism intended for controlling, destroying, repelling or mitigating any pest, and a substance or mixture of substances intended for use as a plant regulator, defoliant or desfoliant;

"sale" includes offering, advertising and exposing, for sale a pesticide, or toxic substance;

"toxic substance" means a poisonous substance which causes any adverse physiological effects to man, animal, plant or the environment;

"trade name" means the registered name of the manufactured pesticide or toxic substance; and

"use" means any act of handling or release of a pesticide or the exposure of human beings and animals or the environment to a pesticide.

58. The Council shall-

Responsibilities of
Council

- (a) control the importation, exportation, manufacture, storage, distribution, sale, use, packing, transportation, disposal and advertisement of pesticides and toxic substances;
- (b) regulate the registration of pesticides and toxic substances;
- (c) provide for the proper labelling and packaging of pesticides and toxic substances;
- (d) review the use and efficacy of pesticides and toxic substances;

- (e) provide for the monitoring, in the environment, of pesticides, and toxic substances and their residues;
- (f) establish or prescribe laboratories which shall operate as standard laboratories for pesticides and toxic substances;
- (g) establish and enforce procedures and regulations for the storage of packages and containers of pesticides or toxic substances;
- (h) collect data from industry on the production, use and health effects of pesticides and toxic substances;
- (i) keep records and reports necessary for the administration of this Part; and
- (j) do all such things as appear necessary for the monitoring and control of pesticides and toxic substances.

59. (1) A person who intends to manufacture, import, export or process a new pesticide or toxic substance or who intends to reprocess an existing pesticide or toxic substance for a significantly new use, must apply for registration of the pesticide or toxic substance and give the Inspectorate ninety days notice in writing before importing, exporting, manufacturing, processing or reprocessing such pesticide or toxic substance.

Application for registration of new or reprocessed pesticide or toxic substance

(2) The application referred to in subsection (1) shall include the name of the trade mark of the pesticide or toxic substance, the chemical identity, molecular structure, proposed categories of use, an estimate of the amount, by-products, processing and disposal of the pesticide or toxic substance, and any test data related to health and environmental effects.

(As amended by Act No.12 of 1999)

60. (1) A person who has manufactured, imported or processed a pesticide or toxic substance in use before the commencement of this Act or whom the Inspectorate so requires shall apply for registration within six months after the commencement of this Act.

Application for registration of pesticide or toxic substance in use before commencement of Act

(2) Applications for registration shall be accompanied by all relevant data to enable the Inspectorate assess the suitability and efficacy of the pesticide or toxic substance.

61. (1) The Inspectorate shall publish guidelines for pesticides and toxic substances specifying the information and data which will be required to support registration.

Information required for, and period of

registration

(2) A pesticide or toxic substance shall be registered for three years, unless some other period is specified by the Inspectorate and may be renewed for a like period.

62. (1) The Inspectorate may on application register a pesticide or toxic substance subject to such conditions as it may determine. Registration

(2) Where the Inspectorate refuses to register any pesticide or toxic substance the notice of refusal shall state the reasons.

63. Regulations made under section *ninety-six* shall prescribe the contents of an application and the conditions for registration of pesticides and toxic substances under this Part. Contents of application and conditions for registration

64. (1) No person shall-

Offences relating to pesticides and toxic substances

(a) detach, alter, or destroy labelling as prescribed under this Part, of a pesticide or toxic substance;

(b) change the composition of a pesticide or toxic substance contrary to the provisions of this Part; or

(c) use or dispose into the environment a pesticide, or toxic substance in contravention of this Part.

(2) No person shall distribute, sell, offer for sale, hold for sale, import, deliver for importation to, export, deliver for exportation to or receive from, deliver or offer to deliver, to any other person any unregistered pesticide or toxic substance.

(3) Any person who contravenes any of the provisions of this section shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding thirty thousand penalty units or imprisonment for a period not exceeding five years or to both.

(As amended by Act No. 13 of 1994 and Act No.12 of 1999)

65. (1) Any pesticide or toxic substance which an Inspector reasonably suspects to be the subject matter of an offence under this Part shall be liable to seizure. Seizure of pesticides and toxic substances

(2) Whenever any pesticide or toxic substance is seized under subsection (1) an Inspector shall serve a notice of seizure on the owner

of the pesticide, or toxic substance as soon as practicably possible.

(3) Where any pesticide or toxic substance is seized under this section the pesticide or toxic substance shall be placed under the custody of such person or such authority as the Inspector may determine.

(As amended by Act No.12 of 1999)

PART VIII

NOISE

66. In this Part, unless the context otherwise requires-

Interpretation

"noise" means any undesirable sound, that is intrinsically objectionable or that can cause adverse effects on human beings, animals or the environment;

"noise level" means the level of noise, measured in decibels or other suitable units; and

"noise emission standards" means the noise level emission standards established by the Council under section *sixty-eight*.

67. The Council shall-

Responsibilities of Council

- (a) set up standard procedures for noise measurement;
- (b) establish noise level and noise emission standards for construction sites, plants, machinery, motor vehicles, aircraft including sonic booms, and for industrial and commercial activities;
- (c) apply appropriate measures to ensure the abatement and control of noise from the sources referred to in paragraph (b);
- (d) measure the level of noise emanating from the sources referred to in paragraph (b), details of which measurement shall be given to the owner or occupier of the premises from which the measurement was taken; and
- (f) advise on noise pollution abatement measures.

68. Subject to section *sixty-nine*, no person shall emit noise in excess of the noise emission standards established under section *sixty-seven*.

Noise emission in excess of established standards prohibited

69. (1) Notwithstanding section *sixty-eight*, the Inspectorate may grant a permit in writing allowing excessive emission of noise under such

Exemption

terms and conditions as it may determine.

(2) Where an exemption has been granted under subsection (1), workers exposed to excessive levels of noise shall be adequately protected in accordance with the directives of the Inspectorate.

70. The noise emission standards and guidelines as well as zones prescribed for the purposes of this Part shall be published in the *Gazette* at least ninety days before the date upon which they shall come into effect.

Publication of noise pollution control standards and guidelines

PART IX

IONISING RADIATION

71. In this Part, unless the context otherwise requires-

Interpretation

"emergency" means a sudden situation associated with an incident arising from the exposure of the public or the environment to the harmful effects of ionising radiation;

"environment" means the total terrestrial, atmospheric and aquatic environs but does not include the area within the boundaries of prescribed installations handling radioactive material or radiation sources;

"facility" means an assembly of devices, equipment, structures or natural features whether simple or complex which serves some specific purpose or performs some specific functions.

"ionising radiation" means any electro-magnetic or particle radiation capable of producing ions, directly or indirectly, in its passage through matter;

"monitoring" means the measurement of radiation or radioactivity for the assessment or control of exposure to radiation or radioactive material;

"natural background levels" means radiation levels due to cosmic rays and natural radioactivity;

"nuclide" means a species of atom characterised by the constitution of its nucleus;

"radioactive material" means any material having a specific activity greater than seventy becquerel per gram;

"radioactive contamination" means the deposition of radioactive

material in any place where it is not desired, particularly where its presence may be harmful and the harm may be vitiating an experiment or procedure, or where it actually may be a source of danger to the public;

"radio nuclide" means any radioactive nuclide.

- 72.** Without prejudice to the Ionising Radiation Act the Council shall-
- (a) establish standards for the proper regulation of radioactive contamination;
 - (b) inspect and examine any area, place or premises, or any vehicle, vessel, boat, aircraft or any carriage of any description in or upon which the Inspectorate has reasonable cause to believe that radioactive material or any source of ionising radiation is stored, used, transported or disposed of;
 - (c) examine any person with respect to matters under this Part, where there is reasonable cause to believe that that person is contaminated with radioactive material or is unlawfully in possession of an ionising radiation source;
 - (d) provide information, warn and protect the public, in case of actual or potential public exposure to radioactive material or ionising radiation in the environment;
 - (e) liaise with the Radiation Protection Board established by section *five* of the Ionising Radiation Act or any other organisation dealing with radioactive material;
 - (f) conduct an ionising radiation monitoring programme and advice on ionising radiation control and protection measures;
 - (g) maintain records of releases of radioactive contaminants into the environment and keep records of natural background levels of radiation in the environment;
 - (h) request any outside authority to offer assistance required to help carry out the duties of the Inspectorate; and
 - (i) do all such things as appear to be necessary for the monitoring and control of pollution from radiation.
- 73.** An inspector at any reasonable time may-
- (a) enter, inspect and examine any place, area, premises, or any vehicle, vessel, boat, aircraft or any carriage of any description in or on which he has reasonable grounds to believe that radioactive material or any source of ionising radiation is stored, used, transported or disposed of but no entry shall be made into a private dwelling house except under the authority of a court
- Responsibilities of Council.
Cap. 311
Cap. 311
- Powers of inspectors relating to ionising radiation

warrant;

(b) order presentation of-

Cap. 311

(i) a licence authorising the possession or use of radioactive material or sources of dangerous ionising radiation;

(ii) a licence authorising the mining and processing of radioactive ores; or

(iii) a register, certificate, notice or document kept under the Ionising Radiation Act;

(c) make enquiries from any person with respect to matters under this Part where there is reasonable cause to believe that such person is contaminated with radioactive material or is unlawfully in possession of an ionising radiation source; and

(d) exercise such other powers as are necessary for the carrying out of this Part.

(As amended by Act No. 13 of 1994 and Act No.12 of 1999)

74. Repealed by Act No. 16 of 2005

PART X

NATURAL RESOURCES CONSERVATION

75. In this Part, unless the context otherwise requires-

Interpretation

"derelict land" means land that is damaged by extractive or other industrial or agricultural activities or that is unsightly and is incapable of reasonable beneficial use;

"land use" includes an activity that has an impact on land, water, soil, air, fauna and flora;

"natural resources" shall have the meaning assigned to it in the Natural Resources Conservation Act; and

"rehabilitation" means the restoration of natural resources to their original state or to a reasonable state acceptable to the Inspectorate.

76. The Council shall-

Responsibilities of Council

(a) conduct or sponsor research on land use practices and their impact on natural resources, and such other studies which shall be the

basis for better conservation and protection of natural resources;

- (b) establish and review land use guidelines;
- (c) with the approval of the Minister, make regulations for the conservation and protection of natural resources;
- (d) monitor dereliction of land and where derelict land exists, assess the nature of rehabilitation works required;
- (e) monitor land contamination and where such contamination exists, assess the nature of any rehabilitation works required;
- (f) carry out campaigns to increase public awareness about natural resources conservation;
- (g) take stock of the nation's natural resources and their utilisation in liaison with other relevant agencies and experts dealing with natural resources conservation; and
- (h) do all such other acts and things as are necessary to carry out the purposes of this Part.

77. (1) The Council may direct any person responsible for land dereliction or contamination to carry out rehabilitation works, within a reasonable specified time, to the satisfaction of the Inspectorate.

Rehabilitation works

(2) Where the Inspectorate believes that land contamination warrants immediate correction, it may carry out rehabilitation works and may charge all or part of the costs of those works to the person responsible for causing the dereliction or contamination who shall pay such costs within a specified reasonable time.

(3) (a) Any person who fails to comply with a directive made by the Inspectorate under this section shall be guilty of an offence.

(b) A court, in addition to any other penalty which it may impose, may make an order requiring that person to comply with the directive within a specified reasonable time.

78. An inspector may-

Powers of inspectors relating to natural resources

- (a) make such inquiries and examinations as are necessary to ascertain whether this Part is being complied with;
- (b) carry out surveys and interviews which will assist in the proper management and conservation of natural resources;
- (c) inspect land uses to determine their impact on the quality and quantity of natural resources; and
- (d) publicise land use guidelines and natural resources conservation regulations.

79. Subject to section *eighty*, Parts I, II, III and VIII of the Natural Resources Conservation Act are hereby repealed.

Repeal of certain Parts of Cap. 156 of old edition

80. Notwithstanding section *seventy-nine* ministerial orders, conservation plans, and regulations made by statutory instrument under the Parts I, II, III and VIII of the Natural Resources Conservation Act shall remain in full force and effect until they are amended, rescinded or replaced by orders, conservation plans, or regulations under this Act.

Savings

PART XI

INSPECTORATE

81. The Council shall establish an Environmental Inspectorate with the necessary technical staff and facilities required to administer, monitor and enforce measures for the management of the environment and the prevention and control of pollution in the environment.

Establishment of Inspectorate

82. The Council may delegate all or any of the duties of the Inspectorate to a local authority in such area as it may designate.

Delegation of duties to Inspectorate

83. (1) In order to ensure compliance with the provisions of this Act the Council shall appoint such number of inspectors as it may consider necessary.

Appointment of inspectors

(2) Every inspector shall be provided with a certificate of appointment which shall be *prima-facie* evidence of the inspector's appointment as such.

(3) An inspector shall, on demand by a person affected by the exercise of the powers of the inspectors under this Act, produce for inspection the certificate referred to in subsection (2).

84. (1) An inspector, at any reasonable time may enter any area, place or premises that is or forms part of any industry, works, undertaking or business, in which he reasonably believes there is being, or has been carried on an activity that may contribute or has contributed to pollution, and examine and take samples or materials used in or resulting from the activity carried on there and inspect any vehicle or other conveyance but there shall be no entry into a private dwelling except with the consent of the occupant or under the authority of a court warrant.

Powers of inspectors

(2) An inspector who enters an area, place or premises or inspects a vehicle under subsection (1) may order the person in charge to produce for inspection or for the purpose of obtaining copies or extracts, any books, documents or papers concerning any matter relevant to the administration of this Act or regulations made for the purposes of this Act.

(3) The owner or person in charge of-

- (a) any area, place, premises or vehicle referred to in subsection (1);
- (b) any waste disposal site referred to in Part VI;
- (c) the manufacture, distribution or use of pesticides or toxic substances referred to in Part VII;
- (d) any radioactive material or any source of dangerous ionising radiation, or a radioactive ore mining or processing facility referred to in Part IX;

and any person found there shall give an inspector reasonable assistance, for the purpose of examination, enquiry collection of samples or otherwise.

(4) An inspector may-

- (a) inspect and examine any vehicle, railway carriage or other conveyance in or upon which he had reasonable cause to believe that a pesticide, toxic substance, hazardous waste or radioactive material, or other pollutant is being or has been transported;
- (b) order the production of any documents pertaining to the transportation of any such substance;
- (c) obtain any samples he considers necessary of any substance so transported; or
- (d) request information from any person who appears to have custody or control of those substances so transported.

(5) An inspector may seize or detain any substance, material, matter, vehicle, aircraft or boat where-

- (a) the inspector has reasonable grounds to believe that the substance, material, matter, vehicle, aircraft or boat is causing pollution contrary to this Act; or
- (b) the inspector has reasonable grounds to believe that the vehicle or boat is transporting or hoarding any matter or article causing or likely to cause pollution contrary to the requirements of this Act.

(6) Where an inspector seizes or detains any substance, material, matter, vehicle, aircraft or boat under subsection (5), the inspector shall give the

person from whom the substance, material, matter, vehicle, aircraft or boat is seized, a notice in the prescribed form.

(7) Where-

(a) the Director of Public Prosecutions advises the Inspectorate in writing that no prosecution shall be instituted consequent upon any search or seizure under this Act; or

(b) the person from whom any substance, material, matter, vehicle, aircraft or boat was seized is not convicted of an offence under this Act;

the inspector shall return the substance, material, matter, vehicle, aircraft or boat to the owner or the person from whose custody the substance was taken within ten days from the date of receipt by the Inspectorate of such information.

84A. (1) An inspector or police officer may, without warrant, arrest any person and keep that person in custody where-

(a) the person is found committing an offence or is reasonably suspected of having committed an offence under this Act;

(b) upon being requested by the inspector or the police officer, the person wilfully fails or refuses to furnish that person's name, address or other relevant information to the satisfaction of the inspector or police officer; and

(c) the inspector or police officer has reasonable grounds to believe that unless arrested, the person will-

(i) escape or cause unreasonable delay, trouble or expense in being made answerable to justice;

(ii) interfere with the witnesses; or

(iii) tamper with or destroy relevant evidence or material.

(2) Subject to subsections (3) and (4), any person arrested under subsection (1) shall be taken before a court of competent jurisdiction as soon as is practicable, and shall be detained for longer than is necessary for the purpose.

(3) Where an inspector arrests a person under subsection (1), the inspector shall hand over the person to a police officer or surrender that person to a police post or station within twenty-four hours.

(4) Where any person is arrested under subsection (1) or surrendered to a police post or station under subsection (3), a police officer shall if it does not appear practicable to bring that person before a court within twenty-four hours after the person was so taken into custody, inquire into the case and unless the offence appears to the police officer to be of a serious nature release the person, on executing a bond, with or without

sureties for a reasonable amount to appear before a competent court at a time and place to be named in the bond; but where any person is retained in custody by a police officer that person shall be brought before a court as soon as is practicable.

84B. an inspector or officer of the Council shall not be liable in respect of any act done or omitted to be done in good faith by the inspector or officer in the exercise of duties and powers under this Act or any other written law.

(As amended by Act No.12 of 1999)

Immunity
of officers
of Council

85. (1) A person shall be guilty of an offence if he-

Obstruction of
Inspector

- (a) wilfully delays or obstructs an inspector in the carrying out of his duties;
- (b) assaults an inspector in the lawful exercise of duties and powers under this Act; or
- (c) knowingly or negligently gives an inspector false or misleading information orally, in writing or otherwise.

(2) Any person guilty of an offence under subsection (1) shall be liable upon conviction to a fine not exceeding seven thousand five hundred penalty units or to imprisonment for a term not exceeding six months or to both.

(As amended by Act No. 13 of 1994 and Act No.12 of 1999)

PART XII

GENERAL

86. (1) A person who inadvertently or accidentally causes or witnesses an act causing pollution of any aspect of the environment shall without delay report to the inspectorate, the police or to a local authority.

Duty to report
pollution

(2) The police or local authority shall submit a report to the Inspectorate on any report received under subsection (1) and take reasonable steps to protect the public.

(3) Any person who wilfully fails to make a report required under this

section shall be guilty of an offence and liable upon conviction to a fine not exceeding one thousand five hundred penalty units or imprisonment for a period not exceeding six months or to both.

(As amended by Act No. 13 of 1994)

87. An inspector shall treat as confidential the source of any complaint bringing to his notice any contravention of this Act and shall give no intimation to the owner of the place inspected or his representative that a complaint was made, or any information that might identify the complainant. Secrecy

88. (1) The Inspectorate may renew any licence issued under this Act. Renewal of licence

(2) In renewing a licence, the Inspectorate shall consider whether the applicant has complied with the provisions of the Act and any regulations made hereunder.

89. Where an inspector considers that an industry, works, undertaking, business or any person is discharging, emitting, or disposing a contaminant or substance which may cause pollution he may require the owner or operator to apply to the Inspectorate for a licence to authorise that discharge, emission, or disposal. Inspector may request application for licence

90. (1) Where the Inspectorate establishes that pollution or despoliation is occurring or has occurred, the Inspectorate shall inform the pollutor and order him to take appropriate abatement and control measures specified by the Inspectorate under this Act. Pollutor obligations

(2) Where the pollutor is unable or unwilling to take the abatement and control measures required under subsection (1), the Council may take the measures and in such case, the cost incurred by the Council, shall be paid by the pollutor.

91. (1) A person who pollutes the environment or contravenes any provision of this Act for which no penalty is provided shall be guilty of an offence and liable upon conviction to a fine not exceeding sixty thousand penalty units or to imprisonment for a term not exceeding three years or to both. Offences and penalties

(2) For a continuing violation, a court may order a daily fine not exceeding thirty thousand penalty units.

(3) Where an offence under this Act is committed by a body of persons-

(a) in the case of a body corporate, every director or similar officer of the body shall be guilty of the offence; or

(b) in the case of a partnership, every partner shall be guilty of an offence.

(4) A person shall not be guilty of an offence under subsection (3), if he proves to the satisfaction of the court that the act constituting the offence was done without his knowledge, consent or connivance and that he did his part to prevent the commission of the offence having regard to all the circumstances of the case.

91A. (1) Subject to the other provisions of this section, where any person is convicted of an offence under this act, the courts may, on application by an inspector or police officer, in addition to any other penalty imposed, declare any matter, article, vehicle, aircraft or boat used in the commission of the offence to be forfeited to the State without compensation and shall order the matter, article, aircraft, vehicle or boat to be disposed of by the Inspectorate by public auction.

(2) the court may, where a police officer or an inspector makes an application under subsection (1), make an order, hereinafter referred to as a conditional order, to the effect that unless any person other than the convicted person claims any right of ownership in the matter, article, vehicle, aircraft or boat within a period of three month from the date of the order, the matter, article, vehicle, aircraft or boat shall be forfeited to the State.

(3) An inspector shall, within a period of thirty days from the date of the order, cause a notice of the order to be published in the *Gazette* and in at least three issues of a newspaper of general circulation in the area where the offence was committed.

(4) The notice referred to in subsection (3) shall be in the prescribed form.

(5) The Inspectorate shall, where the article, matter, vehicle, aircraft, or boat is registered in the name of any person other than the convicted person, within seven days after the publication of notice in the *Gazette*, cause a copy to be sent by registered post to the person at the address indicated on the register.

(6) A person who claims any right of ownership in the matter, article, vehicle, aircraft or boat may, within the period stipulated under subsection (2), serve upon the Inspectorate and lodge with the clerk of the court an application, in writing, for the discharge of the conditional order setting out the claim of ownership in the matter, article, vehicle, aircraft, or boat.

(7) The clerk of the court shall where an application is lodged under subsection (6)-

(a) fix a date for the hearing, not less than one month after the lodgement of the application; and

(b) within seven days of the lodgement, cause notice of the hearing of the application to be served upon the Inspectorate.

(8) In any proceedings brought under subsection (6), the onus of proof shall be on the applicant and no order discharging the conditional order shall be made unless the applicant has adduced evidence and proved to the satisfaction of the court that the applicant was not in any manner privy to the offence and that the matter, article, vehicle, aircraft, or boat was at the time of the commission of the offence, used for such purpose without the applicant's knowledge or consent, and without any negligent disregard on the part of the applicant of its use by the convicted person.

(9) Where, upon any application made under subsection (6) the court is satisfied that the matter, article, vehicle, aircraft or boat is owned by jointly by the claimant and the convicted person or is the subject matter of a hire purchase agreement between the claimant and the convicted person and the claimant has discharged the onus of proof required under subsection (8), the court shall declare forfeited to the State all of the estate or interest of the convicted person in and to the article, matter, vehicle, aircraft or boat, or all the rights therein accrued to the claimant under the hire purchase agreement or under the Hire Purchase Act and order the estate, interest or rights or to be disposed of as the court may consider fit.

(10) Except with the consent of the court, any right vested in any claimant under any hire purchase agreement, or under the Hire Purchase Act to repossess any matter, article, vehicle, aircraft or boat which is subject to a conditional order made under subsection (2), shall be suspended pending the determination of any application brought under subsection (6), and in the event of the court declaring the rights therein accrued to the convicted person to be forfeited to the State, the accrued right to repossess the matter, article, vehicle, aircraft or boat shall not be exercisable against the Government or Council.

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91B. (1) Where any matter, article, vehicle, aircraft or boat is seized under this Act in relation to or in connection with the commission of an offence under this Act and-

(a) the person suspected of having committed the offence is unknown;

(b) the person suspected of having committed the offence cannot be found for the purpose of service of the process of the court charging that person with the offence; or

Disposal of matter,
article, vehicle,
aircraft or boat

(c) having been served with such process, the person suspected of having committed the offence fails to appear in answer to the charge;

the Inspectorate may, one month after publication of a notice of its intention so to do, in an issue of a newspaper of general circulation in the district in the the offence is alleged to have been committed, apply by way of an *ex-parte* original application, to the court for an order declaring the matter, article, vehicle, aircraft or boat to be forfeited to the State without compensation and ordering it to be disposed of as the court may consider fit.

(2) Where any person claims any right of ownership in any vehicle, aircraft or boat to which a notice published under subsection (1) applies, that person may, within one month after the date of publication, lodge with the clerk of the court a claim of ownership and serve a copy of the notice upon the Inspectorate, and the provisions of section *ninety-one A* shall apply, with the necessary modification, tot he claim of ownership.

(3) Where any matter, article, vehicle, aircraft or boat is seized under this Act, in relation to or in connection with the commission of any offence, the Inspectorate may apply to the court by way of *ex-parte* original application, for an order for the immediate disposal by sale or otherwise of the matter, article, vehicle, aircraft or boat and the court may order the sale.

(4) Where the matter, article, vehicle, aircraft or boat is sold, the proceeds shall be held by the inspectorate pending the determination of any proceedings brought in respect of the offence and shall be dealt with by the Inspectorate as the court may direct.

(5) Where the person suspected of having committed the offence is unknown or cannot be found for the purpose of service of the process of the court, subsection (1) shall apply with the necessary modifications to the proceedings.

9C. (1) The Director of Public Prosecutions may at the request of the Council in writing appoint by name or rank any inspector to undertake or assit in undertaking and prosecuting criminal proceedings in respect of any offence alleged to have been committed by any person in contravention of this Act, and may at any time, without assigning any reason cancel any such appointment.

(2) In undertaking or prosecuting any proceedings under subsection (1), the inspector shall act in accordance with the general or special instruction of the Director of Public Prosecutions and shall for the purpose of any such prosecution have the powers of a public prosecutor appointed under any law for the time being in force.

Prosecution of offences

91D. (1) An inspector shall, by way of an *ex-parte* application, apply to a court for an order in respect of any premises on which an offence is suspected of being committed under this Act-

(a) to prohibit the carrying on of a process or operation causing pollution or is likely to cause significant damage to human, plant, animal health or the environment;

(b) to prohibit the use of machinery, plant, equipment or appliance whose use is causing or is likely to cause significant damage to human, plant, animal health or the environment;

Power to make orders on process in premises, plant and machinery

after having given the owner or occupier seven days notice of intention to make the application to a court.

(2) The notice of intention to make the application to a court under subsection (1) shall be in the prescribed form.

(3) Where in the case of premises on which an offence is suspected of being committed under this Act, the court is satisfied on an application made by an Inspector under subsection (1)-

(a) that seven days notice of the Intention to make an application under this section stating the time at which it had been made, has been served on the occupier of the premises;

(b) that the carrying on or use of the operation or process on any part of the premises is causing pollution likely to cause significant damage to human, plant or animal health or the environment; or

(c) that any machinery, plant, equipment or appliance is being used so as to cause significant damage to human, plant or animal health or the environment; the court may make an interim order prohibiting either absolutely or subject to conditions the use of the plant, machinery, equipment or appliance or the carrying on or use of the operation or process until the earliest opportunity for hearing and determining the application.

(4) Where after the hearing of the application by an inspector under subsection (1) the court is satisfied on evidence submitted by an

inspector and after affording the owner or occupier an opportunity to be heard, the court may-

(a) prohibit the use of the machinery, plant, equipment or appliance in question unless satisfied that it can be repaired, altered or moved so as to permit the use thereof without the polluting effect, in which case the court may prohibit its use until it has been so repaired, altered or moved;

(b) prohibit the carrying on or use of the operation or process in question unless satisfied that there shall be taken such steps as will enable it to be carried on or used otherwise than in the manner causing pollution or causing significant damage to human, plant or animal health or the environment, in which case the court may prohibit the use of the machinery, plant, equipment or appliance or the carrying on or use of the operation or process until such steps are taken in the course of the carrying on or the use of it; or

(c) make such other order as the court may consider appropriate.

91E. (1) An inspector may, where satisfied that any person has committed an offence for which the penalty does not exceed one thousand penalty units or where a person has admitted the commission of an offence under this Act for which the penalty does not exceed one thousand penalty units, summarily demand from the person the payment of a fine not exceeding eight hundred penalty units in respect of such offence.

(2) an inspector shall, where the inspector demands payment under section (1), inform the person against whom the demand is made of the right to admit or dispute the liability.

(3) Any person from whom payment of a fine has been demanded under subsection (1) may elect to admit liability and pay the fine, or dispute liability.

(4) The payment of a fine shall operate as a bar to any further criminal proceedings against the person making the payment in respect of the offence concerned.

(5) an inspector receiving payment of a fine shall give a receipt to the person making the payment in such form as may be prescribed.

(6) An inspector who receives a payment under this section and-

(a) fails to issue a receipt to the person making the payment as required under subsection (5);

Summary
imposition of
penalties

(b) fails to account for any payment made under this section; or

(c) in any manner misuses or puts to personal use any payment made under this section;

commits an offence and liable, on conviction, to a fine not exceeding five thousand penalty units or to imprisonment for a period not exceeding one year or to both.

(As amended by Act No. 13 of 1994 and Act No.12 of 1999)

92. (1) An application for a licence, registration or permit under this Act shall be made to the Inspectorate or to a local authority to whom the Council has delegated power under section *eighty-three*.

Applications for licences to be made to Inspectorate or local authority

(2) Any application referred to in subsection (1) shall be made in such form and in such manner as the Council may prescribe.

93. No licence or permit shall be issued under this act unless the

Grant of licence permit subject to

Inspectorate has, twenty-eight days before granting the licence or permit published its intention in the *Gazette* and in at least three issues of a newspaper in general circulation in the Republic inviting representation from any interested person affected by the grant of the licence or permit. (As amended by Act No.12 of 1999)

public
representation

94. Where any licence granted under this Act is for a duration of five years or more and after five years from the date of the issue of a licence such discharge, emission or disposal authorised by the licence has not taken place or where such discharge, emission or disposal has ceased for a period of three years, the licence shall cease to be in force.

Cessation of
licences

95. (1) A person aggrieved with any decision or ruling made by an Inspectorate under this Act, may appeal to the Council within forty-five days after the date of receipt of the ruling or decision.

Appeals

(2) The Council within thirty days after the receiving an appeal, shall make and convey its decision to the appellant.

96. The Minister in consultation with the Council, may, by statutory instrument make regulations for anything which has to be prescribed under this Act, for the management of any aspect of the environment and for the prevention and control of pollution in the environment. (As amended by Act No.12 of 1999)

Regulations