

THE ENVIRONMENT PROTECTION ACT 2002

Act No. 19 of 2002

I assent

KARL AUGUSTE OFFMAN

11th July 2002

President of the Republic

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AN ACT

To provide for the protection and management of the environmental assets of Mauritius so that their capacity to sustain the society and its development remains unimpaired and to foster harmony between quality of life, environmental protection and sustainable development for the present and future generations; more specifically to provide for the legal framework and the mechanism to protect the natural environment, to plan for environmental management and to coordinate the inter-relations of environmental issues, and to ensure the proper implementation of governmental policies and enforcement provisions necessary for the protection of human health and the environment of Mauritius.

ENACTED by the Parliament of Mauritius, as follows -

PART I - PRELIMINARY

1. Short title

This Act may be cited as the Environment Protection Act 2002.

2. Environmental stewardship

It is declared that every person in Mauritius shall use his best endeavours to preserve and enhance the quality of life by caring responsibly for the natural environment of Mauritius.

3. Interpretation

In this Act –

"accredited laboratory" means a public or private laboratory accredited by MAURITAS to conduct analyses of environmental samples and provide environmental data;

"air" includes ambient or localised air within a building, a vehicle, or within any enclosure or a structure;

"authorised officer" means an officer designated under section 8(5), and includes a police officer;

"Board" means the Board established under section 61;

"Board of Investment" means the Board of Investment established under the Board of Investment Act 2000;

"Central Water Authority" means the Central Water Authority established under the Central Water Authority Act;

"Chief Commissioner" has the same meaning as in the Rodrigues Regional Assembly Act 2001;

"clinical waste" means waste produced by, discharged by, or derived from or associated with the operation of, a health institution, hospital, pathological laboratory or sanatorium, and includes human and animal tissue or excretions, drugs, medicinal products;

"Commission" means the National Environment Commission established under section 5;

"Committee" means the Environment Coordination Committee established under section 14;

"contingency plan" means measures intended to be applied in the event of a spill or an environmental emergency;

"Department" means the Department of Environment established under section 8(1);

"Director" means the Director of Environment appointed under section 8(2);

"discharge" includes deposit, emission and leakage;

"effluent" means wastewater, whether treated, untreated, or partially treated, produced by or discharged from agricultural, industrial, commercial or domestic premises;

"effluent limitations" means any restriction prescribed under section 39 on quantities, rates and concentrations of chemical, biological or other constituents which are discharged into the environment;

"EIA" means an environmental impact assessment;

"EIA Committee" means the EIA Committee established under Section 22;

"EIA licence" means a licence issued under section 23(8);

"enforcement notice" means a notice referred in section 71;

"enforcing agency" means an enforcing agency designated under section 13;

"environment" includes -

- (a) land, air, water, or any one of, or any combination of, these media;
- (b) all living organisms;
- (c) any built-up environment;

"environmental data" means data obtained from the laboratory analyses of environmental samples;

"environmental impact assessment" means a document containing the information required under section 18;

"environmental law" means -

- (a) this Act and any regulations made under this Act, and includes any direction, order, notice issued under, or any requirement imposed by, this Act;
- (b) any other enactment, or part of any other enactment which the Minister may, by regulations, declare with the approval of the Commission, to be an environmental law;

"environment liaison officer" means an environment liaison officer designated under section 13(2);

"exempt undertaking" means an undertaking by a public department in relation to which a declaration is made under section 28;

"Finance Officer" means the Finance Officer posted at the Ministry;

"financial year" has the meaning assigned to it by section 111 of the Constitution;

"Fund" means the National Environment Fund established under section 59;

"hazardous waste" means waste, natural or artificial, whether in solid or liquid form, or in the form of gas or vapour, declared as hazardous waste under section 42, and includes clinical waste;

"ICZM Committee" means the Integrated Coastal Zone Management Committee established under section 50;

"Island Chief Executive" has the same meaning as in the Rodrigues Regional Assembly Act 2001;

"local authority" has the meaning assigned to it in the Local Government Act;

"MAURITAS" means the Mauritius Accreditation Service established under the Mauritius Accreditation Service Act;

"medium" means environmental medium and includes air, land and water;

"Minister" means the Minister to whom responsibility for the subject of the environment is assigned;

"Ministry" means the Ministry having responsibility for the subject of the environment;

"monitoring" includes the inspection, measurement, sampling or analysis of any discharge of a pollutant, or of any environmental medium in any locality, whether periodically or continuously;

"national environmental standards" means standards referred to under Part VI;

"National Network for Sustainable Development" means the network established under section 10;

"noise" includes vibration;

"non-hazardous waste" means waste other than hazardous waste;

"notice" means an enforcement notice, a prohibition notice, a stop order, and a variation notice;

"owner of a pollutant" means the owner or the person having the charge, management or control of a pollutant which is spilled;

"Permanent Secretary" means the Permanent Secretary of the Ministry;

"person responsible" means the owner, or the person having the charge, management or control of an activity, enterprise, or undertaking;

"pesticide residue" means any substance resulting from the use of a pesticide or of the derivation of a pesticide;

"Police de l' Environnement" means the unit established under section 9;

"pollutant" means a substance which may cause harm, damage or injury to the environment, to plant or animal life, or to human health, and includes any substance from which a pollutant is derived;

"preliminary environmental report" means a preliminary environmental report required under section 16;

"Prime Minister" means the Prime Minister of the Government of Mauritius;

"programme approval" means a programme approval referred to under section 70(3);

"programme of measures" includes steps, plans, proposals;

"prohibition notice" means a notice referred to under section 72;

"proponent", subject to section 26, means a person who -

- (a) is the owner of, or who has the charge, management, or control of an undertaking; or
- (b) carries out or proposes to carry out an undertaking;

"public comment" means a submission made under section 20 by any person, other than a public department, on an EIA;

"public department" means a Ministry in the Government of Mauritius, a parastatal body or a public authority established under any enactment and includes an enforcing agency;

"radioactive emission" means ionizing radiation emitted by a radioactive substance;

"relevant enforcing agency" means the enforcing agency designated in the Fourth Schedule in relation to a specified medium or pollutant;

"Rodrigues Environment Committee" means the Rodrigues Environment Committee established under section 90;

"spill" means a discharge of a pollutant into the environment from or out of a structure, vehicle, vessel, craft, or other carrier or container, which -

- (a) is abnormal having regards to all the circumstances of the discharge; and
- (b) poses a serious threat to the environment;

"standards" includes criteria and specifications;

"stop order" means an order referred to in section 73;

"strategic EIA" means an EIA of a plan or programme referred to in Part C of the First Schedule;

"substance" means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour, and includes mixtures of any substance, electricity and heat;

"technical advisory committee" means a committee established under section 12;

"Tribunal" means the Environment Appeal Tribunal established under 53;

"undertaking" means such enterprise or activity, or any proposal, plan, or programme in respect of an enterprise or activity by a public department, local authority, or any person, as is prescribed in the First Schedule, and includes any modification, change, alteration or addition of an undertaking;

"zone" has the meaning assigned to it by section 49.

4. Application of Act

This Act shall -

- (a) bind the State
- (b) apply to -
 - (i) the island of Mauritius;
 - (ii) subject to Part XII, the island of Rodrigues;
 - (iii) the other islands under the jurisdiction of the State of Mauritius with such modifications as the Minister may, by regulations, prescribe.

PART II - ADMINISTRATION

5. The National Environment Commission

(1) There is established for the purposes of this Act a National Environment Commission.

(2) The Commission shall consist of -

- (a) the Prime Minister, as Chairman;
- (b) the Ministers to whom are assigned responsibility for the subjects listed in the Second Schedule; and
- (c) such other Ministers as the Prime Minister may designate.

(3) The Chief Commissioner may, from time to time, at the request of the Prime Minister, attend the meetings of the Commission.

6. Functions and powers of the Commission

(1) The Commission shall -

- (a) set national objectives and goals, and determine policies and priorities for the protection of the environment, having due regard to the recommendations of the Minister;
- (b) review progress made by public departments on any aspect of environmental management projects and programmes;
- (c) ensure coordination and cooperation between public departments, local authorities, and other government organisations engaged in environmental protection programmes;
- (d) make such recommendations and issue such directions as it may determine to public departments;
- (e) monitor and review the activities of public departments concerned with the protection and management of the environment.

(2) The Director shall act as secretary to the Commission.

7. Powers of the Minister

Subject to any direction by the Commission, the Minister shall for the purposes of this Act-

- (a) propose and develop policies on all aspects of environmental protection and management pursuant to national objectives and goals set by the Commission from time to time;
- (b) coordinate and monitor all environmental management programmes, and where he deems necessary, issue directions to any public department or local authority for the promotion of such programmes;
- (c) refer for investigation reports of pollution, spills, and other related cases for redress and for prosecution;
- (d) establish such standards for the protection of the air, land and water as may be necessary to safeguard the human health and the environment;
- (e) carry out research and commission studies on environmental quality and related matters;
- (f) prepare environmental action plans and issue reports on the state of the environment in cooperation with other public departments, the National Network for Sustainable Development, and non-governmental organisations or associations;
- (g) initiate and coordinate actions required in a state of environmental emergency or any other situations which may pose a serious threat to the environment;
- (h) appoint technical advisory committees or other committees;
- (i) publish and disseminate information concerning the protection of the environment;
- (j) carry out such other activities as may be necessary or expedient for the administration of this Act.

8. The Department of Environment

(1) There is established within the Ministry for the purposes of this Act a Department of Environment.

(2) The Department shall be administered by a Director of Environment who shall –

- (a) be a public officer;
- (b) be appointed by the Public Service Commission;
- (c) be responsible for the control, operation and management of the day to day business of the Department;
- (d) carry out the duties and functions provided under this Act, and such other assignments given to him by the Minister;
- (e) be responsible to the Permanent Secretary for the proper discharge of his functions under this Act and for the implementation of such policies as may be determined.

(3) There shall be appointed at the Department such officers as may be necessary for the proper discharge of the functions and duties of the Director under this Act.

(4) The officers of the Department shall be public officers and shall be under the administrative control of the Director.

(5) The Director may designate any officer of the Department as authorised officer who shall have the duties and powers conferred by this Act.

9. Police de l'Environnement

(1) There shall be a Police de l'Environnement.

(2) The Police de l'Environnement shall be a unit of the Mauritius Police Force comprising of police officers, designated by the Commissioner of Police, who shall have, in addition to any powers under any other enactment, the powers of an authorised officer under this Act.

(3) The Police de l' Environnement shall provide the Director, and the Island Chief Executive in relation to the Island of Rodrigues, such assistance as is required to enforce an environmental law.

10. The National Network for Sustainable Development

(1) There is established for the purposes of this Act a National Network for Sustainable Development, which shall be a body unincorporate.

(2) The National Network for Sustainable Development shall consist of –

- (a) the Minister, as Chairman;
- (b) the Permanent Secretary, as Vice-Chairman;
- (c) the Director;
- (d) a representative of each of the Ministries and organisations listed in the Third Schedule;
- (e) the representative of every non-governmental organization registered with the Ministry; and
- (f) not more than 2 other members having competence and knowledge in relevant matters, designated by the Minister.

(3) The National Network for Sustainable Development shall meet at such place and time as the Chairman thinks fit, but in any case not less than once every 3 months.

(4) One third of the members of the National Network for Sustainable Development shall constitute a quorum.

(5) The National Network for Sustainable Development -

- (a) shall regulate its meetings and proceedings in such manner as it thinks fit.
- (b) may set up such sub-committees as it thinks fit.

11. Objects of the National Network for Sustainable Development

The objects of the National Network for Sustainable Development shall be to act as a forum for discussions and consultations on any matter relating to –

- (a) harmonisation of the various sectoral, economic, social and environmental policies and plans operating in the country;
- (b) quality and state of the environment;
- (c) measures, plans and technologies for the improvement of the quality of the environment;

- (d) development and implementation of an integrated approach to pollution prevention and control;
- (e) harmonisation of the interests of proponents and promoters generally, and the aspirations of users and society in the field of built-up environment and visual pollution;
- (f) protection and management of the environmental assets and the national heritage of Mauritius in order to foster sustainable development.

12. Technical advisory committee

(1) The Minister may at any time establish such technical advisory committee as he thinks fit to advise him on matters pertaining to the scientific and technical aspects of environmental protection and management.

(2) A technical advisory committee established under subsection (1) shall-

- (a) consist of members appointed by the Minister;
- (b) provide advice on any matter specified by the Minister;
- (c) obtain any assistance from the Director as may reasonably be required to carry out its functions;
- (d) be discharged on submission of its opinion on the matter referred to it, unless the Minister-
 - (i) requests for further advice; or
 - (ii) otherwise directs;
- (e) regulate its meetings and proceedings in such manner as it thinks fit.

(3) Any person having a sound technical knowledge of the matter on which advice is required may be appointed by the Minister on a technical advisory committee on such terms and conditions he may determine.

(4) A person appointed under subsection (3) -

- (a) shall not be deemed to hold a public office solely by virtue of his appointment on the committee;
- (b) shall be under the duty of confidentiality provided under section 94.

PART III - ENFORCING AGENCIES

13. Enforcing agencies

(1) There shall be such enforcing agencies as are designated in the Fourth Schedule in respect of such environmental medium, or such pollutant, as is specified.

(2) Subject to subsection (3), an enforcing agency and an environmental liaison officer designated by it shall have the functions, powers and duties specified in the Fourth Schedule.

(3) Subsection (2) shall not be construed to restrict, limit or derogate from, the powers of the Minister, the Permanent Secretary or the Director under the environmental laws in respect of a medium, aspect of a medium, or any pollutant.

(4) Where any enforcing agency fails for any cause or reason to take appropriate action with a view to prosecuting an offence, or issue a notice in connection with a breach, or with an alleged or suspected breach, of an environmental law, the Minister may –

- (a) issue such direction as he thinks fit to the enforcing agency;
- (b) give direction as to such action in connection with the breach or suspected breach, and the issue of such notice, as he thinks fit.

(5) Where an enforcing agency fails to comply with a direction of the Minister under subsection (4) within the delay prescribed in the direction -

- (a) the Director may carry out the task required in the direction;
- (b) the Minister may report the failure of the enforcing agency to the Chairman of the Commission for consideration.

(6) The Minister may by regulations amend the Fourth Schedule.

14. The Environment Coordination Committee

(1) There shall be for the purposes of this Act an Environment Coordination Committee which shall consist of -

- (a) the Permanent Secretary, as Chairman;

- (b) the Director, as Vice-Chairman;
 - (c) the Permanent Secretaries, or the executive directors, of the enforcing agencies, or a designated officer of a rank immediately below them;
 - (d) such other public officers, or officers of statutory bodies, designated by the Minister.
- (2) The Committee shall -
- (a) ensure the maximum cooperation and coordination among enforcing agencies and other public departments dealing with environment protection;
 - (b) develop such policies and administrative measures as are necessary to ensure prompt and effective consultation on matters relating to environment protection and management;
 - (c) ensure that information is shared among the enforcing agencies, the Department and other public departments so as to develop a better understanding of environmental issues and of problems relating to enforcement of environmental laws;
 - (d) advise the Minister and, when requested, the Commission, on matters relating to environmental standards, guidelines, codes of practice and other control measures for the purpose of avoiding duplication of functions among public departments and of ensuring proper enforcement of environmental laws; and
 - (e) ensure compliance with, implementation and enforcement of, any direction given by the Minister in relation to the coordination in the administration and enforcement of an environmental law among the various enforcing agencies.
- (3) The Committee may -
- (a) make recommendations to the Minister on any matter relating to the protection and management of the environment, including national environmental standards, the processing of applications for EIA licences, the review of EIAs, spills and environmental emergencies, enforcement procedures and policies;

- (b) propose to the Minister amendment of the Fourth Schedule;
 - (c) adopt any memorandum of understanding on the use of facilities under the control of any public department;
 - (d) provide sound guidelines on sampling, monitoring and laboratory analyses under an environmental law.
- (4) The Committee shall -
- (a) regulate its meetings and proceedings as it thinks fit;
 - (b) meet as often as it is necessary at the request of its Chairman, but in any case at least once every month.
- (5) For the purpose of discharging its functions under this Act, the Committee may -
- (a) establish sub-committees;
 - (b) delegate any of its functions and powers to its Chairman, the Director or any subcommittee.
- (6) Half of the members of the Committee shall constitute a quorum.

PART IV - ENVIRONMENTAL IMPACT ASSESSMENT

15. Prohibition to carry out an undertaking

(1) Subject to section 17, no person shall be required to provide a preliminary environmental report or an EIA in respect of any activity or project other than an undertaking.

(2) No proponent shall commence, proceed with, carry out, execute, or conduct or cause to be commenced, proceeded with, carried out, executed or conducted –

- (a) an undertaking specified in Part A of the First Schedule, without an approval of a preliminary environmental report in accordance with section 16;
- (b) an undertaking specified in Part B or Part C of the First Schedule, without an EIA licence;

- (c) any undertaking, more than 2 years after the issue of an EIA licence in respect of that undertaking.

(3) A proponent, other than a proponent applying through the Board of Investment, shall, at least 3 months before submitting his application for an EIA licence under section 18, provide the Director with an outline of his proposed undertaking, including its location, nature and scope.

(4) On the basis of the outline submitted under subsection (3), the Director may impose the terms of reference for the EIA report, the fields of study that are required to be covered, and the levels of expertise and the qualifications of the consultants signing the report.

(5) The Director may –

- (a) refuse to consider an application for an EIA in respect of which an outline in terms of subsection (3) has not been submitted;
- (b) dispense a proponent with the requirement under subsection (3).

(6) Notwithstanding subsection (2), a proponent may prepare a feasibility study, or do any research, or any other act in furtherance of an application for an EIA licence or a submission of a preliminary environmental report in respect of an undertaking.

(7) A proponent shall inform the Director of any act proposed to be undertaken under subsection (6).

(8) Any proponent who contravenes subsection (2) shall commit an offence.

16. Preliminary environmental report

(1) A preliminary environmental report in respect of an undertaking specified under Part A of the First Schedule shall be -

- (a) in such form as may be approved by the Director;
- (b) duly signed by the proponent of the undertaking or his duly appointed legal representative; and
- (c) deposited at the Director's office in 5 copies or in such additional copies as the Director may request.

(2) A preliminary environmental report shall contain a description of the undertaking with particulars of -

- (a) its location and its surroundings;
 - (b) its process, design and size;
 - (c) any data or information necessary to identify and assess the effects which the undertaking is likely to have on the environment, people and society;
 - (d) the measures which the proponent proposes to take to avoid, reduce and, where possible, remedy any significant effect that the undertaking is likely to have on the environment; and
 - (e) such other aspects of the undertaking as the Director may require.
- (3) A preliminary environmental report shall be accompanied by -
- (a) a site plan indicating the location of the undertaking;
 - (b) a non-technical summary, where the report is prepared by a consultant;
 - (c) a certificate issued by a notary expressing his opinion as to the ownership of the land on which the undertaking is to be executed, or where the proponent is not the owner of the land, by a written evidence of the permission of the owner, and a certificate issued by a notary expressing his opinion as to the owner's title.
- (4) The Director may request -
- (a) such additional information from the proponent as he thinks necessary;
 - (b) any public department, an enforcing agency, any non-governmental organisation or any other person, to submit its or his observations in writing on the preliminary environmental report within not more than 14 days from such request.
- (5) After examination of a preliminary environmental report and such additional information and observations as he may have obtained, the Director shall refer the report to the Minister with such recommendations as he thinks fit.
- (6) On being referred a preliminary environmental report under subsection (5), the Minister may -

- (a) approve the report with such conditions as he deems appropriate;
- (b) reject the report; or
- (c) request submission of an application for an EIA licence in respect of the undertaking to which the report relates.

(7) Where a request is made under subsection (6)(c), the application for an EIA licence shall be in the same form and be processed in the same manner as if the undertaking were an undertaking under Part B of the First Schedule.

(8) Where a preliminary environmental report contains any false or misleading information or any material omission, the Minister may revoke an approval granted under this section.

(9) Any proponent who gives false or misleading information, or fails to disclose any material fact or information in a preliminary environmental report, shall commit an offence.

17. Non-listed activity

(1) Notwithstanding section 15, where in his opinion a project or an activity not specified as an undertaking under the First Schedule is likely, by reason of its nature, scope, scale and sensitive location, to have an impact on the environment or on the zoning of an area, the Minister may request the person carrying out or proposing to carry out the project or activity to submit a preliminary environmental report or an application for an EIA licence.

(2) Where a request for submission of a preliminary environmental report or an application for an EIA licence is made, the project or activity shall be deemed to be an undertaking specified under the First Schedule in respect of which a preliminary environmental report or an EIA licence is required, as the case may be.

18. Application for an EIA licence

(1) A proponent applying for an EIA licence in respect of an undertaking specified in Part B and Part C of the First Schedule, or in accordance with a request under section 16(6)(c) or 17(1), shall submit to the Director an EIA report -

- (a) in electronic form, and in 15 printed copies, and such additional copies as may reasonably be required by the Director;

- (b) signed by the proponent or his duly appointed legal representative and countersigned by the consultant referred to in section 19 who prepared the report;
- (c) accompanied by -
 - (i) satisfactory proof of ownership of the undertaking;
 - (ii) a site plan prepared and signed by a land surveyor;
 - (iii) a non-technical summary of the report;
 - (iv) a certificate issued by a notary expressing his opinion as to the ownership of the land on which the undertaking is to be executed, or where the proponent is not the owner of the land, by a written evidence of the permission of the owner, and a certificate issued by a notary expressing his opinion as to the owner's title.

(2) The EIA report shall contain a true and fair statement and description of the undertaking as proposed to be carried out by the proponent, and shall include-

- (a) the name and address of the proponent;
- (b) the ownership of the undertaking and of the land on which it is being conducted;
- (c) the name, address and qualifications of the consultant who prepared the EIA;
- (d) the precise location and surroundings of the undertaking, the zoning of the site and the number of similar undertakings in the area;
- (e) the principle, concept and purpose of the undertaking;
- (f) the direct or indirect effects that the undertaking is likely to have on the environment;
- (g) an assessment of the social, economic and cultural effects which the undertaking is likely to have on the people and society;
- (h) any actions or measures which the proponent proposes to take to avoid, prevent, change, mitigate or remedy, as

far as possible, the likely effects of the undertaking on the environment;

- (i) an assessment of the inevitable adverse environmental effects that the undertaking is likely to have on the environment, people and society, where it is implemented in the manner proposed by the proponent;
- (j) an accurate assessment of the irreversible and irretrievable commitment of resources which will be involved in the undertaking, where it is implemented in the manner proposed by the proponent;
- (k) any alternative manner or process in which the undertaking may be carried out so as to cause less harm to the environment;
- (l) an environmental monitoring plan;
- (m) information pertaining to the decommissioning of the project at the end of its life cycle and associated impacts, proposed measures to return the site as far as possible to its former state, or rehabilitation measures;
- (n) in the case of a new infrastructure proposal, an environmental management plan to be implemented during the construction phase; and
- (o) such other information as may be necessary for a proper assessment and review of the potential impact of the undertaking on the environment, people and society.

19. Consultancy

- (1) An EIA shall -
 - (a) be signed by the proponent and all principal consultants who prepared or assisted in the preparation of the EIA;
 - (b) enclose particulars of the schedule of works undertaken by the proponent and his consultants in the preparation of the EIA, including particulars of any consultation held with the public in the area where the undertaking is to be located.

(2) Notwithstanding the Copyrights Act, no intellectual property rights in an EIA submitted under subsection (1) shall be opposable to a public

officer or a Government Department or agency dealing with an EIA in the discharge of his duties or exercise of his functions.

20. Public Comment

(1) An EIA submitted under section 18 shall be open for public inspection during working hours at-

- (a) the office of the Department;
- (b) the main office of the municipal council or district council for the area where the undertaking is to be carried out; and
- (c) such other places as may be specified in a notice under subsection (2).

(2) The Director shall give notice of public inspection specified in subsection (1) in 2 issues of the *Gazette* and in 2 issues of 2 daily newspapers, there being in each case an interval of at least 7 days between the first and second publications.

(3) A notice published under subsection (2) shall -

- (a) give a summary description of the undertaking;
- (b) state the address where the undertaking is to be carried out;
- (c) state the place where the EIA may be inspected;
- (d) specify the time limit for the submission of public comment in writing which shall not be later than 28 days after the date of the first appearance of the notice in the *Gazette*.

(4) The Director may in respect of an EIA, other than one submitted through the Board of Investment, extend the time limit specified in subsection(2) to afford reasonable opportunity for any person to submit public comments on the EIA.

(5) The Director may cause to be published an EIA or an extract of an EIA on the internet for public inspection.

21. Review of EIA

(1) The Director shall -

- (a) review an EIA submitted by a proponent and determine its scope and contents; and
- (b) subject to subsection (5), refer the EIA, other than the EIA relating to an exempt undertaking, with such comments and observations as he thinks appropriate, and with any public comment submitted under section 20, to the EIA Committee for examination not later than 42 days after the expiry of the time limit set for submission of public comments under section 20(3) or (4), as the case may be.

(2) The Director may for the purpose of the review under subsection (1)(a) -

- (a) request any public department, an enforcing agency, any non-governmental organisation or any other person, to submit their observations in writing on the EIA;
- (b) set up a technical committee to advise him on the EIA or on any aspects of the undertaking;
- (c) require the proponent to carry out further study or to submit additional information for the purpose of ensuring that the EIA is as accurate and exhaustive as possible.

(3) Subject to subsection (5), any observation made pursuant to a request made under subsection (2)(a) shall be made not later than 14 days after the expiry of the time limit set for submission of public comments under section 20(3)(d), after which date it shall be presumed that the person does not have any observation to make.

(4) Where in respect of an EIA, other than one submitted through the Board of Investment, it appears to the Director that the time limit set out in subsection (1)(b) cannot for any reason be met, he may, after consultation with the proponent, refer the EIA on a date not later than 28 days after the expiry of that time limit, and shall inform the proponent accordingly.

(5) Where an EIA is submitted through the Board of Investment -

- (a) the observations requested under subsection (2)(a) shall be made not later than 7 days after the request;
- (b) the Director shall refer the EIA to the Committee not later than 14 days after the expiry of time limit set for the submission of public comments under section 20(3)(d).

22. EIA Committee

(1) There is established for the purposes of this Act an EIA Committee which shall consist of -

- (a) the Permanent Secretary, as Chairman;
- (b) the Permanent Secretaries of the Ministries having responsibility for the subjects specified in the Sixth Schedule, or their representatives;
- (c) the Director, but he shall have no voting right.

(2) The EIA Committee shall examine applications for an EIA licence referred to it after review by the Director and shall make such recommendations to the Minister as it thinks fit.

(3) Half of the number of members of the EIA Committee shall constitute a quorum.

(4) The EIA Committee may-

- (a) establish any sub-committee for the purpose of examining the whole or any specific aspect of an EIA;
- (b) with the approval of the Minister, co-opt any person as member.

(5) A co-opted member shall not-

- (a) by virtue of his designation as member of the EIA Committee, be deemed to be a public officer;
- (b) have any voting right.

(6) Subject to this section, the EIA Committee shall regulate its meetings and proceedings in such manner as it thinks fit.

(7) The Chairman may request the attendance of any officer of the Department at a meeting of the EIA Committee to provide such information it may require, but the officer shall not have any right to vote at the meeting.

(8) The EIA Committee shall as far as possible give its recommendations to the Minister not later than 14 days after the date the application was referred by the Director under section 21(1)(b).

(9) Where the EIA Committee is examining an EIA submitted by a Ministry, the Permanent Secretary of that Ministry or his representative shall not take part in the proceedings.

23. Decision on EIA

(1) Subject to subsections (3) and (4), the Minister shall after taking into consideration the recommendations of the EIA Committee make his decision on the EIA-

(a) within 7 days, in the case of an EIA submitted through the Board of Investment;

(b) within 14 days, in any other case,

of the receipt of the recommendations.

(2) The Minister may-

(a) subject to section 24, approve the issue an EIA licence on such terms and conditions as he may deem appropriate; or

(b) disapprove the EIA and reject the application.

(3) Where the Minister is unable to make a decision, he shall refer the EIA to a technical advisory committee set up under section 12 with instructions to advise him within 14 days on such issues as are set out in the terms of reference.

(4) The Minister may, within 14 days of receipt of the advice of the technical advisory committee and in the light of the advice of that committee, approve the EIA subject to such terms and conditions he deems fit to impose, or disapprove the EIA and reject the application.

(5) The Director shall give notice in the *Gazette* and in the newspapers in which notice of application was given pursuant to section 20(2), of a summary of the decision of the Minister to approve or to reject the EIA stating the place where the full decision may be available.

(6) Subject to an appeal under sections 56 and 57, the decision of the Minister shall be final and binding.

(7) The Director shall comply and give effect to the decision of the Minister under subsection (2) or (4).

(8) Where an EIA is approved by the Minister, the Director shall issue an EIA licence on the terms and conditions specified by the Minister.

24. EIA approval

(1) In considering approval of an EIA, account shall be taken of -

- (a) the environmental factors considered in the EIA;
- (b) the measures proposed to avoid or minimise adverse effects on the environment, people or society;
- (c) the alternatives proposed in the EIA;
- (d) such other matters that may be relevant in weighing the significance or insignificance of the potential environmental impact of the undertaking.

(2) Where an EIA is approved or a direction is given by the Minister under subsection 3(b), the EIA and the directions shall be deemed to be conditions of the EIA licence issued under section 23(8).

(3) Notwithstanding the approval of an EIA, the Minister may at any time -

- (a) revoke an EIA licence, or amend the conditions of an EIA licence, where he has reason to believe that -
 - (i) circumstances reasonably justifying such revocation or amendment of the conditions have arisen since the granting of the EIA licence;
 - (ii) the proponent is contravening the conditions attached to his licence;
 - (iii) the proponent had failed to disclose any material information or had provided false or misleading information in the EIA report;
- (b) give the proponent such directions as he considers necessary in relation to-
 - (i) the methods of execution and the phasing of the undertaking;
 - (ii) works or actions required to prevent, reduce or eliminate the adverse effects of the undertaking on the environment, people and society;
 - (iii) research, investigation, and monitoring programmes related to the undertaking;
 - (iv) any other aspect of the undertaking or of the execution of the undertaking which is reasonably expected to have adverse environmental effects;

(c) require the proponent to submit at such interval as he may determine, reports on the impacts of the undertaking on the environment, people and society.

(4) Any person who fails to comply with a direction or requirement under subsections (3)(b) and (c), shall commit an offence.

25. Submission of fresh EIA

(1) The Minister may, at any time after the issue of an EIA licence, issue a direction to the licensee requiring him to submit a fresh EIA in respect of his undertaking within such time as may be specified.

(2) A direction under subsection (1) may be issued where, in the opinion of the Minister -

- (a) the undertaking is, or is likely to be, a source of pollution to the environment;
- (b) there is a substantial change or modification in the undertaking, or in the manner in which the undertaking is being operated;
- (c) the undertaking poses a threat to the environment; or
- (d) the circumstances of the undertaking with regard to its surrounding environment so require.

(3) Where a licensee fails to comply with a direction issued under subsection (1) –

- (a) he shall commit an offence;
- (b) his EIA licence shall be cancelled.

26. Transfer of undertaking

(1) Where the ownership, control and management of an undertaking is transferred, whether before or after the grant of an EIA licence, the transferor shall by registered post -

- (a) notify the Director of the transfer and communicate to the Director a copy of the document witnessing the transfer; and
- (b) send a copy of the notification under paragraph (a) to the transferee.

(2) Unless a notification is given under subsection (1), it shall be presumed for the purposes of this Act or any other enactment or rule of law, that the person applying for an EIA licence or the holder of the EIA licence, as the case may be, is the proponent and shall have all the responsibilities and liabilities of the proponent.

(3) Where a notification is given under subsection (1), the transferee mentioned in the notice under subsection (1) shall, in the absence of any protest by him within 28 days after the notification, be presumed as from the date of the notice, for the purposes of this Act or any other enactment or rule of law, to be the owner or the person having the charge, or management or control of the undertaking.

(4) A transfer of an undertaking or of the land where the undertaking is conducted shall not affect the application of the EIA licence and its conditions to the undertaking.

(5) Any person who contravenes subsection (1) shall commit an offence.

27. Effect of EIA licence

(1) No civil or criminal liability in respect of an undertaking or consequence resulting from an undertaking shall be incurred by the Government of Mauritius, the Minister, or any public officer by reason of the approval of an EIA or the grant of an EIA licence, or by reason of any conditions attached to an EIA licence.

(2) The fact that an EIA licence is issued in respect of an undertaking shall afford no defence to any civil action or to a prosecution under any enactment, other than section 15(2), concerning that undertaking or the manner it is operated or managed.

28. Exemption

(1) The Minister may declare an undertaking by a public department, which, in his opinion, is urgently needed in the national interest or for the economic development of Mauritius, to be an exempt undertaking.

(2) The EIA of an exempt undertaking shall be submitted to the Director, who after examination, shall refer it to the EIA Committee for any comments or recommendations.

(3) The EIA Committee shall refer an EIA in respect of an exempt undertaking, together with its comments and observations to the Minister for his decision.

(4) The Minister may approve the EIA on such conditions as he thinks fit, having regard to the matters specified in section 24.

(5) On approving an EIA under subsection (4), the Minister shall cause a notice to be published in the Gazette and in 2 daily newspapers stating -

- (a) a summary description of the undertaking and its location;
- (b) the proponent of the undertaking;
- (c) a declaration that the undertaking is an exempt undertaking;
- (d) the approval of the EIA and the conditions attached to the approval.

PART V - SPILL AND ENVIRONMENTAL EMERGENCY

29. Emergency measures

(1) A public officer, officer of a local authority, or any person, who is informed or otherwise made aware of a spill shall immediately notify the Director.

(2) Any owner of a pollutant which is spilled shall forthwith -

- (a) notify the Director; and
- (b) inform the Director of -
 - (i) the circumstances of the spill; and
 - (ii) any action taken or proposed to be taken in relation to the spill;
- (c) do everything practicable to -
 - (i) prevent, eliminate or reduce the adverse effects of the spill;
 - (ii) restore the environment to the state it was prior to the spill.

30. Interventions of the Director

- (1) Where the owner of a pollutant which is spilled -
- (a) is reasonably suspected of contravening section 29(2)(c);
 - (b) cannot promptly be identified;
 - (c) requests the assistance of the Director in relation to a spill,

the Director may initiate any action and take any measures necessary in the public interest to prevent, eliminate or reduce the adverse effects on, and to restore to its previous state as far as is practicable, the environment.

(2) In the event of a spill, the Director may direct the owner of the pollutant which is spilled, or any other person, to take such action within such period of time as he may specify in order to -

- (a) prevent, eliminate, or reduce the adverse environmental effects of the spill;
- (b) restore as far as is practicable the environment to its previous state;
- (c) dispose of, or in any way deal with, the pollutant or any object reasonably suspected to be affected by the pollutant.

(3) The Director may direct any person conducting an activity which may, in the Director's opinion, cause a spill –

- (a) to prepare a contingency plan to the satisfaction of the Director; or
- (b) to make such modification as he thinks appropriate to an existing contingency plan.

31. Clean-up and removal operations

The Minister shall prescribe -

- (a) the procedures for clean-up and removal operations in the event of a spill;
- (b) the method of storage and of disposal of any pollutant or of any object, plant, animal or any part of the environment removed in a clean-up or removal operation or otherwise affected by a pollutant.

32. Liability for spill

(1) Without prejudice to any other cause of action or remedy under any other enactment, any person affected in any way by a spill shall have a right to damages from the owner of a pollutant.

(2) Subject to this section, Article 1384 alinea I of the Code Napoleon shall apply to an action under subsection (1).

(3) For the purposes of an action for damages under this section -

- (a) the owner of a pollutant shall be presumed to be liable for any damages caused by a spill;
- (b) the owner of a pollutant which is spilled shall always be deemed to be the "gardien" of the pollutant;
- (c) a pollutant shall always be deemed to be in the custody of the owner of the pollutant;
- (d) the burden of proving that the damage was not caused by the pollutant which was spilled, shall always rest on the owner of the pollutant;

(4) Where there are several owners of a pollutant, the action may be directed against all or anyone of them.

(5) Where damage is caused by a spill to the environment, or to any property, object or thing which is not the subject of private ownership, the Attorney-General may claim damages against the owner of the pollutant in accordance with this section.

33. Recovery of expenses

(1) The Director shall recover from the owner of a pollutant which is spilled all costs and expenses incurred as a result of -

- (a) any clean-up or removal operation;
- (b) any measure taken to prevent, eliminate or reduce the adverse effects of a spill on the environment;
- (c) any measure taken to dispose of or to deal with the pollutant.

(2) The costs and expenses referred to in subsection (1) shall be deemed to be civil debts owed by the owner of a pollutant to the Government of Mauritius.

34. Environmental emergency

(1) Where a major threat to the environment is posed as a result of a spill or otherwise, the Prime Minister may in consultation with the Minister, declare an environmental emergency.

(2) Notwithstanding any other enactment, where an emergency is declared under subsection (1), the Prime Minister may give such direction as he thinks fit to any public department for the purpose of the protection of the environment.

(3) The Commission shall prepare such contingency plan as is appropriate in the event of an emergency situation contemplated under this section.

35. Powers in case of emergency or spill

Any person engaged in an action or measure taken by the Director in the case of a spill, or in furtherance of a direction by the Prime Minister in the case of an emergency, may -

- (a) without warrant enter any premises, except a dwelling house, and have access through or over any building, structure, vehicle or by land, water or air;
- (b) construct or set up any structure, machinery, materials and equipment on any premises;
- (c) remove the pollutant or any object, plant, animal, to any part of the environment which is reasonably suspected to be affected by the pollutant, and
- (d) stop, inspect, search and detain any vehicle.

36. Regulations under this Part

The Minister may make regulations under this Part -

- (a) for the purpose of preventing, or in any way dealing with, a spill;
- (b) providing for the requirement of a contingency plan in respect of any activity which may cause a spill;
- (c) after consultation with the Commission, for the purpose of environmental emergency.

PART VI - NATIONAL ENVIRONMENTAL STANDARDS

37. Issue of standards and guidelines

(1) Subject to this section, the Minister may, for the protection and management of the environment, issue guidelines published in the *Gazette* on any of the following -

- (a) water;
- (b) effluent limitations;
- (c) air;
- (d) noise;
- (e) waste, in any form or nature;;
- (f) pesticide residues;
- (g) odour;
- (h) radioactive emission; and
- (i) built-up environment and landscape.

(2) Without prejudice to the Occupational Safety, Health and Welfare Act, and any other enactment, and subject to this section, the Minister shall, for the control of pollution of the environment, have exclusive authority to issue national environmental standards in relation to any of the subjects set out in subsection (1).

(3) A public department, a non-governmental organisation or any person, may make recommendations to the Minister in respect of national environment standards.

(4) Where the Minister proposes to issue any guidelines or any national environmental standards or to amend existing guidelines or standards, he -

- (a) shall consult the relevant enforcing agency;
- (b) may consult a technical advisory committee appointed by him, and the Committee.

(5) Before issuing any guidelines or national environmental standards, the Minister shall cause the proposed guidelines or standards to be published by notice in the *Gazette* in 2 daily newspapers, and invite

submissions in writing on the proposed standards within such period as may be specified in the notice.

38. Standards for water

(1) The Minister shall prescribe standards for water quality to protect the public health, welfare and the environment, and to provide adequate safeguard for the quality of water.

(2) Any regulations made under subsection (1) may provide for different standards for water quality, having regard to the use and value of water for domestic supply, propagation of fish, flora, fauna, and wildlife, recreational purpose, agricultural, industrial and other uses.

39. Effluent limitations

The Minister shall establish -

- (a) effluent limitations for sources of pollution by effluents in accordance with the applicable pollution control technology, having regard to existing and to new sources of pollution;
- (b) time schedule for installation and operation of applicable pollution control technology.

40. Standards for air

(1) The Minister shall prescribe standards to protect the quality of air resources so as to promote the public health and welfare, and the development and the productive capacity of the human, animal, or plant life.

(2) The standards prescribed under subsection (1), shall provide for

-

- (a) minimum essential air quality;
- (b) the control of concentration of substances in the air, which separately or in combination, are likely to result in damage or deterioration of property, and of human, animal and plant health;
- (c) controls for atmospheric pollution originating from energy and industrial sources, including pollution produced by crafts and other self-propelled vehicles, and by factories and power generating stations;

- (d) standards applicable to emission from mobile sources, causing or contributing to air pollution, or endangering public health and welfare.

41. Standards for noise

The Minister shall prescribe such standards for noise emission as are required to preserve and maintain public health and the environment.

42. Standards for hazardous wastes

(1) The Minister may by regulations declare what wastes are to be considered as hazardous wastes.

(2) In determining what wastes shall be declared hazardous, the Minister shall have regard to such special circumstances as he considers appropriate, including quantity, location, and climatic conditions, relating to discharges.

(3) The Minister shall prescribe standards for hazardous wastes to control pollution of the environment and to promote public health and welfare.

(4) The Minister may make regulations for -

- (a) the control of the import, export, collection, movement, transportation and disposal of hazardous wastes;
- (b) the licensing of waste disposal sites, waste management systems and other facilities relating to the disposal of hazardous wastes in an environmentally sound manner.

43. Standards for non-hazardous wastes

The Minister shall prescribe standards for the collection, transportation, storage, processing, disposal and re-cycling of non-hazardous wastes.

44. Standards for pesticide residues

(1) The Minister shall prescribe standards for the concentration of pesticide residues in raw agricultural commodities, food and animal feeds.

(2) For the purpose of subsection (1), raw agricultural commodities-

- (a) include fresh or frozen fruits and vegetables in their raw state, grains, nuts, eggs, raw milk, meat and other agricultural produce;

- (b) but do not include any agricultural produce or food which is processed, fabricated or manufactured by cooking, dehydrating, milling or by any other means.

45. Standards for odours

The Minister shall prescribe such standards for odours as are required to preserve and maintain public health and the environment.

46. Standards for built-up environment

The Minister shall prescribe such standards as are required to maintain, preserve and develop architectural harmony and aesthetic value for the built-up environment.

47. Quality control of laboratories

(1) An analysis of environmental sample conducted by, or environmental data provided by, a laboratory, other than an accredited laboratory, shall not be admissible evidence in any proceeding before a Court of law or before the Tribunal to establish the properties of any environmental sample and the result of any analysis of an environmental sample.

(2) Pending the accreditation of a laboratory, subsection (1) shall have no effect.

48. Industrial waste audit

(1) The Minister may make regulations to provide for pollution control by means of an industrial waste audit.

(2) Without prejudice to the generality of subsection (1), such regulations may, in respect of such activities as may be prescribed, provide for –

- (a) an inventory of waste;
- (b) the development and implementation of an environmental management plan;
- (c) the appointment of officers for the preparation, implementation and monitoring of an environmental management plan;
- (d) different criteria and qualifications in respect of different industrial enterprises.

PART VII - COASTAL AND MARITIME

ZONE MANAGEMENT

49. Interpretation under this Part

In this Part -

"coastal zone"

- (a) means any area which is situated within 1 kilometre or such other distance as may be prescribed from the high water mark, extending either side into the sea or inland;
- (b) includes -
 - (i) coral reefs, reef lagoons, beaches, wetlands, hinterlands and all islets within the territorial waters of Mauritius and Rodrigues;
 - (ii) any estuary or mouth of a river and that part of a river, stream or canal which lies within 1 kilometre from the outermost point of its bank on the sea at high tide;
 - (iii) the islands of Agalega and Saint Brandon, and other outer islets.

"dumping" means -

- (a) any deliberate disposal of wastes or other matter from vehicles, vessels, crafts, platforms or other man-made structures at sea;
- (b) any deliberate disposal of vehicles, vessels, crafts, or other man-made structures at sea;

"maritime zone" means the maritime zone under the jurisdiction of the State of Mauritius, and includes the territorial sea, the exclusive economic zone, and the continental shelf, as defined in the Maritime Zones Act;

"zone" means the coastal and maritime zones.

50. ICZM Committee

(1) There is established for the purposes of this Act an Integrated Coastal Zone Management Committee which shall consist of -

- (a) the Director of Environment, as Chairman;
- (b) a representative of each of the Ministries, departments, public bodies, organisations and associations specified in the Seventh Schedule; and
- (c) the representatives of 6 non-governmental organizations, appointed by the Minister.

(2) The ICZM Committee shall in relation to the coastal zone -

- (a) develop an integrated management plan;
- (b) coordinate regional and international projects;
- (c) monitor coastal water quality and coastal resources, including wetlands;
- (d) conduct and recommend studies on beach erosion and propose measures for its control;
- (e) make recommendations for the upgrading of recreational facilities;
- (f) coordinate the management of islets and outer islands;
- (g) make recommendations on guidelines for coastal constructions;
- (h) propose oil spill contingency planning and sensitivity mapping; and
- (i) generally, make recommendations to the Minister on the management and protection of the coastal zone.

(3) The ICZM Committee shall meet at such place and time as the Chairman thinks fit.

(4) One third of the members of the ICZM Committee shall constitute a quorum.

(5) The ICZM Committee shall regulate its meetings and proceedings in such manner as it thinks fit.

51. Protection of the zone

(1) The Minister may make regulations providing for -

- (a) the management, protection and enhancement of the environment in the zone;
- (b) the prevention, reduction and control of pollution in the zone;
- (c) the implementation of obligations under, and giving effect to, international and regional agreements.

(2) Notwithstanding the generality of subsection (1), the regulations may provide for -

- (a) the preservation and conservation of the environment of the zone;
- (b) such measures as are necessary to ensure that activities in the zone are so conducted as not to cause damage by pollution to the natural environment;
- (c) the control and prevention of pollution from vessels, crafts, and other engines used in the zone;
- (d) the control and prevention of pollution from installations and devices used in the exploration or exploitation of the natural resources of the sea-bed and subsoil of the maritime zone;
- (e) the control and prevention of pollution of the marine environment from land-based sources, including rivers, estuaries, pipelines, and outfall structures;
- (f) the control and prevention of pollution of the marine environment arising from, or in connection with, seabed activities and from artificial islands, installations and structures in the maritime zone;

(3) The Minister shall cause to be prepared an integrated coastal zone management plan which shall be used for coastal zone planning, management and development.

52. Dumping in the zone

(1) Subject to subsection (2), no person shall release, or cause to release, into the zone any pollutant, waste or other noxious substance from or through, the atmosphere, or by dumping.

(2) It shall be a defence to a prosecution under subsection (1) to prove that the release and the dumping -

- (a) was due to or was rendered necessary by "force majeure" or for the protection of human life;
- (b) was within the level, amount or nature permissible under an international agreement or convention to which the State of Mauritius is a party.

(3) Any person who contravenes subsection (1) shall commit an offence.

PART VIII - THE ENVIRONMENT APPEAL TRIBUNAL

53. The Environment Appeal Tribunal

(1) There is established for the purposes of this Act an Environment Appeal Tribunal which shall consist of -

- (a) a Chairman, who shall be a barrister at law of not less than 10 years standing, appointed by the Public Service Commission; and
- (b) such other members, with at least 3 years' experience in a field related to the protection and management of the environment, as may be appointed by the Attorney-General.

(2) The Attorney-General may -

- (a) appoint such members on an ad hoc basis and for such period as he considers necessary to serve on the Tribunal;
- (b) designate such public officers as he thinks fit to assist in conducting the business of the Tribunal;
- (c) approve such fees as may be paid to the members of the Tribunal.

54. Jurisdiction of the Tribunal

(1) The Tribunal shall hear and determine appeals against -

- (a) any decision of the Minister –

- (i) on an EIA under section 23;
 - (ii) revoking an EIA licence or amending the conditions of an EIA licence under section 24(3)(a);
 - (iii) approving a preliminary environmental report under section 16(6)(a);
 - (iv) relating to a preliminary environmental report under section 16 (6)(b) and (c);
 - (v) relating to a request under section 17(1);
 - (vi) relating to a request for a fresh EIA under section 25(1).
- (b) a direction given under section 24(3)(b);
 - (c) the revocation of a programme approval under section 70;
 - (d) the issue of an enforcement notice, a prohibition notice, a stop order, and a variation notice under sections 71, 72, 73 and 76;
 - (e) a requirement of compliance monitoring under section 84.

(2) Any person may appeal within 30 days of the decision, direction, order, or notice referred to in subsection (1) in such form and manner as may be prescribed by regulations.

55. Proceedings of the Tribunal

(1) The Tribunal shall sit at such place and time as the Chairman of the Tribunal may determine.

(2) Where the Tribunal adjourns any proceedings, it may resume them at such place and time as the Chairman of the Tribunal may determine.

(3) Subject to any regulations made under Section 58, all appeals before the Tribunal shall be instituted and conducted -

- (a) as far as possible in the same manner as proceedings in a civil matter before a District Magistrate;
- (b) in accordance with the law of evidence in force in Mauritius;

- (c) in public, except with the agreement of all the parties, or where the Tribunal so orders in the interests of public order.
- (4) The Tribunal may -
- (a) make such orders for requiring the attendance of persons and the production of articles or documents, as it thinks necessary or expedient;
 - (b) take evidence on oath and may for that purpose administer oaths; and
 - (c) on its own motion, summon and hear any person as witness.
- (5) Any person who -
- (a) fails to attend Tribunal after having been required to do so under subsection (4);
 - (b) refuses to take an oath before the Tribunal, or to answer fully and satisfactorily to the best of his knowledge and belief any question lawfully put to him in any proceedings before the Tribunal, or to produce any article or document when required to do so by the Tribunal;
 - (c) knowingly gives false evidence or evidence which he knows to be misleading before the Tribunal;
 - (d) at any sitting of the Tribunal -
 - (i) wilfully insults any member thereof;
 - (ii) wilfully interrupts the proceedings, or commits any contempt of the Tribunal,

shall commit an offence.

56. Determination of the Tribunal

- (1) (a) For the purpose of hearing and determining any cause or matter under this Act, the Tribunal shall be constituted by the Chairman and at least any 2 of its members.

(b) A member of the Tribunal who has a direct interest in any cause or matter which is the subject of proceedings before the Tribunal shall not take part in those proceedings.

(2) Where there is a disagreement among the members of the Tribunal, the decision of the majority shall be the determination of the Tribunal.

(3) Subject to section 57, a decision or finding of the Tribunal, on any cause or matter before it, shall be final and binding on the parties.

(4) On hearing an appeal, the Tribunal may confirm, amend or cancel any decision, order, direction or notice referred to in section 54.

(5) Where a decision, order, direction or notice is confirmed or amended, the Tribunal shall specify the period within which it shall be complied with.

(6) Any person who fails to comply with a decision, order, direction or notice confirmed or amended by the Tribunal, shall commit an offence.

(7) (a) The Tribunal may make such order as to costs as may be prescribed.

(b) An order made under paragraph (a) shall be enforced in the same manner as an order for costs in proceedings before a Judge.

(c) No order under paragraph (a) shall be made against the State, the Minister, the Department or the Director.

(8) Proceedings before the Tribunal shall be exempt from registration dues.

57. Appeal to the Supreme Court

(1) Any party who is dissatisfied with the final decision of Tribunal, relating to an appeal, under section 56 as being erroneous in point of law may appeal to the Supreme Court.

(2) Any party wishing to appeal to the Supreme Court under subsection (1) shall, within 21 days of the date of the decision of the Tribunal-

(a) lodge with, or send by registered post to, the Chairman of the Tribunal a written application requiring the Tribunal to state and sign a case for the opinion of the Supreme Court on the grounds stated therein;

(b) at the same time, or earlier, forward a copy of his application by registered post to the other party.

(3) An appeal under this section shall be prosecuted in the manner provided by rules made by the Supreme Court.

58. Regulations by the Tribunal

The Tribunal may make regulations for the purpose of instituting and conducting proceedings of appeals before it.

PART IX - THE NATIONAL ENVIRONMENT FUND

59. The National Environment Fund

(1) There shall be established a National Environment Fund.

(2) The Fund shall be deemed to be a Special Fund for the purposes of the Finance and Audit Act.

60. Objects of the Fund

The objects of the Fund shall be -

- (a) to provide for foreign laboratory support for analysis of environmental samples;
- (b) to carry out programmes to prevent and reduce pollution;
- (c) to promote environmental education and research;
- (d) to support non-governmental organisations engaged in environment protection;
- (e) to encourage local environmental initiatives;
- (f) to publish reports on the environment;
- (g) to promote, support and encourage activities relating to environment protection and management;
- (h) to compensate victims in situations of environmental emergency and spills.

61. The Board

- of -
- (1) The Fund shall be administered by a Board which shall consist
 - (a) The Permanent Secretary, as Chairman;
 - (b) The Accountant-General, or his representative;
 - (c) The Director;
 - (d) any other person designated by the Minister.
 - (2) The Board shall -
 - (a) be convened by the Chairman at such time and place as he thinks fit;
 - (b) regulate its meetings and proceedings in such manner as it thinks fit.
 - (3) The Board shall -
 - (a) comply with such directions of a general character as the Minister may give;
 - (b) furnish to the Minister such information with respect to the discharge of its functions as the Minister may require.

62. Income and disbursement

- (1) The Fund shall consist of -
 - (a) any money lawfully accruing to the Fund;
 - (b) donations and grants;
 - (c) any funds raised from public activities organised with the approval of the Board.
- (2) No disbursement of money shall be made from the Fund except-
 - (a) for the purposes of the Fund; and
 - (b) with the authorisation of the Board.
- (3) Article 910 of the Code Napoleon shall not apply to donations made to the Fund.

63. Audit and accounts

- (1) The Finance Officer shall -
- (a) not later than 3 months after each financial year, prepare and submit to the Director of Audit -
 - (i) an annual statement of the receipts and payments of the Fund for that financial year; and
 - (ii) a balance sheet showing the assets and liabilities of the Fund in respect of that financial year;
 - (b) furnish to the Minister as soon as practicable after the end of each financial year, a report dealing with the activities and financial position of the Fund during that period;
 - (c) attend the meetings of and advise the Board on the financial standing of the Fund.

(2) The Minister shall, at the earliest available opportunity, lay a copy of the annual reports and audited annual accounts of the financial year before the Assembly.

64. Regulations in respect of the Fund

The Minister may, with the approval of the Board, make such regulations as he thinks fit for the purposes of the Fund.

PART X - ENVIRONMENT PROTECTION FEE

65. Interpretation

In this part –

“designated establishment” means premises, or a set of premises, used in connection with the carrying on of any of the activities specified in the Fifth Schedule;

“fee” -

- (a) means the environment protection fee specified in section 66; and
- (b) includes any surcharge specified in section 68;

“manager’ in relation to a designated establishment means –

- (a) the person responsible; and
- (b) includes the licensee.

66. Charge to environment protection fee

(1) Subject to this section, there shall be levied on every designated establishment a fee to be known as the environment protection fee.

(2) The manager of every designated establishment shall, in respect of every financial year, pay to the Director the fee specified in the Fifth Schedule.

- (3) (a) Where at any time, in a financial year, a designated establishment starts or ceases its activity, the fee leviable under this section shall be calculated on a prorata basis provided that part of a month shall be reckoned as a month.
- (b) Where a designated establishment ceases its activity, the fee calculated in accordance with paragraph (a) shall be paid not later than 7 days of the date of cessation of operations.

(4) Any manager who fails to pay the fee leviable under this Part shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 5 years.

67. Registration of enterprise or activity

- (1) Subject to this section, every manager shall -
 - (a) within 14 days of the start of its activity; or
 - (b) within 30 days of the coming into force of this Act, where its activity has already started before the coming into force of this Act,

register the designated establishment with the Director by submitting an application for registration in such form as may be approved by the Director.

(2) For the purposes of registration under subsection (1), the manager shall provide the full name and address, the nature of the activity, the turnover and the number of employees in respect of the accounting year of the designated establishment and such other information and particulars as may be required in the form of registration.

(3) Where, after the registration of a designated establishment, under this Part, there is a change in the turnover or number of employees which may affect the liability to the fee payable, or there is a change in any of the other particulars provided, the manager shall, within 14 days of the occurrence of the change, give notice in writing to the Director.

(4) Where a designated establishment ceases its activity, the manager shall, within 7 days, thereof give written notice to that effect to the Director.

(5) Any manager who fails to comply with this section, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 2 years.

68. Surcharge for late payment of fee

Where a manager fails to pay any fee chargeable under section 66 on the last day on which it is payable, he shall be liable to pay to the Director, in addition to the fee, a surcharge representing 50 per cent of the fee remaining unpaid.

69. Recovery of fee

The Director may, in respect of any fee which has been left unpaid, recover the amount due in the same manner as is prescribed in the Recovery of State Debts Act.

PART XI - ENFORCEMENT

70. Programme approval

(1) Where he is of opinion that a person is contravening, or is likely to contravene an environmental law, the Director may serve, or cause to be served, on him a programme notice -

- (a) stating the opinion of the Director;
- (b) specifying the matter constituting the contravention, or the matter making it likely that a contravention will arise, as the case may be;
- (c) requesting the person to submit for his approval before a specified date a written programme of measures which the person intends to take to remedy the contravention, or to eliminate the likelihood of a contravention.

(2) The Director may -

- (a) hold consultations with the person to determine the appropriate method of remedying the contravention or eliminating the likelihood of a contravention;
- (b) consult a technical advisory committee or the Committee;
- (c) request the person to submit such additional information, proposal or research study as he may deem appropriate.

(3) On approving a programme of measures, the Director shall issue or cause to be issued a programme approval stating -

- (a) the notice issued under subsection (1);
- (b) the measures that shall be taken to remedy the contravention or eliminate the likelihood of a contravention; and
- (c) the period within which the measures shall be implemented.

(4) The Director may -

- (a) supervise and issue directions in respect of the implementation of the measures contained in the programme approval;
- (b) with the consent of the person, modify the programme approval;
- (c) at any time, revoke a programme approval.

(5) No person shall be prosecuted for a contravention in respect of which a programme approval is in force.

(6) Where -

- (a) a person fails to comply with -
 - (i) a request in a notice under subsection (1);
 - (ii) a programme approval issued under subsection (3);
 - (iii) any direction issued under subsection (4); or
- (b) a programme approval is revoked under subsection (4),

the Director may issue or cause to be issued an enforcement notice or a prohibition notice.

71. Enforcement notice

- (1) Where he is of the opinion that -
 - (a) a person is contravening, or is likely to contravene an environmental law; and
 - (b) a programme approval will not provide an effectual remedy, or a prohibition notice is not appropriate,

the Director may cause to be served on the person an enforcement notice.

- (2) An enforcement notice shall -
 - (a) state the opinion of the Director;
 - (b) specify the matter constituting the contravention, or the matter making it likely that the contravention will arise, as the case may be;
 - (c) specify the measures that shall be taken to remedy the contravention, or to remedy or eliminate the matter making it likely that the contravention will arise, as the case may be; and
 - (d) specify a period within which those measures shall be implemented.

(3) No person shall be prosecuted for a contravention in respect of which an enforcement notice was issued as long as the notice is in force.

(4) Any person who fails to comply with an enforcement notice shall commit an offence.

72. Prohibition notice

(1) Where he is of the opinion that an enterprise or activity, or the manner in which the enterprise or activity is carried on, involves a serious pollution or an imminent risk of serious pollution of the environment, the Director may serve, or cause to be served, a prohibition notice on the person owning, or managing, or in charge of, or in control of the enterprise or activity.

- (2) A prohibition notice may be served whether or not -
- (a) the enterprise or activity, or the manner in which the enterprise or activity is carried on, constitutes a contravention of an environmental law;
 - (b) there is in force in relation to that enterprise or activity, a licence, permit or approval issued under any environmental law or any other enactment;
 - (c) there is before any Court of law or before a Judge sitting in Chambers any case involving the subject matter in relation to which a notice is being issued, unless the Court or Judge has issued an order preventing the Director from issuing the prohibition notice.
- (3) A prohibition notice shall -
- (a) state the Director's opinion;
 - (b) specify the serious pollution caused, or the risk of serious pollution involved, as well as the way in which the enterprise, activity, or the manner in which the enterprise or activity is carried on, is suspected to give rise to the risk;
 - (c) specify the measures that shall be taken to eliminate the serious pollution caused, or the risk of pollution, and the period within which they shall be implemented;
 - (d) specify-
 - (i) the enterprise or activity, or any aspect of the enterprise or activity, that is prohibited from operation or performance; or
 - (ii) any conditions subject to which the enterprise or activity may be resumed.

(4) A prohibition notice shall not be a bar to a prosecution for any offence, even if there are consultations with the person served with the notice.

(5) Any person who fails to comply with a prohibition notice, shall commit an offence.

73. Stop order

(1) Where a person commences or carries on any development or activity without the relevant licence or permit issued under this Act or any legislation dealing with town and country planning, or the Trade and Industry Classification Act, the Director may, where such development or activity contravenes an environmental law, serve, or cause to be served, on that person, or any person responsible for the giving of instructions for the carrying out of such development or activity, a stop order prohibiting the development or the activity.

(2) Any person who fails to comply with a stop order issued under subsection (1) shall commit an offence.

74. General provisions on notices

In sections 75 to 78 -

"notice" means an enforcement notice, a stop order or a prohibition notice, as the case may be;

"person affected" means a person on whom a notice is served, or is proposed to be served.

75. Consultation on notices

(1) Before or at any time after issuing a notice, the Director shall as far as he deems practicable, consult -

- (a) the person affected;
- (b) the Committee.

(2) The Director may consult a technical advisory committee, or any public department, on a notice.

76. Variation notice

(1) Any person affected by a notice, may apply to the Director for an amendment of a notice.

(2) The Director, on his own initiative, or on application, may amend a notice by causing to be served on the person affected a variation notice.

(3) A variation notice shall -

- (a) refer to the notice which is amended;
- (b) specify the amendment to the notice;
- (c) where necessary, vary the date specified in the notice.

(4) A variation notice shall supersede the notice to which it refers to the extent of the amendment.

77. Service of notice

(1) A notice issued under this Act shall be served -

- (a) personally on the person affected, or in the case of a body corporate, at its registered address; or
- (b) by registered post sent to, or by leaving a copy at, the last known address of the person affected.

(2) Where service could not be effected by the means referred to in subsection (1), the service shall be effected by affixing a copy of the notice at the place-

- (a) of the undertaking which is the subject matter of the notice;
- (b) where a contravention is being committed, or has been committed, or is suspected to have been committed; or
- (c) where a pollution has been or is occurring, or is likely to occur.

(3) A certificate of an authorized officer or any other officer of the Department as to service under subsection (1) shall be prima facie evidence of effective service of the notice on the person affected.

78. Revocation of notices

(1) Where he is satisfied that -

- (a) (i) the measures required to be taken in a notice have been implemented; and
- (ii) there exists no further pollution, or risk of pollution, to the environment caused by the enterprise, activity or the manner in which the enterprise or activity is carried on; or
- (b) the notice is not, or will not, be effectual,

the Director may revoke a notice and shall inform the person affected in writing.

(2) The Director may -

- (a) when revoking any notice, serve a programme notice;
- (b) when revoking an enforcement notice, serve a prohibition notice;
- (c) when revoking a prohibition notice, serve a programme notice or enforcement notice.

79. Powers of entry

(1) An authorised officer may, at any time, enter any premises other than a dwelling house, for the purposes of -

- (a) carrying out any lawful direction given by any enforcing agency, or the Director, under this Act;
- (b) determining whether any environmental law or any programme approval, any enforcement notice, prohibition notice, or any direction, is being complied with;
- (c) discharging any other functions under an environmental law.

(2) An authorised officer shall not enter a dwelling house unless-

- (a) he has given to the owner or occupier of the house 24 hours' notice in writing of his proposed entry; and
- (b) he has obtained the consent of the owner or occupier of the house.

(3) An authorised officer may on entering any premises -

- (a) require the owner to produce any records, documents or licences;
- (b) examine any such records, documents or licences, and take copies or extracts from them;
- (c) make plans, take photographs and carry out inspections;
- (d) make tests, take measurements and samples, inspect plants, machineries, equipments, vehicles;
- (e) require the owner of the premises entered upon, or any person employed by him, or any other person on the premises, to give to the authorised officer all reasonable assistance and to answer all reasonable questions either orally or in writing.

(4) For the purposes of carrying out his duties under this section, the authorised officer may bring with him any person or equipment he considers necessary.

80. Entry and arrest without warrant

(1) Where -

- (a) there is, or has been, a contravention of an environmental law;
- (b) there is reasonable suspicion that a contravention of an environmental law has been, or is likely, to be committed;
- (c) an environmental emergency is declared;
- (d) a spill occurs, or is reasonably suspected to have occurred, or is likely to occur;
- (e) in his opinion, there is a serious pollution, or an imminent risk of serious pollution, of the environment,

an authorised officer may, at any time, without warrant -

- (i) enter and search premises, other than a dwelling house;
- (ii) secure any article, object, equipment, plant, machinery related to the contravention, or suspected to be a cause of spill or pollution to the environment;
- (iii) secure any document, file, or record reasonably required for the investigation or for the prevention of the contravention;
- (iv) arrest any person reasonably suspected of the contravention;
- (v) exercise any of the powers conferred under section 79(3).

81. Entry of a dwelling house

(1) A Magistrate may, upon being satisfied that the authorised officer should exercise the powers and duties conferred upon him under sections 79 or 80 in respect of a dwelling house, he may issue a warrant authorizing the authorised officer to exercise those powers.

(2) A warrant issued under subsection (1) shall be valid for the period stated in the warrant.

82. Authorised officer to produce authority

(1) When exercising his duties under section 79, 80 or 81, the authorised officer, other than a police officer, must -

- (a) hold a card signed by the Director showing his authority;
- (b) produce that card, upon request, to any affected person.

(2) A police officer shall produce his warrant card as proof of his authority.

83. Obstruction of an authorized officer

Any person who in relation to the exercise of powers conferred by section 79, 80 and 81-

- (a) refuses to allow an authorised officer to enter any premises or to take any person or equipment with him in the exercise of his powers;
- (b) obstructs or impedes an authorised officer in the exercise of any of his powers;
- (c) fails to provide assistance or information requested by the authorised officer;
- (d) gives to an authorised officer any information which is false or misleading,

shall commit an offence.

84. Compliance monitoring

(1) The Director may, after consultation with the Committee, in relation to any activity, enterprise, or undertaking, carry out, cause to be carried out, or arrange for monitoring of environmental quality, and the nature, extent and effects of discharges of pollutants, as the Director may consider necessary for ensuring compliance with an environmental law.

(2) The Director may, as he considers necessary, require a person responsible for an activity, enterprise, or undertaking from which there is a discharge of a pollutant into the environment, to-

- (a) carry out such monitoring of the nature, extent and effect of the discharge and of the quality of any environmental medium likely to be affected by the discharge; and
- (b) keep and supply to him records of the monitoring as the Director considers necessary.

(3) Any person who fails to comply with a requirement under subsection (2) shall commit an offence.

85. Offences

(1) Any person who -

- (a) fails to comply with any requirement, notice, order or direction issued under this Act;
- (b) on being required to submit a report, or to provide information under this Act,
 - (i) fails to do so within the specified date; or
 - (ii) submits a false report or submits a report misleading in any material particular; or
 - (iii) provides false or misleading information;
- (c) fails to acknowledge or evades service of any notice, order or direction issued under this Act, or any regulations made under this Act;
- (d) contravenes this Act or any regulations made thereunder,

shall commit an offence, and unless it is otherwise specifically provided, shall

-

- (i) on a first conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 2 years;
- (ii) on a second or subsequent conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 8 years.

(2) Any person who commits an offence under sections 15(8), 25(3)(a), 52(3), 56(6), 71(4) and 72(5) shall -

- (a) on a first conviction, be liable to a fine which shall be not less than 50,000 rupees and not more than 100,000

rupees and to imprisonment for a term not exceeding 4 years;

- (b) on a second or subsequent conviction, be liable to a fine which shall not be less than 100,000 rupees and not more than 500,000 rupees and to imprisonment for a term not less than 6 years and not exceeding 12 years.

(3) Any person who commits an offence under sections 24(4), 26(5) and 84(3), shall -

- (a) on a first conviction, be liable to a fine which shall be not less than 10,000 rupees and not more than 25,000 rupees and to imprisonment for a term not exceeding 4 years;
- (b) on a second or subsequent conviction, be liable to a fine which shall not be less than 50,000 rupees and not more than 250,000 rupees and to imprisonment for a term not less than 6 years and not more than 8 years.

86. Powers of Court

(1) In addition to any penalty under section 85, the Court may -

- (a) order the forfeiture of any object, machine, plant, vehicle or any article used in, or connected in any way, with the commission of an offence;
- (b) order, or prohibit, the doing of any act to stop a continuing contravention.

(2) Where the conviction relates to an enforcement notice, a prohibition notice, an order or direction, the Court shall order compliance with the notice, order or direction within such period as the Court may determine.

(3) Where the conviction relates to section 15(2), the Court shall make an order that the undertaking be stopped, ceased, closed or pulled down, as the case may be.

87. Prosecution and jurisdiction

(1) An authorised officer may swear an information and conduct prosecution in respect of an offence under an environmental law before a magistrate.

(2) Notwithstanding -

- (a) Section 114 of the Courts Act; and
- (b) Section 72 of the District and Intermediate Courts (Criminal Jurisdiction) Act,

a Magistrate shall have jurisdiction to try all offences under an environmental law and may impose any penalty and exercise all the ancillary powers provided under the enactment.

(3) The following enactments shall not apply to a sentence provided under an environmental law:

- (a) sections 152 and 153 of the Criminal Procedure Act;
- (b) the Probation of Offenders Act.

88. Fixed penalties

(1) Where a person commits an offence specified in regulations made by the Minister, the authorised officer who detects the offence may, as soon as is reasonably practicable, and not later than 14 days of the commission of the offence, serve on that person a notice calling upon him to pay the fixed penalty specified in the regulations.

(2) A notice under subsection (1) shall-

- (a) be in such form as may be prescribed;
- (b) be drawn in quadruplicate; and
- (c) specify -
 - (i) the name and address of the person committing the offence;
 - (ii) the time and place of the offence;
 - (iii) the nature of the offence;
 - (iv) the fixed penalty provided for the offence;
 - (v) the time within which the fixed penalty is to be paid;
 - (vi) the District Court where the fixed penalty is payable;
 - (vii) the name and identification number of the authorized officer who detected the offence.

- (3) The authorised officer who detects the offence shall-
- (a) cause the original of the notice to be served on the offender;
 - (b) forward one copy to the enforcing agency and another to the appropriate District Court; and
 - (c) retain one copy.

(4) Every person who is served with a notice under subsection (1) shall, within 20 days of the service and upon production of the notice, pay the fixed penalty in the prescribed manner at the appropriate District Court.

(5) Where a person who has been served with a notice under subsection (1) fails to pay the fixed penalty within the time limit mentioned in the notice and criminal proceedings are instituted against him for the offence in respect of which he was served with the notice, he shall be liable, on conviction, to a fine which shall not be less than thrice the fixed penalty.

89. Eyesores

The Minister may make regulations for abatement of injurious affection to the environment by reason of the dangerous state of any land, building or structure or by reason of their being injurious to the health of human beings, animals, trees or plants.

PART XII – APPLICATION OF ACT TO RODRIGUES

90. Establishment of Rodrigues Environment Committee

(1) There is established for the purposes of this Act a Rodrigues Environment Committee which shall consist of -

- (a) the Chief Commissioner, as Chairman;
- (b) the Island Chief Executive, as Vice-Chairman;
- (c) a representative of the Ministry responsible for the subject of environment;
- (d) the public officer responsible for the following:-
 - (i) agriculture;
 - (ii) education;

- (iii) environment;
 - (iv) fisheries;
 - (v) health, and
 - (vi) tourism.
- (e) 2 representatives of non-governmental organisations designated by the Chief Commissioner;
 - (f) a representative of the Police de l'Environnement in Rodrigues;
 - (g) 2 other persons designated by the Chief Commissioner, and
 - (h) a Secretary with no voting right, appointed by the Chief Commissioner.
- (2) The Rodrigues Environment Committee shall -
- (a) develop such administrative measures as are necessary to ensure prompt and effective consultation on matters relating to environment protection and management in the Island of Rodrigues;
 - (b) make recommendations to the Rodrigues Regional Assembly on matters relating to environment protection and management on the Island of Rodrigues, including control measures and means of enforcement of environmental laws;
 - (c) devise such educational programmes as it thinks fit in respect of environment protection and management on the Island of Rodrigues.
- (3) The Rodrigues Environment Committee shall -
- (a) regulate its meetings and proceedings as it thinks fit;
 - (b) meet as often as it is necessary at the request of the Chairman, but in any case at least once every month;
 - (c) co-opt any person likely to assist it as member, but who shall have no right to vote.
- (4) The quorum of the Rodrigues Environment Committee shall be

91. Powers of Island Chief Executive

(1) Notwithstanding any provisions of this Act to the contrary, the Island Chief Executive shall exercise all the powers of the Director in the enforcement of environmental laws on the Island of Rodrigues, and shall, for that purpose in relation to the Island, issue any of the notices and orders referred to in Part XI.

(2) The Island Chief Executive shall in relation to the Island of Rodrigues -

- (a) supervise the enforcement of national environmental standards and notices, orders and directions issued under an environmental law;
- (b) verify compliance with environmental laws;
- (c) conduct such regular monitoring, sampling, test and analyses as to ensure compliance with environmental laws;
- (d) provide such assistance as may be required for reviewing an EIA relating to an undertaking in Rodrigues, and in case of spill or of an environmental emergency.

(3) The Rodrigues Environment Committee shall establish a Rodrigues Environment Unit which shall consist of the public officers sitting on the Committee for the purpose of assisting the Island Chief Executive in the discharge of his duties under subsection (2).

(4) The officers of the Rodrigues Environment Unit shall have all the powers of an authorized officer under this Act in respect of the Island of Rodrigues.

92. Regulations for Rodrigues

(1) Subject to subsection (3) and notwithstanding section 96(2)(d), the Rodrigues Regional Assembly may, after consultations with the Rodrigues Environment Committee, make regulations applicable to the Island of Rodrigues.

(2) Regulations made under subsection (1) may provide –

- (a) for the issue, amendment and revocation of licences;
- (b) for the taking of fees and the levy of charges;

- (c) that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding Rs 250 000 and to imprisonment for a term not exceeding 10 years;
- (d) for categories of undertakings, projects or activities on the Island of Rodrigues requiring -
 - (i) a preliminary environmental report;
 - (ii) an EIA licence.
- (e) for any matter relating to the protection and management of the environment on the Island of Rodrigues.

(3) Nothing in this section is to be taken as empowering the Rodrigues Regional Assembly to make regulations for -

- (a) the processing, approval and revocation of approvals in respect of preliminary environmental reports and EIA licences;
- (b) establishing environmental standards.

PART XIII - MISCELLANEOUS PROVISIONS

93. Restriction of liability

(1) No civil or criminal liability shall attach to the Minister, the Director, the Island Chief Executive, the Police de l'Environnement, or to any authorised officer in respect of any act done in good faith in the execution or purported execution of their duties or their powers under this Act.

(2) The Director and the authorised officers shall be public officers for the purposes of the Public Officers Protection Act and the Criminal Code.

(3) Subsection (1) shall be in addition to and not in derogation from the Public Officers Protection Act.

94. Disclosure of information

Where the Director or any other officer of the Department, or any person appointed on a committee or any other person discharging any function or duty under this Act, discloses otherwise than in the performance of his duty, any information relating to any trade secret used in carrying on a

particular undertaking, and the information has been given to him or obtained by him by virtue of this Act, he shall commit an offence.

95. Code of practice

(1) The Minister may, after consultation with the Committee, cause to be published in the *Gazette* codes of practice for the purpose of providing practical guidance with respect to appropriate pollution control technology, and generally with respect to the protection of the environment.

(2) The Minister may, for the preparation of a code of practice, consult a technical advisory committee or any person he thinks fit.

96. Regulations

(1) The Minister may -

- (a) make regulations for the purposes of this Act;
- (b) subject to this Act, amend the Schedules.

(2) Regulations made under this Act may -

- (a) make provisions for the issue, amendment and revocation of licences;
- (b) provide for the taking of fees and the levy of charges;
- (c) make different provisions for different classes of activities or things and for different areas;
- (d) make provisions for the purpose of this Act in respect of islands under the jurisdiction of Mauritius other than the Island of Rodrigues;
- (e) provide for the implementation or enforcement of obligations under international treaties, conventions or agreements relating to the protection and management of the environment generally, including spills, whether on the sea or inland, and coastal and maritime zone management;
- (f) provide for offences punishable by fines not exceeding Rs. 250,000 and for imprisonment not exceeding 10 years imprisonment.

97. Repeal

The Environment Protection Act 1991 is repealed.

98. Saving and transitional provisions

(1) On the date of coming into operation of this Act-

- (a) the National Environment Commission subject to its composition being completed under this Act, the Department of Environment, any technical advisory committee and the National Environment Fund created under the repealed Act shall be deemed to have been created under this Act;
- (b) the Director of Environment and the officers of the Department of Environment shall continue to be the Director and officers of the Department as if they had been appointed or designated under this Act;
- (c) the Environment Advisory Council, the Environment Coordination Committee and the EIA Committee are dissolved;
- (d) any EIA licence issued in respect of an undertaking specified under Part A of the First Schedule shall be deemed to be an undertaking which has obtained the approval of the Minister with the same conditions as was imposed in the EIA licence;
- (e) any EIA licence shall have effect as if granted under this Act;
- (f) the Environment Appeal Tribunal shall continue in existence as if created under this Act, and the Chairman, any member and any officer of the Tribunal shall continue to be Chairman, member or officer as if appointed under this Act;
- (g) any appeal started before the Tribunal or the Supreme Court shall be continued and determined as if this Act had not come into operation.

(2) Any fee payable under the repealed Act and all the provisions concerning surcharge and recovery shall be deemed to be in force under this Act and any proceedings relating thereto shall be deemed to have been taken under this Act.

(3) Every notice issued under the repealed Act and any proceeding taken under the notice shall be continued and be deemed to have been issued and taken under this Act.

(4) Where on the date of coming into operation of this Act, the Island Chief Executive has not been appointed, the Director shall exercise all the powers provided for under section 91.

(5) Where this Act does not make provision for the necessary transition from the repealed Act to this Act, the Minister may make necessary regulations for such transition.

99. Consequential amendments

(1) The Board of Agriculture, Natural Resources and Environment Act is amended -

(a) in section 1, by deleting the words "Natural Resources and the Environment Act" and replacing them by the words -

"Natural Resources Act";

(b) in section 2, by deleting the definition of "Board" and replacing it by the following -

"Board" means the Board of Agriculture and Natural Resources established by section 3;

(c) in section 3-

(i) in subsection (1), by deleting the words "Natural Resources and the Environment" and replacing them by the words "Natural Resources";

(ii) in subsection (2), in paragraph (a), by deleting "Natural Resources and the Environment" and replacing them by the words "Natural Resources".

(2) The Central Water Authority Act is amended -

(a) in section 2, by deleting the definition of "polluted water";

(b) in section 20(2)(l), by inserting before the words "to supervise", the following words -

"subject to any other enactment";

(c) by deleting section 21(k);

- (d) by deleting section 42 and replacing it by the following section -

42. Immunity of Authority

The Authority shall not be responsible for any damage resulting from the irregularity and insufficiency of supply of water for whatever purpose.

- (e) by deleting section 46A.

(3) The Criminal Code (Supplementary) Act is amended in section 110 by deleting subsections (2) and (3) and by renumbering the existing subsection (4) as subsection (2).

(4) The Dangerous Substances Act and the Dangerous Substances Regulations 1914 are repealed.

(5) The Ground Water Act is amended in section 4, by deleting subsection (2) and by renumbering the existing subsection (3) as subsection (2).

(6) The Local Government Act is amended -

- (a) in section 2, by inserting in their appropriate places the following definitions -

"disposal", in relation to waste, includes the sorting, carriage, transportation, treatment, storage and tipping above or underground, and the transformation operations necessary for its recovery, re-use or recycling;

"disposal site" means a disposal site designated under section 156 A(8);

"Environment Coordination Committee" means the Environment Coordination Committee established under the Environment Protection Act 2002;

"waste" means solid waste other than hazardous waste, clinical waste and pharmaceutical waste;

- (b) in section 51(1), by deleting paragraph (b) and replacing it by the following paragraph -

- (b) subject to any regulations under section 156 A(5), the collection and removal of waste to disposal sites;
- (c) by inserting immediately after section 156 the following new part, and renumbering the existing PART X as PART XI –

PART X

156A. Control of waste

(1) The Permanent Secretary shall make arrangements for -

- (a) the collection and disposal of waste;
- (b) the operation and management of disposal sites.

(2) In making arrangements under subsection (1), the Permanent Secretary shall -

- (a) comply with such standards and code of practice issued under the Environment Protection Act 2002;
- (b) consult the Environment Coordination Committee.

(3) The Minister may make regulations to give effect to the arrangements made.

(4) The regulations may provide for -

- (a) the issue, amendment and revocation of licences;
- (b) the taking of fees and the levy of charges;
- (c) the removal of waste unlawfully deposited and the recovery of expenses incurred for the removal;
- (d) any matter relating to enforcement, including the issue of enforcement notices, powers of entry, search and arrest, and the

seizure of any vehicle, object or thing used in the commission of an offence under the regulations.

- (5) The regulations may -
- (a) make different provisions for different categories of waste, and for different disposal sites;
 - (b) provide that a person who contravenes them shall commit an offence, and shall on conviction be liable to a fine not exceeding Rs 25 000, and to a term of imprisonment not exceeding 5 years;
 - (c) provide that, in addition to the punishment under paragraph (b), the Court may order the forfeiture of any vehicle, object or thing used in the commission of the offence.

(6) Subject to any requirements imposed under the Environment Protection Act 2002, the Minister may by notice in the *Gazette* designate a disposal site.

(7) Notwithstanding section 114 of the Courts Act, and section 72 of the District and Intermediate Courts (Criminal Jurisdiction) Act, a Magistrate shall have jurisdiction to try all offences under this section and under any regulations made under this section.

- (7) The National Coast Guard Act is amended -
- (a) in section 2, by inserting at its appropriate place the following definition -

"environmental laws" has the meaning assigned to it by section 3 of the Environment Protection Act 2002;
 - (b) in section 6(1), by inserting after the word "section" the following words -

"and any environmental law,"

(8) The Occupational Safety, Health and Welfare Act is amended in subsection (1) of section 4 by deleting the words "The Minister" and replacing them by the words -

"Without prejudice to any standards issued under the Environment Protection Act 2002, the Minister"

- (9) The Public Health Act is amended -
- (a) in section 2, by inserting in its appropriate place the following definition-
 - "environmental law" has the meaning assigned to it in the Environment Protection Act 2002;
 - (b) in section 18, by deleting the word "nuisance" and replacing it by the words-
 - Without prejudice to any environmental law, "nuisance"
 - (c) by deleting sections 84 to 88 and section 150.
- (10) The Rivers and Canals Act is amended -
- (a) in section 26, by deleting subsection (2) and renumbering the subsection (3) as subsection (2);
 - (b) in section 68, by deleting paragraphs (c), (i) and (j);,
 - (c) by repealing sections 70, 87, 88 and 91;
- (11) The Territorial Sea Act is amended by deleting section 9.
- (12) The Town and Country Planning Act is amended -
- (a) in section 2, by inserting in their appropriate places the following definitions -
 - "EIA licence" has the meaning assigned to it in the Environment Protection Act 2002;
 - "preliminary environment report" has the meaning assigned to it in the Environment Protection Act 2002;
 - "undertaking" has the meaning assigned to it in the Environment Protection Act 2002;
 - (b) in section 7, by inserting after subsection (3), the following subsection-
 - (4) Where an application under subsection (3) relates to an undertaking, the local authority shall not grant a permit unless there is in relation to that

undertaking an approved preliminary environmental report or an EIA licence.

- (13) The Town and Country Planning Act 1990 is amended -
- (a) in section 2, by inserting in their appropriate places the following definitions -
- "EIA licence" has the meaning assigned to it in the Environment Protection Act 2002;
- "preliminary environment report" has the meaning assigned to it in the Environment Protection Act 2002;
- "undertaking" has the meaning assigned to it in the Environment Protection Act 2002;
- (b) in section 12 -
- (i) by inserting after paragraph (a) the following paragraph -
- (b) the provisions of Part IV of the Environment Protection Act 2002 and any standards issued under that Act;
- (ii) by renumbering the existing paragraphs (b) to (e) as paragraphs (c) to (f) accordingly;
- (c) in section 13, by deleting the expression "A development order" where it first occurs, and replacing it by the following words -
- " Subject to section 14 A, a development order";
- (d) by adding after section 14 the following section -
- 14A. Permit for undertaking.**
- No permit for development shall be granted in respect of an undertaking, unless there is in relation to it an approved preliminary environment report or an EIA licence.

100. Commencement

- (1) Subject to subsection (2), this Act shall come into force on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of the Act.

Passed by the National Assembly on the twenty eighth day of May two thousand and two.

ANDRE POMPON

Clerk of the National Assembly

FIRST SCHEDULE*(Section 15(2))***PART A***List of undertakings requiring a Preliminary Environmental Report*

1. Assembly of batteries
2. Assembly of motor vehicles
3. Bakery
4. Barachois development.
5. Block making plant manufacturing up to 10,000 blocks per day
6. Bulk storage of pesticides and dangerous chemicals
7. Cold rooms and refrigeration plants
8. Coral sand crushing and processing
9. Decommissioning of treatment plant or industrial plant
10. Demolition of buildings and hotels
11. Depot for buses
12. Discotheque and night-club
13. Electroplating
14. Filling Station
15. Food canning industry
16. Food processing industry
17. Hotels (inland)
18. Housing project and apartments of 20 units and not more than 50 units
19. Installation of high tension lines
20. Land reclamation and backfilling
21. Laundry
22. Manufacture of animal feed
23. Manufacture of ceramics

24. Manufacture of plastics and plastic products
25. Manufacture of rubber products
26. Mirror manufacture
27. Multi-purpose hall, including wedding hall
28. Nautical centre
29. Parcelling out of land between 1 to 3 ha-
 - (a) otherwise than by way of division in kind among heirs;
 - (b) to be allocated to persons other than such persons as may be approved by the Minister responsible for the subject of agriculture and who are -
 - (i) bona fide occupiers of housing units forming part of sugar estate camps owned by sugar millers or sugarcane planters;
 - (ii) bona fide occupiers of housing units forming part of tea estate camps;
 - (iii) workers affected by the closure of a sugar factory; or
 - (iv) workers opting for the Voluntary Retirement Scheme
30. Pesticides formulation and packing
31. Processing, bottling and canning of beverages, syrup and water
32. Quarantine station for livestock
33. Rearing of livestock including cattle, goat, pig, poultry and sheep
34. Recycling plant
35. Removal of marine flora such as sea grasses and marine algae, except for use as bait by a local fisherman
36. Slaughter house
37. Textile industry associated with spinning, weaving, washing, knitting, bleaching and printing
38. Traffic centre
39. Wastewater treatment plant

PART B

List of undertakings requiring an Environment Impact Assessment

1. Asphalt plant
2. Block making plant manufacturing above 10,000 blocks per day.
3. Brewery.
4. Bulk processing, storage and handling of petroleum, petroleum products, liquid gas, coal and petro-chemical products
5. Clinic and hospital
6. Construction of air field and airport
7. Construction of breakwaters, groins, jetties, revetments and seawalls
8. Construction of dam and dyke
9. Construction of marinas
10. Conversion of forest land to other land use
11. Desalination plant
12. Development, production, release, use, marketing and application of Genetically Modified Organisms
13. Distillery
14. Dyehouse
15. Fishing port
16. Foundry, smelting plant or metallurgical work
17. Galvanising Industry
18. Golf course
19. Harbour dredging operation, construction and development
20. Highway and mass transit system
21. Hotel (coastal), including extension
22. Housing project and apartments above 50 units

23. Lagoon dredging and reprofiling of sea beds including creation of bathing areas
24. Land clearing and development in environmentally sensitive areas such as water catchment areas, waterlogged areas, mountain slopes and islets
25. Landfill
26. Lime manufacture
27. Manufacture of battery
28. Manufacture or packing of cement
29. Manufacture of chemical fertiliser
30. Manufacture of pharmaceutical products
31. Manufacture, handling and storage of dangerous chemicals and pesticides
32. Manufacture of paint, pigment & varnish
33. Manufacture of photographic films
34. Manufacture of polyurethane foam
35. Manufacture of soap and detergents
36. Modification of existing coastline such as beach reprofiling, coastal protection works and removal of basaltic and beach rock
37. Offshore sand mining
38. Parcelling out of land above 3 ha-
 - (a) otherwise than by way of division in kind among heirs;
 - (b) to be allocated to persons other than such persons as may be approved by the Minister responsible for the subject of agriculture and who are -
 - (i) bona fide occupiers of housing units forming part of sugar estate camps owned by sugar millers or sugarcane planters;
 - (ii) bona fide occupiers of housing units forming part of tea estate camps;
 - (iii) workers affected by the closure of a sugar factory; or
 - (iv) workers opting for the Voluntary Retirement Scheme.

39. Petroleum refinery
40. Power station
41. Pulp and paper manufacture
42. Ready-mix concrete plant
43. Rearing of introduced species, such as crocodiles and monkeys
44. Refining and processing of edible oils and fats
45. Rendering plant
46. Retreading of tyres
47. Rock quarrying
48. Sawmill
49. Sewage treatment plant
50. Sea outfall
51. Shipyard and dry dock
52. Stone crushing plant
53. Sugar factory or refinery
54. Tannery and leather finishing
55. Timber treatment plant
56. Timber warehousing
57. Transfer station for solid waste
58. Undersea walk
59. Waste incinerator
60. Wetland development
61. Wine industry

PART C

(Strategic EIA)

1. Housing Development Programme
2. Integrated Coastal Zone Management (ICZM) Plan
3. Industrial estates
4. Land and transport management plan
5. National Physical Development Plan (NPDP), outline schemes
6. New town and satellite town
7. Port master plan
8. Sewerage master plan
9. Solid waste management plan
10. Tourism development plans for Mauritius and Rodrigues

SECOND SCHEDULE*(section 5(2))*

Ministers who are assigned responsibilities for the following subjects –

1. Agriculture
2. Commerce
3. Economic Development
4. Education
5. Environment
6. Finance
7. Fisheries
8. Foreign Affairs
9. Health
10. Housing and Lands
11. Industry
12. Justice
13. Labour & Industrial Relations
14. Local Government
15. Public Infrastructure
16. Public Utilities
17. Rodrigues
18. Shipping
19. Tourism
20. Transport
21. Women's Rights, Child Development & Family Welfare
22. Youth & Sports

THIRD SCHEDULE*(section 10(2))***National Network for Sustainable Development**

1. The Prime Minister's Office
2. The Ministry responsible for the subject of environment
3. The Ministry responsible for the subject of finance
4. The Ministry responsible for the subject of economic development
5. The Ministry responsible for the subject of public utilities
6. The Ministry responsible for the subject of industry
7. The Ministry responsible for the subject of commerce
8. The Ministry responsible for the subject of local government
9. The Ministry responsible for the subject of health
10. The Ministry responsible for the subject of fisheries
11. The Ministry responsible for the subject of agriculture
12. The Ministry responsible for the subject of labour & industrial relations
13. The Rodrigues Regional Assembly
14. The Police Force
15. The Meteorological Services
16. The Joint Economic Council
17. Every Municipal Council and every District Council
18. The Mauritius Employers' Federation
19. The Export Processing Zone Development Authority (EPZDA)
20. The Mauritius Export Processing Zone Authority (MEPZA)
21. The Mauritius Sugar Industry Research Institute (MSIRI)
22. The Institution of Engineers, Mauritius
23. The Mauritius Association of Architects
24. The Media Trust

FOURTH SCHEDULE

(Section 13(1))

Enforcing Agencies

1. In this Schedule -

"functions" includes duties and powers conferred by this Act;

"inland waters"

(a) includes -

- (i) any river, watercourse, stream, lake, pond,
- (ii) ground waters, water in a well, borehole or any passage or adit constructed in connection with a well or borehole;
- (iii) effluents other than those containing hazardous substances;

(b) does not include -

- (i) waters in the coastal and maritime zone except effluents discharged in the coastal zone;
- (ii) water supplied for drinking and domestic purposes;

"port" means the port named "Port Louis" and delimited in the manner described in the second column of the Schedule to the Ports Act;

"Port Master" has the meaning assigned to it in the Ports Act;

"record" means a record of inspections, compliance monitoring exercises and information and environmental data obtained as result of such monitoring;

"relevant enforcing agency" means the enforcing agency designated in respect of a medium, or the aspects of a medium, or a pollutant specified in paragraph 2;

"sphere of responsibility" means the functions exercisable by an enforcing agency over the medium, or the aspects of a medium, or the pollutant specified in paragraph 3;

"zone" has the meaning assigned to it by section 2 of the Act;

2. (1) Subject to subparagraph (2), the enforcing agencies shall be –
 - (a) in relation to noise, quality control of drinking water, and odour, the Permanent Secretary to the Ministry responsible for the subject of health;
 - (b) in relation to inland waters, the Permanent Secretary to the Ministry responsible for the subject of water resources;
 - (c) in relation to effluents, the Permanent Secretary to the Ministry responsible for the subject of waste waters;
 - (d) in relation to solid wastes and hazardous wastes, the Permanent Secretary to the Ministry responsible for the subject of local government;
 - (e) in relation to pesticide residue, the Permanent Secretary of the Ministry responsible for the subject of agriculture;
 - (f) in relation to waters in the zone, other than waters in the Port, the Permanent Secretary to the Ministry responsible for the subject of fisheries and marine resources; and
 - (g) in relation to waters in the port, the Port Master.
- (2) The Director of the Department shall be an enforcing agency and-
 - (a) may exercise his functions as an enforcing agency in respect of any medium, aspect of medium or pollutant specified in subparagraph (1);
 - (b) shall, where no enforcing agency is specifically designated in relation to any medium, aspect of medium or pollutant, exercise his functions in relation to that medium, aspect of medium or pollutant.
3. An enforcing agency shall in respect of its sphere of responsibility -
 - (a) supervise enforcement of national environmental standards and notices, orders and directives issued under an environmental law;
 - (b) verify compliance with environment laws;

- (c) conduct such regular monitoring, sampling, test and analyses as to ensure compliance with environmental laws;
- (d) provide such assistance as may be required for reviewing an EIA, and in case of a spill or of an environmental emergency;
- (e) carry out directions issued by the Minister.

4. (1) An enforcing agency shall have all the powers conferred on the Director by sections 70, 71, 75(1), 76 and 78 of the Act to issue and to revoke any notice other than a prohibition notice and stop order.

(2) For the purpose of sub-paragraph (1), reference to the Director in sections 70, 71, 75(1), 76 and 78 shall be read as if reference is made to the Director or an enforcing agency.

(3) An enforcing agency shall -

- (a) have all the powers conferred on an authorised officer under sections 79, 80 and 81 of the Act, and may delegate in writing its powers to any officer posted under his authority;
- (b) make available to other enforcing agencies and to the Department all facilities required for carrying out any environmental monitoring, laboratory analyses and tests;
- (c) keep a record of all inspections and compliance monitoring exercises and information and environmental data obtained as a result of such monitoring;
- (d) at his request, provide the Director with a copy of the record.

5. An enforcing agency shall report, as soon as is practicable, to the Director, through its environment liaison officer, any contravention of an environmental law relating to its sphere of responsibility and report on any activity undertaken under section 84.

6. Where an enforcing agency suspects, or detects any contravention of an environmental law, beyond its sphere of responsibility, it shall forthwith inform the Director and the relevant enforcing agency.

FIFTH SCHEDULE*(Section 65)***Designated establishment and environment protection fee**

Column 1 <i>Enterprise or activity</i>	Column 2 <i>Fee payable</i>	Column 3 <i>Date payable</i>
1. Hotels	0.75 percent of monthly turnover	Within 20 days after the end of every month
2. Boarding houses of more than 4 bedrooms	0.75 percent of monthly turnover	Within 20 days after the end of every month
3. Enterprise engaged in stone crushing or in the manufacture or processing of aggregates, concrete blocks, pre-cast units, coral sand, rocksand or basalt sand	0.75 percent of monthly turnover	Within 20 days after the end of every month

SIXTH SCHEDULE

(Section 22)

EIA Committee

1. Agriculture
2. Fisheries and Marine Resources
3. Health
4. Industry
5. Local Government
6. Public Infrastructure
7. Town and Country Planning
8. Water Resources
9. Waste Water

SEVENTH SCHEDULE*(section 50 (1))***ICZM Committee**

1. The Ministry having responsibility for the subject of environment
2. The Ministry having responsibility for the subject of local government
3. The Ministry having responsibility for the subject of fisheries
4. The Ministry having responsibility for the subject of marine resources
5. The Ministry having responsibility for the subject of housing and lands
6. The Ministry having responsibility for the subject of shipping and port development
7. The Ministry having responsibility for the subject of tourism
8. The Ministry having responsibility for the subject of agriculture
9. The Ministry having responsibility for the subject of water resources
10. The Island Chief Executive or his representative
11. Every Municipal Council and every District Council
12. The National Coast Guard
13. The Police Force
14. The Waste Water Authority
15. Mauritius Ports Authority
16. The Meteorological Services
17. The University of Mauritius
18. The Mauritius Oceanography Institute
19. The Association des Hoteliers et Restaurateurs, Ile Maurice (AHRIM)
20. The Beach Authority
21. The Police de l'Environnement
22. The Central Water Authority