

ENVIRONMENTAL PLANNING AND PROTECTION BILL, 2015

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ENVIRONMENTAL PLANNING & PROTECTION BILL, 2015

A BILL FOR AN ACT TO PROVIDE FOR ENVIRONMENTAL PLANNING AND PROTECTION AND FOR CONNECTED PURPOSES

Enacted by the Parliament of The Bahamas

PART I - PRELIMINARY

1.Short title and commencement.

- (1) This Act may be cited as the Environmental Planning and Protection Act, 2015.
- (2) This Act shall come into force on such date as the Minister may appoint by notice published in the Gazette.

2.Interpretation.

- (1) In this Act —
 - “**air**” means the unconfined portion of the atmosphere, that is, excluding that within any structure or underground space;
 - “**coastal zone**” means the coastal waters and the adjacent shore lands, and includes islands, transitional and intertidal areas, salt marshes, mangrove swamps, the seabed, wetlands, and beaches. The coastal zone extends inland from the shoreline to the extent necessary to include shore lands whose uses have a direct and significant impact on the coastal waters and extends seaward to the outer limit of title and ownership under the Archipelagic Waters and Maritime Jurisdiction Act;
 - “**contaminant or pollutant**” means any solid, liquid, gas, odor, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from the activities of man which may —
 - (a) impair ecosystem functioning;
 - (b) impair the quality of the natural environment of any use that can be made of it;
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- (c) cause injury or damage to property or to plant or animal life;
- (d) cause harm or material discomfort to any person;
- (e) adversely affect the health or impair the safety of any person;
or
- (f) render any property or plant or animal life unfit for use by
man;

“contamination” means the state resulting from the presence of a
contaminant;

“Department” means the Department of Environmental Planning and
Protection;

“discharge” includes, but is not limited to, any spilling, leaking,
pumping, pouring, emitting, emptying or dumping of any effluent
into the air, water or on land;

“effluent” means any fluid, solid or gas discharged from a given source
into the external environment;

“emission” means a contaminant or gas stream, visible or invisible,
passing into the air, water or on land;

“environment” means the natural, manmade or altered air,
water(including the coastal water of the sea), land and underground,
natural resources or any combination or part or interacting systems
thereof;

“environmental accident” means —

- (a) a release, spill or introduction, or threat thereof, of a
polluting substance into the environment, other than in
accordance with this Act;
- (b) an event or circumstance which, in the opinion of the
Minister or a designated official, is likely to result in harm to
the environment; or
- (c) the environmental consequences of a naturally occurring
event or circumstance such as an earthquake, flood, landslide,
hurricane or tsunami;

“Environmental Advisory Council” means the body established by
section 7(3);

“environmental emergency” means an environmental accident which
creates an immediate or imminent adverse effect or threat of such
an effect requiring prompt measures to be taken;

“environmental impact assessment” means a study identifying and
evaluating -

- (i) the likely impacts of a proposed activity on the
environment.

- (ii) alternatives to the proposed activity, and
- (iii) potential means of mitigating the likely impacts of the proposed activity;

“land” means surface land, the seabed and other land covered by water and all subsoils, minerals and other natural resources found therein, or any combination or part thereof;

“liquid waste” means —

- (a) sewage and human body wastes and other organic wastes and waste water from toilets and other receptacles intended to receive body wastes;
- (b) drainage from medical premises e.g. hospitals, sick bays, dispensaries via baths, wash basins and the like fixtures;
- (c) drainage from places where animals are held, reared or slaughtered;
- (d) drainage and waste water from domestic, industrial, commercial and agricultural operations, including hotels, resorts, marinas, feedlots, and facilities for the manufacture and storage of chemicals; and
- (e) other waste waters;

“Minister” means the Minister responsible for Environmental Planning and Protection;

“owner” means the person who owns all or part of a facility, premise, or project;

“pesticide” means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects, rodents, nematodes, fungi, weeds or other forms of plant or animal life which are considered pests;

“pollution” means the state resulting from the presence of a pollutant;

“siting permit” means a permit to make use of a particular portion of the land resources of The Bahamas for a purpose specified in the permit to be specified in the form prescribed in the First Schedule;

“solid waste” includes ashes, garbage, refuse, litter and other discarded solid material resulting from domestic, industrial, commercial and agricultural operations and from community activities but does not include sewage;

“sustainable management” means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their safety as well as —

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- (a) sustaining the potential of natural and physical resources to meet reasonably foreseeable needs of future generations,
 - (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems, and
 - (c) avoiding, remedying or mitigating any adverse effects on the environment and human health; and

“water” means any liquid collection site whether natural or man-made, above ground or below whether permanent, temporal or seasonal, coastal marine or inland of saline, or fresh quality.

- (2) In determining for the purposes of this Act and any proceedings thereunder whether anything is a contaminant or pollutant as defined in subsection (1) regard shall be had not only to the probable effect of the contaminant or pollutant but also to the probable cumulative effect of things of substantially the same composition.

PART II – ORGANIZATION

3. Responsibilities of the Minister.

- (1) The Minister is charged with the responsibility of ensuring the integrated protection of the environment of The Bahamas and ensuring the sustainable management of natural resources.
- (2) In carrying out the responsibilities under (1), it is the responsibility of the Minister to —
 - (a) exercise his powers in a manner that protects the environment and promotes sustainable management by —
 - (i) applying the precautionary principle that, when planning or implementing any action, measures shall be taken beforehand in order to avoid or reduce any risk or danger to the environment and that, where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing effective measures to prevent environment degradation or harm to human health and that uncertainty concerning the environment or ecological consequences of any action should not be taken as sufficient reason for proceeding with that action,
 - (ii) promoting the prevention of pollution or environmental degradation as a national goal and the priority approach to environmental protection, and
 - (iii) implementing an ecosystem approach that considers the unique and fundamental characteristics of ecosystems;

- (b) encourage and facilitate the protection of the environment and sustainable management by the people of The Bahamas by —
 - (i) issuing environmental quality objectives and standards for The Bahamas;
 - (ii) encouraging the participation of the people of The Bahamas in making decisions that affect the environment;
 - (iii) developing a programme to enhance awareness and to promote environmentally responsible behavior on the part of the private sector, residents and visitors to The Bahamas;
 - (iv) disseminating information about the state of the environment;
 - (v) informing affected parties of their obligations under this Act and the Regulations; and
 - (vi) advancing any other activity prescribed to facilitate the protection of the environment;
 - (c) provide for the identification, inventorying, and mapping of all environmental resources of The Bahamas, including undeveloped lands, forestry resources, creeks, wetlands, blue holes, mangroves, flood plains, estuaries, beaches, dunes, barrier islands, near shore marine areas, coral reefs, fish and wildlife and their habitat, archeological, historical, and cultural resources;
 - (d) serve as the initiator and coordinator, with advice from the members of the Environmental Advisory Council; and in conjunction with such other members of the Government as the Minister shall determine, and have final responsibility for the development, maintenance, updating, dissemination and application of a land use plan, a coastal zone management plan, a surface water management plan, a groundwater management plan, and such other natural resource management plans and a national conservation strategy and action plan for The Bahamas;
 - (e) develop and implement a system of project review and approval that will provide for the early, systematic, and detailed evaluation of the environmental implications of proposals to develop the resources of The Bahamas, including privately-held lands, government-held lands, and crown lands. Such system shall promote sustainable management and shall include an environmental impact assessment program and the provision of siting permits and environmental permits to operate with such conditions as are appropriate to ensure environmental protection and the sustainable management of natural resources;
 - (f) develop and implement measures to ensure the effective management and maintenance quality of groundwater, including
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- oversight and approval of activities affecting groundwater of the Water and Sewerage Corporation and the Ministry of Public Works;
- (g) provide for a system of identifying, inventorying, surveying, monitoring, recording and mapping land use;
 - (h) serve as the representative of the Department on the National Economic Council;
 - (i) implement the provisions of the Conservation and Protection of the Physical Landscape of the Bahamas Act, and regulations thereunder;
 - (j) implement the provisions of the Wild Birds Protection Act and the Wild Animals Protection Act;
 - (k) monitor, prevent, regulate and control the actual and likely contamination or pollution from any source, ensure compliance in all matters and activities relating thereto and establish minimum standards required for a clean, healthy and aesthetically pleasing environment;
 - (l) initiate and coordinate the development of a plan for the prevention and response to environmental accidents and emergencies;
 - (m) develop and implement a plan to ensure the provision of laboratory services in support of the programs and activities provided for in this Act and regulations thereunder;
 - (n) develop and implement means for the application of science and technology for the identification, avoidance, and control of environmental risks and the solution of environmental problems;
 - (o) coordinate the implementation of international environmental agreements entered into by The Bahamas;
 - (p) investigate, and when appropriate develop and implement in coordination with the Ministry of Finance, environmental fees or levies designed to recover from persons whose activities cause or are likely to cause damage to the environment some or all of the cost of preventive or restorative measures;
 - (q) enforce all requirements, regulations and other obligations under this Act; and
 - (r) provide for training of staff of the Department within their areas of responsibility.

4. Minister's staff.

There shall be a Director of the Department and such other officers and staff as the Minister may consider necessary.

5. Delegation responsibility.

- (1) The Minister may, in writing, delegate for a specified period of time to —
 - (a) any employee of the Government or a Government agency;
 - (b) any employee of a Town Committee or District Council; or
 - (c) any other person,who has the qualifications and experience, any power or duty conferred or imposed on the Minister pursuant to this Act other than the power under section 3(2) to make regulations.
- (2) Any delegation while in force shall not prevent the discharge by the Minister of any functions thereby delegated and may be —
 - (a) made subject to such conditions, qualifications and exceptions as may be specified; and
 - (b) revoked or varied at any time.

6. Environmental advisory council.

- (1) There shall be an Environmental Advisory Council (“the Council”).
- (2) The Council shall be chaired by the Permanent Secretary of the Department, and shall consist of one person with the appropriate technical qualifications appointed by the Director of the Department of Agriculture, the Director of the Department of Fisheries, the Port Comptroller of the Port Department, the Permanent Secretary of the Ministry of Foreign Affairs, the Permanent Secretary of the Ministry of Transport & Aviation, the Director-General of Tourism, the President of the College of the Bahamas, the General Manager of the Water and Sewerage Corporation, and the Executive Director of the Bahamas National Trust, and such other persons as may be appointed by the Minister.
- (3) The Council’s task is to advise the Minister on matters within the jurisdiction of the Department that are referred to the Council relating to —
 - (a) the protection of the environment and the sustainable management of natural resources;
 - (b) the identification, inventorying, and mapping of the environmental resources of The Bahamas;
 - (c) the preparation of a national land use plan and national conservation strategy for The Bahamas;
 - (d) the review of the feasibility or desirability from an environmental standpoint of any draft legislation, regulations, programmes, policies or activities proposed by any government ministry, department, or other public body that is likely to have a significant

effect on the protection of the environment or the sustainable management of natural resources;

- (e) the development of a national environmental laboratory program;
- (f) chemical management ; and
- (g) any other matter.

7.Functions assigned related to environmental planning.

In addition to any other duties as may be from time-to-time by the Minister, the Department shall carry out the Minister's responsibilities under the Act for —

- (a) the development and application of land use plans for the land resources of The Bahamas;
- (b) the development and application, in collaboration with the Bahamas National Trust and the Departments of Agriculture and Marine Resources, of management plans for protected areas and parks;
- (c) the development and application of a plan for the conservation and development of surface waters, wetlands and mangroves;
- (d) oversight and approval of activities of the Water and Sewerage Corporation and the Ministry of Public Works that could affect the management or maintenance of the quality of groundwater;
- (e) the development and application, as necessary, of any additional resource management plans;
- (f) the development and application of a national conservation strategy and action plan;
- (g) the administration of a system for issuing siting permits for developments on private lands and Crown lands;
- (h) the administration of a system for issuing leases of Crown land; and
- (i) the administration of a system for land surveying.

8.Functions related to environmental protection.

In addition to any other duties as may be assigned from time-to-time by the Minister, the Department shall —

- (a) carry out the Minister's responsibilities under this Act with respect to —
 - (i) environmental emergency preparedness and prevention;
 - (ii) environmental education, awareness promotion and outreach;
 - (iii) the regulation, review and oversight of the environmental impact assessment program, including the issuing of environmental permits to operate;

- (iv) the development of environmental objectives, standards, guidelines, codes of practice and regulations;
 - (v) environmental monitoring;
 - (vi) the promotion and enforcement of compliance with this Act and regulations and decisions made thereunder;
 - (vii) the establishment and operation of an environmental information system;
 - (viii) the establishment and operation of an environmental laboratory system.
- (b) prepare and cause to be submitted to the Minister, in such form as the Minister may require, an annual report of the activities of the Department, and, when requested, such other reports as the Minister may require concerning the Department's operations and the state of the environment in The Bahamas.

PART III - LAND USE PLANNING

9.Land use plans.

- (1) The Department shall work cooperatively with the Department of Physical Planning, the Ministry of Works and the Department of Works, the Department of Lands and Surveys and the Bahamas National Geographic Information Systems Centre (BNGIS) to develop, apply and update, as appropriate, plans for the sustainable management of all land resources in The Bahamas of whatever ownership, including government lands, crown lands, and private lands, and including both uplands and coastal zone areas. Such plans or the updates thereto shall be tabled on the floor of the House of Assembly at least once every three years.
- (2) These plans shall take into account —
 - (a) the Minister's duties under this Act to protect the environment and ensure the sustainable management of natural resources;
 - (b) any relevant zoning decisions and decisions to designate parks, protected areas or reserves under the Town Planning Act, the Private Roads (Ch.256) and Subdivisions Act, the Private Roads and (Ch.257) Subdivisions (Out Islands) Act, the Subdivisions (Local Improvement Associations) Act, The Bahamas National Trust Act, the Fisheries Resources (Jurisdiction and Conservation) Act, the Agriculture and Fisheries Act, the Wild Birds Protection Act, the Wild Animals Protection Act, and the Conservation and

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- Protection of the Physical Landscape of The Bahamas Act; (c) an inventory of the land resources of The Bahamas and its capabilities;
- (d) such conservation and development objectives as the Department may establish;
 - (e) such interim use criteria as may be developed from time-to-time;
 - (f) the demarcation of the resources into zones with appropriate use categories and density limits; and
 - (g) any other issue relating to uplands and coastal zones areas.
- (3) With respect to coastal zone areas, such plans shall incorporate the following objectives —
- (a) minimize the loss of life and property caused by improper development in flood-prone, storm surge, geological hazard, or erosion-prone areas and in areas likely to be affected by or vulnerable to sea level rise, land subsidence, or salt water intrusion, and by the destruction of natural protective features such as beaches, dunes, wetlands, and barrier islands or cays;
 - (b) improve, safeguard, and restore the quality of coastal waters and mangrove areas;
 - (c) ensure public access to beaches for recreational purposes; and
 - (d) assist planning for the conservation and management of living coastal and marine resources.
- (4) A plan developed under this section shall be taken into consideration in any procedure set out in this Act or in the regulations thereunder.

10.Park management plans.

- (1) The Department shall work cooperatively with The Bahamas National Trust, the Department of Agriculture, and the Department of Marine Resources or any other governmental or non-governmental agency or organization or person to develop, apply and update, appropriate, plans for the sustainable management of parks and protected areas. Such plans or the updates thereto shall be tabled on the floor of the House of Assembly at least once every three years.
- (2) These plans shall take into account —
 - (a) the Minister's duties under this Act to protect the environment and ensure the sustainable management of natural resources;
 - (b) an inventory of areas appropriate for conservation and recreation purposes;
 - (c) existing parks and protected areas;
 - (d) proposed park and protected areas;

- (e) such conservation and development objectives as the Department may establish for each designated park and protected area; and
 - (f) any other issue relating to the sustainability of parks and protected areas.
- (3) A plan developed under this section shall be taken into consideration in any procedure set out in this Act or in the regulations thereunder.

11.Surface water management plans.

- (1) The Department shall develop, apply and update, as appropriate, plans for the sustainable management of surface waters. Such plans or the updates thereto shall be tabled on the floor of the House of Assembly at least once every three years.
- (2) These plans shall take into account —
- (a) the Minister's duties under this Act to protect the environment and ensure the sustainable management of natural resources;
 - (b) an inventory of surface water resources and its capabilities;
 - (c) such conservation, water quality and development objectives as the Department may establish; and
 - (d) such interim use criteria as may be developed from time-to-time.
- (3) A plan developed under this section shall be taken into consideration in any procedure set out in this Act or in the regulations thereunder.

12.Ground-water management plans.

- (1) The Department shall be responsible, with the assistance of the Water and Sewerage Corporation and the Ministry of Public Works, for the development, application, and updating, as appropriate, plans for the sustainable management of groundwater. Such plans or the updates thereto shall be tabled on the floor of the House of Assembly at least once every three years.
- (2) These plans shall take into account —
- (a) the Minister's duties under this Act to protect the environment and ensure the sustainable management of natural resources;
 - (b) an inventory of groundwater resources and its capabilities;
 - (c) such conservation, water quality, and development objectives as the Department may establish;
 - (d) such interim use criteria as may be developed from time-to-time; and
 - (e) any other matter relating to groundwater.

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- (3) A plan developed under this section shall be taken into consideration in any procedure set out in this Act or in the regulations thereunder.

13.Natural resources management plans.

- (1) The Department may develop, apply and update, as appropriate, plans for the sustainable management of a natural resource. Such plans or the updates thereto shall be tabled on the floor of the House of Assembly at least once every three years.
- (2) "Natural resource" means any land, water, forest, wilderness, wildlife, marine, hydrocarbons, or other natural resources over which the Government of The Bahamas has authority.
- (3) A natural resource plan shall take into account —
- (a) the Minister's duties under this Act to protect the environment and ensure the sustainable management of resources;
 - (b) an inventory of the resource and its capabilities;
 - (c) such conservation and development objectives as the Department may establish;
 - (d) such interim use criteria as may be developed from time-to-time; and
 - (e) any other issue relating to natural resources.
- (4) The Department of Environmental Planning and Protection shall work cooperatively with the Department of Marine Resources to develop the fisheries component of the natural resources plan, but shall have final responsibility for establishing the environmental and ecological goals for sustainable management of the resource.

PART IV: DEVELOPMENT APPROVALS AND CROWN LEASE

14.Interpretation.

In this Part —

"commence" means to initiate any physical activity, including among other things, to clear vegetation, break ground or alter the environment in any way;

"operate" means to use a facility or structure following the completion of its construction, erection or creation.

15.Guidelines.

- (1) In the exercise of the responsibilities described in section 3.(2)(e), the Minister may issue guidelines for the issuance of siting permits by the Department for designated activities involving the development of privately owned land or the leasing and development of Crown land.
- (2) These guidelines shall —
 - (a) indicate which activities and types of activities require a permit under this section;
 - (b) stipulate applicable procedures and criteria;
 - (c) incorporate the precautionary principle, as stated in section 4.(2)(a)(i);
 - (d) indicate offences and applicable penalties; and
 - (e) address any other matter necessary for the effective administration of this Act.
- (3) Siting permits shall be required for dredging activities.
- (4) In determining whether to issue a siting permit, the Director of Environmental Planning and Protection must consider —
 - (a) the Minister's duties under this Act to protect the environment and ensure the sustainable management of natural resources; and
 - (b) any plan or interim criteria developed under Part 2 of this Act.
- (5) The Director of Environmental Planning and Protection may attach to a siting permit whatever conditions and requirements he determines to be necessary to ensure environmental protection and the sustainable management of natural resources.
- (6) Where a development or activity requires a siting permit, no person shall commence construction, undertake the activity, or operate the development, or abandon the development without the appropriate siting permit.
- (7) The Director of Environmental Planning and Protection may, at any time,
 - (a) at the direction of the Minister,
 - (b) in accordance with any guidelines or regulations under this Act,
 - (c) on his own initiative if he considers it necessary, or
 - (d) on application by a holder of a siting permitamend, suspend or cancel a siting permit if —
 - (i) the Director considers such action to be necessary to protect the environment or ensure the sustainable management of natural resources,

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- (ii) the permit holder has failed or is likely to fail to comply with any terms of the permit,
 - (iii) the permit holder has failed to submit any information, report or fee required under this Act or the regulations,
 - (iv) the permit holder has committed an offence under this Act or the regulations,
 - (v) the permit holder has not commenced the activities subject to the permit within a reasonable period of time or is not making reasonable progress towards completing those activities, or
 - (vi) there has been a change in the nature of the permitted activity.
- (8) (a) Where the Director of Environmental Planning and Protection requires the submission of a basic environmental assessment or a detailed environmental impact assessment, the Department shall not issue a siting permit until the Director of Environmental Planning and Protection has reviewed the assessment and issued an approval for the issuance of a siting permit.
- (b) The Director of Environmental Planning and Protection may make his approval under subsection (4) subject to whatever conditions and requirements he determines to be necessary to protect the environment and ensure the sustainable management of natural resources.
- (9) If the Director proposes to amend, suspend or cancel a siting permit, the Director shall —
- (a) require that a holder of the permit supply plans, specifications and other information the Director requests;
 - (b) give the holder of the permit —
 - (i) notice in writing of the proposed cancellation, suspension or amendment, and
 - (ii) the opportunity to make representations to him before the expiration of ten days;
 - (c) forthwith inform the holder of the permit of his final decision, and shall specify the reason for the decision and, if applicable, the action required to be taken by the holder before the suspension may be removed.
- (11) (a) A transfer of a siting permit is without effect unless the Director of Environmental Planning and Protection has consented in writing to the transfer.

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- (b) If a person requests a transfer of a siting permit, the Director of Environmental Planning shall make a decision on the transfer within ninety (90) days.

16.Environmental impact assessment.

- (1) In the exercise of the responsibilities described in section 3.(2)(e), the Minister may make regulations and issue guidelines setting standards and establishing procedures for the preparation and review of environmental impact assessments for all actions reasonably expected to have a significant impact on the environment of The Bahamas whether on private land or Crown land.
- (2) The regulations and guidelines made under this section shall —
- (a) require the submission to the Director of Environmental Planning and Protection of sufficient information to allow the Director to determine what type, if any, of environmental impact assessment shall be required;
 - (b) prescribe the circumstances in which the submission to the Department of a basic environmental assessment (BEA) is required;
 - (c) prescribe the circumstances in which the submission to the Department of a detailed environmental impact assessment (EIA) is required;
 - (d) implement the precautionary principle, as stated in section 4.(2)(a)(i); and(e) address any other matter necessary for the effective administration of this section.

17.Environmental clearance and permit be required.

Where an activity requires the submission and approval of an assessment under section 18, no such activities shall commence until the Director of Environmental Planning and Protection has issued an —

- (a) environmental clearance; and (b) environmental permit to operate.

18.Environmental permit to operate.

- (1) No person shall —
- (a) construct, alter, extend or replace any plant, structure, equipment, apparatus, mechanism or thing; or
 - (b) carry on or alter a process or rate of production, that will or has the potential to have a significant adverse impact on the environment of The Bahamas, including its natural resources and its ecological integrity and diversity,

without first obtaining an environmental permit to operate issued in accordance with this section by the Director of Environmental Planning and Protection.

- (2) The Director may require an applicant for an environmental permit to operate under subsection (1) to submit such plans, specifications and other information as may be required and to engage, subject to the approval of the Director, an independent consultant who shall carry out and report on any tests or experiments relating to the plant, structure, equipment, apparatus, mechanism or thing or to the process, rate of production, methods and devices to be employed to prevent, control, monitor and report on such impacts, which may be in the form of an environmental assessment.
- (3) The Director shall, upon being satisfied that the methods or devices, or both, to be used to prevent, control, monitor and report on the adverse affects described in subsection (1) are adequate to prevent or control such impacts, grant an environmental permit to operate, or, if not so satisfied, shall refuse to grant the permit.
- (4) An environmental permit to operate shall be subject to such conditions as the Director may impose in order to protect the environment and ensure the sustainable management of natural resources.
- (5) The Director of Environmental Planning and Protection may, at any time -
 - (a) at the direction of the Minister,
 - (b) in accordance with any regulations and guidelines under this section,
 - (c) on his or her own initiative if he or she considers it necessary, or
 - (d) on application by a holder of a certificate of approval,amend in any way, suspend or cancel an environmental permit to operate if —
 - (i) the Director considers such action to be necessary to protect the environment or ensure the sustainable management of natural resources,
 - (ii) the holder has failed or is likely to fail to comply with any terms of the permit,
 - (iii) the holder has failed to submit any information, report or fee required under this Act or the regulations, or
 - (iv) the holder has committed an offence under this Act or the regulations.
- (6) If the Director proposes to cancel, suspend or amend an environmental permit to operate, the Director —

- (a) may require that a holder of the environmental permit to operate supply plans, specifications and other information the Director requests; and
 - (b) shall give the holder of the environmental permit to operate -
 - (i) notice in writing of the proposed amendment, suspension or cancellation, and
 - (ii) the opportunity to make representations to him before the expiration of ten days;
 - (c) shall forthwith inform the holder of the environmental permit to operate of his final decision, and shall specify the reason for the decision and, if applicable, the action required to be taken by the holder before the suspension may be removed.
- (7) (a) A transfer of an environmental permit to operate is without effect unless the Director of Environmental Planning and Protection has consented in writing to the transfer,
- (b) If a person requests a transfer of an environmental permit to operate, the Director shall make a decision on the transfer within 90 days.
- (8) A person who is dissatisfied with —
- (a) the refusal of the Director to issue or transfer an environmental permit to operate;
 - (b) the terms and conditions attached to an environmental permit to operate;
 - (c) the variation of any terms and conditions contained in an environmental permit to operate;
 - (d) the revocation of an environmental permit to operate,
- may appeal to the Minister within fourteen days of being notified of such decision; and the Minister may confirm, vary, or reverse such decision.

19.Appeals.

A proponent of an activity subject to this Part may appeal any decision made by the Department under this Part to a court of appropriate jurisdiction.

PART 4: ENVIRONMENTAL PROTECTION STANDARDS

20.Regulations.

(1) The Minister may make regulations for environmental protection and without prejudice to the generality of the foregoing such regulations may provide for —

- (a) protection of water resources and the prevention and control of pollution of any waters;
- (b) measures for monitoring and ensuring the safety of water supplies;
- (c) prevention of the supply and use of unsafe water for human consumption;
- (d) the setting of standards for, and the regulation and control of public and private liquid waste disposal systems and works including sanitary facilities;
- (e) prevention and control of radiation and radioactive wastes;
- (f) the prevention and control of the use and release of toxic, contaminated or hazardous substances;
- (g) the prevention and control of the generation of hazardous wastes;
- (h) the control of the shipment and disposal of hazardous wastes;
- (i) the prevention and control of pollution or contamination of the air;
- (j) the prevention and control of the pollution or contamination of land, and for the control of the use of land for the deposit of pollutants, contaminants and wastes therein;
- (k) the use, regulation and control of beaches and areas of the foreshore both above and below high water mark;
- (l) the protection of ecosystem integrity and ecological diversity;
- (m) implementation of the Wild Animals Protection Act and the Wild Birds Protection Act;
- (n) the preparation and implementation of pollution prevention plans or environmental management systems and the reporting of the results thereunder;
- (o) the content, preparation and publication of corporate environmental reports;
- (p) the prevention and control of greenhouse gas emissions, including the control of combustion processes, and the prevention and control of emissions of ozone depleting substances;
- (q) control and monitoring of scientific research pertaining to the environment in The Bahamas; and

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- (r) any other matter which, in the interest of environmental protection, is concerned with or incidental to the protection, preservation and conservation of the environment or the sustainable management of natural resources.
- (2) The regulations made under subsection (1) above may —
- (a) establish procedures for the issue, variation, suspension or revocation or trading of licenses or permits in respect of any activity contemplated by this Act;
 - (b) specify fees or charges or a system for fixing deposit fees or charges to be paid for any license, permit, examination certificate, service rendered or any other matter under this Act;
 - (c) provide for the recovery of deposit fees or charges payable under paragraph (b);
 - (d) prescribe forms for the purposes of this Act;
 - (e) create offences for the contravention or failure to comply with any regulation made under this section to be punishable by a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding six months or both such fine and imprisonment, and in the case of a continuing offence the offender may be punishable by way of a further fine not exceeding one thousand dollars for each day that such offence continues after the date of conviction;
 - (f) provide appropriate exemptions and special defenses in respect of any requirements and proceedings under this Act or the regulations;
 - (g) provide for appeals to a court against any act or decision of any person performed or made under this Act or the regulations;
 - (h) provide for the recovery of costs and expenses incurred in carrying out any work done as a consequence of any default by any person in accordance with this Act or the regulations;
 - (i) provide for compensation for damage or destruction of any property in the exercise of any powers conferred by this Act; and
 - (j) provide for their application throughout the Commonwealth of The Bahamas or such part or parts thereof as may be prescribed by the Minister therein or from time to time.

21.Objectives, guidelines, and specifying codes of practice.

For the purpose of carrying out the Department's mandate under this Act, the Minister may issue —

- (a) environmental quality objectives goals or purposes, including ambient environmental quality objectives expressed in quantitative or qualitative terms;

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- (b) release guidelines recommending limits, including limits expressed as concentrations or quantities, for the release of substances into the environment;
 - (c) codes of practice respecting pollution prevention or specifying procedures, practices or release limits for environmental control; and
 - (d) codes of practice respecting environmental accident and emergency prevention and preparedness.

22.Prohibition.

No person shall otherwise than in accordance with this Act and the regulations, deposit in, add to, emit or discharge into the environment or permit the deposit, emission or discharge into the environment of any contaminant, pollutant or solid or liquid waste from any source.

23.Notification to director of emission or discharge etc. of contaminant or the pollutant.

Every person who —

- (a) deposits in, adds to, emits or discharges into the environment any contaminant or pollutant; or
- (b) is the person responsible for a source of a contaminant or pollutant that is deposited in, added to, emitted or discharged into environment,

in an amount, concentration or level in excess of that prescribed by a siting permit, environmental operating permit, or any regulation under this Act shall forthwith notify the Director of Environmental Protection of the deposit, addition, emission or discharge, as the case may be.

24.Power to use economic and financial approaches.

The Minister, or the Director as delegated by the Minister, may, in accordance with the regulations, establish programs and other measures for the use of economic and financial instruments including —

- (a) incentives,
- (b) deposits and refunds,
- (c) handling fees,
- (d) taxes and levies,
- (e) emission, effluent and residuals disposal fees,
- (f) differential levies,
- (g) emission trading and marketable discharge units,
- (h) product charges, and

(i) grants, loans and contributions,
for the purposes of protecting the environment, fulfilling national obligations under Multilateral Environmental Agreements, achieving environmental quality goals and providing methods of financing environmental programs.

25.Environmentally responsible product procurement and use.

- (1) The Minister may establish partnership programs with other ministries and agencies, local authorities or any other person for the purpose of promoting product use policies and purchasing policies which favor environmentally responsible products, goods and services.
- (2) The Minister may develop codes and standards, including guidelines for the use and procurement of products, goods and services to encourage purchasers to consider resource use and waste reduction in their purchasing decisions.
- (3) The Minister may establish purchasing policies which are binding on ministries and agencies to require the use of products, goods and materials with —
 - (a) a minimum specified content of recycled materials,
 - (b) a minimum specified rate of recycling, or
 - (c) the cost of recycling and final disposal included in the purchase price.
- (4) The purchasing policies established under subsection (3) shall not be binding during periods when the specified products, goods and materials are unavailable from suppliers.

PART 5: DISPOSAL AT SEA

26.Discharge of waste oil prohibited.

Notwithstanding anything in this Act, the provisions concerning oil pollution of the Merchant Shipping (Oil Pollution) Act (*Ch.275*) continue to apply mutatis mutandi.

27.Guidelines or regulations.

- (1) The Minister may issue regulations or develop guidelines restricting the right of persons to dispose of material into the sea.
- (2) These regulations and guidelines may prescribe —
 - (a) the process to be followed, the form to be used and the fees applicable to obtain a permit;

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- (b) the criteria to be applied by the Minister;
 - (c) the conditions that may be applied to a permit; and
 - (d) any exemptions for safety reasons to the requirement to obtain a permit.

PART 6: ENVIRONMENTAL ACCIDENTS AND EMERGENCIES

28.Environmental emergency program.

In the exercise of the responsibilities described in section 3(k), the Minister shall develop a program for efficient, coordinated and effective action to prevent and minimize adverse environmental impacts from environmental accidents and emergencies in The Bahamas.

29.Guidelines and Regulations.

- (1) The Minister may issue regulations and guidelines to support the program described in section 30.
- (2) These regulations or guidelines may —
 - (a) prescribe measures to be taken with respect to environmental accident and emergency prevention and preparedness;
 - (b) prescribe and authorize actions to be taken to respond to and minimize the adverse environmental impacts of environmental accidents and emergencies; and
 - (c) address any other matter necessary for the effective administration of this Part.

30.Obligation to notify and in minimize impact.

- (1) Where there occurs an environmental accident or emergency, or where there is the potential for an environmental accident or emergency, any person described in subsection (2) shall, as soon as possible, in the circumstances —
 - (a) notify the Department;
 - (b) take all reasonable measures consistent with the protection of the environment and human health and safety to prevent, repair, mitigate or reduce the adverse effects of the incident; and
 - (c) make a reasonable effort to notify any member of the public who may be adversely affected by the incident.
- (2) Subsection (1) applies to any person who —

- (a) owns or has charge, management or control of a substance immediately before the incident;
- (b) causes or contributes to the incident; or
- (c) any other person who becomes aware of the incident.

31. Authority of Department to act to recover costs.

- (1) Where any person fails to take any measures required under section 32, the Minister may take those measures, cause them to be taken or direct any person referred to in section 32(2)(a) and (b) to take them.
- (2) The Minister may recover the costs and expenses of and incidental to any measures under subsection (1) from any person referred to in section 32(2)(a) and (b).

32. Liability.

Subject to any regulations or guidelines developed under this Part, the person who owns or has the charge, management or control of a substance immediately before an environmental accident or emergency is liable —

- (a) for restoring any part of the environment damaged by or during the incident; and
- (b) for all reasonable costs and expenses incurred by the Minister and any other government agency in respect of measures taken to prevent, repair, remedy or minimize the damage resulting from the incident.

**PART 7: ENVIRONMENTAL INFORMATION, RESEARCH,
EDUCATION, AND TRAINING**

33. Information gathering.

- (1) The Minister is authorized under this Act to collect information, by means of voluntary surveys, questionnaires, inquiries, and other similar means, for the purpose of conducting research, creating an inventory of data, formulating objectives, guidelines, codes of practice or draft regulations, reporting on the state of the environment, or administering any provision under this Act.
- (2) The Minister may, for the purpose of enforcing any provision under this Act, require any person to provide information that may be in the possession of that person or to which that person may reasonably be expected to have access. The Minister shall provide procedures under which persons from whom information is requested may seek to

demonstrate that they do not possess such information, or, if they do possess such information, that they should not be required to provide it.

34. National laboratory program.

- (1) In the exercise of the responsibilities described in section 4(1), the Director of the Department of Environmental Protection shall develop and implement a program for the provision of whatever environmental laboratory services are required to implement this Act effectively.
- (2) In developing the program under subsection (1), the Director shall take into account, among other things —
 - (a) the anticipated needs for environmental laboratory services under this Act;
 - (b) the anticipated needs for other, related laboratory services in The Bahamas;
 - (c) the current environmental laboratory capacity The Bahamas; and
 - (d) the potential for private analytical services to supply some or all of the environmental laboratory requirements of The Bahamas in a cost-effective manner.

35. Scientific technical and management research.

- (1) The Minister shall encourage and develop scientific, technical and management research on environmental issues and topics, including, in particular, ecological processes, research on threatened or endangered species, development of measures for the management, recovery, and protection of protected areas and species of their habitats, assessments of the effectiveness of measures taken to implement management and recovery plans, monitoring programs, and assessments of the archeological, historical and cultural heritage of areas of The Bahamas.
- (2) The Minister may —
 - (a) provide technical assistance for training, research, education, and management pertaining to environmental issues and topics; and
 - (b) seek information as necessary from scientifically or technically qualified experts and organizations.
- (3) The Minister shall develop regulations for the control and monitoring of scientific research pertaining to the environment in The Bahamas, to ensure that such research, when it involves the collection of samples or field investigations, is conducted in a coordinated manner and in a manner that does not place an undue burden upon and adequately protects the environment of The Bahamas. In the development and implementation of these regulations the Minister shall take into account the priorities and

goals of the Department of Agriculture and the Department of Marine Resources for environmental research in The Bahamas.

- (4) A requirement for submission of reports on research conducted.

36. Public information, education, and training.

In the exercise of the responsibilities described in section 4(2)(b), the Minister shall develop programmes for public information, education, and training to promote basic environmental understanding and awareness, as well as the skills necessary for effective environmental assessment and management, to promote awareness of and compliance with the environmental impact assessment program as well as other environmental standards, guidelines, and regulations, to promote knowledge of national and international developments in environmental science and technology, and to develop effective environmental curricula for the schools of The Bahamas.

PART 8: ENFORCEMENT AND MISCELLANEOUS

37. Entry on premises by authorized persons.

- (1) The Director of Environmental Planning and Protection or any person authorized in writing by the Minister or the Director may at all reasonable times enter any premises for the purpose of —
- (a) ascertaining whether there is or has been on or in connection with the premises any contravention of the provisions of this Act or any regulations made thereunder and examine the premises and take away samples of any thing by means of or in relation to which he believes any provision of this Act has been contravened;
 - (b) ascertaining whether or not circumstances exist which would authorize or require the Director to take any action or execute any work under this Act or any guidelines or regulations made thereunder;
 - (c) taking any action, performing any function or executing any thing authorized or required to be done under this Act or any guidelines or regulations made thereunder; or
 - (d) generally examining and inspecting the premises.
- (2) Any person claiming the right to enter any premises shall produce the document authorizing him to do so.
- (3) A document purporting to have been signed by the Minister, the Permanent Secretary or by a Director or Deputy Director shall be deemed, until the contrary is proved, to have been signed by that person.

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- (4) Any officer or person authorized to enter any premises which he has entered pursuant to this section, shall leave the premises as effectually secured against trespassers as he found them.

38. Detention.

- (1) Whenever, during the course of an inspection or a search, an official of the Department has reasonable grounds to believe that a provision of this Act or the regulations has been contravened, the official may seize and detain anything —
- (a) by means of or in relation to which the official reasonably believes the contravention occurred; or
 - (b) that the official reasonably believes will afford evidence of the contravention.
- (2) An official of the Department shall not seize anything under subsection (1) unless the thing is required as evidence or for purposes of analysis or the official is of the opinion that the seizure is necessary in the public interest.
- (3) An official who has seized and detained a thing under subsection (1) shall as soon as is practicable, advise the person in whose possession it was at the time of the seizure of the provision of this Act or the regulations that the official believes has been contravened.
- (4) Anything seized under subsection (1) other than a ship, aircraft, platform or other structure, shall not be detained —
- (a) after the owner of the thing or the person in whose possession it was at the time of the seizure applies to the official or to the Minister for its release and the official or the Minister is satisfied that it is not necessary in the public interest to continue to detain the thing or that it is not required as evidence or for purposes of analysis; or
 - (b) after the expiry of 90 days after the day of seizure, unless before that time —
 - (i) proceedings have been instituted in respect of the contravention in relation to which the thing was seized, in which case it may be detained until the proceedings are finally concluded, or
 - (ii) the Minister has served or made reasonable efforts to serve notice of an application for an order extending the time during which the thing may be detained.

39. Director may issue order.

- (1) Where the Director of the Department of Environmental Planning and Protection is in receipt of a credible report and is of the opinion that a source of contaminant or pollutant is adding to, emitting or discharging into the environment any contaminant or pollutant that constitutes, or the amount, concentration or level of which constitutes, an immediate danger to life or the health of any persons or to property, the Director may issue an appropriate order directed to the person responsible for the source of such contaminant or pollutant to discontinue adding to, emitting or discharging such contaminant or pollutant, and such person shall comply with the order of the Director.
- (2) An order issued under subsection (1) may not be issued for a period of more than 180 days.
- (3) Any person subject to an order issued under subsection (1) may appeal that order to the Supreme Court, but must comply with that order until authorized otherwise by an order of the court or until the order is removed by the Director.

40. Voluntary reports.

- (1) Where a person has knowledge of the commission or reasonable likelihood of an offence under this Act but is not required to report the matter under this Act, the person may report any information relating to the offence or likely offence to the Department.
- (2) No person shall disclose or cause to be disclosed the identity of a person who makes a report under subsection (1) or any information that could reasonably be expected to reveal their identity without the express permission of said person;
- (3) No employer shall dismiss, suspend, demote, discipline, harass or otherwise disadvantage an employee or deny an employee a benefit of employment by reason that the employee has made a report under subsection (1) or: —
 - (a) the employee, acting in good faith and on the basis of a reasonable belief, has refused or stated an intention of refusing to do anything that is an offence under this Act; or
 - (b) the employee, acting in good faith and on the basis of a reasonable belief, has done or stated an intention of doing anything that is required to be done by or under this Act.

41. Offences and penalties.

A person who —

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- (a) knowingly or negligently provides false information to the Department; or
 - (b) contravenes any provision of this Act or of the regulations for which a penalty is not specified, commits an offence and is liable to a fine not exceeding one hundred thousand dollars or imprisonment for a term not exceeding one year or both such fine and imprisonment.

42.Continuing offences.

Where an offence under this Act or under the regulations is committed or continued on more than one day, the person who committed the offense is liable to be convicted for a separate offence for each day the offence is committed or continued.

43.Employer's liability.

A person may be convicted of an offence under this Act where it is established that the offence was committed by the person's employee acting in the course of his or her employment, whether or not the employee has been identified or been prosecuted for the offence.

44.Liability of corporate officers.

Where a Corporation commits an offence under this Act, any officer, director, manager, or agent of the corporation who knowingly or negligently directed, authorized, asserted to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence, and is liable to the punishment for the offence, whether or not the Corporation has been prosecuted or convicted for the offence.

45.Sentencing.

In determining the sentence applicable to an offence under this Act, the Court shall consider, among other things, the extent to which the offence has led to impairment of the quality of the natural environment or of the sustainable management of natural resources.

46.Orders of court.

- (1) Where an offender has been convicted of an offence under this Act, in addition to any other punishment that may be imposed under this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order having any or all of the following effects —

- (a) prohibiting the offender from doing any act or engaging in any activity that may result in the continuation or repetition of the offence;
- (b) directing the offender to take any action that the court considers appropriate to remedy or avoid any harm to the environment that results or may result from the act or omission that constituted the offence;
- (c) directing the offender to prepare and implement a pollution prevention plan, an environmental emergency plan or an environmental management system;
- (d) directing the offender to carry out environmental effects monitoring in the manner established by the Minister or directing the offender to pay, in the manner prescribed by the court, an amount for the purposes of environmental effects monitoring;
- (e) directing the offender to have an environmental audit conducted by a person of a class and at the times specified by the court and directing the offender to remedy any deficiencies revealed during the audit;
- (f) directing the offender to publish, in the manner directed by the court, the facts relating to the conviction;
- (g) directing the offender to notify, at the offender's own cost and in the manner directed by the court, any person aggrieved or affected by the offender's conduct of the facts relating to the conviction;
- (h) directing the offender to post any bond or pay any amount of money into court that will ensure compliance with any order made under this section;
- (i) directing the offender to submit to the Minister, on application by the Minister made within three years after the date of conviction, any information with respect to the offender's activities that the court considers appropriate and just in the circumstances;
- (j) directing the offender to compensate the Minister, in whole or in part, for the cost of any remedial or preventive action taken by or caused to be taken on behalf of the Minister as a result of the act or omission that constituted the offence;
- (k) directing the offender to perform community service, subject to any reasonable conditions that may be imposed in the order;
- (l) directing the offender to pay, in the manner prescribed by the court, an amount for the purposes of conducting research into the ecological use and disposal of the substance in respect of which the offence was committed or research relating to the manner of carrying out environmental effects monitoring;

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- (m) directing the offender to pay, in the manner prescribed by the court, an amount to environmental, health or other groups to assist in their work in the community where the offence was committed;
 - (n) directing the offender to pay, in the manner prescribed by the court, an amount to an educational institution for scholarships for students enrolled in environmental studies; and
 - (o) requiring the offender to comply with any other reasonable conditions that the court considers appropriate and just in the circumstances for securing the offender's good conduct and for preventing the offender from repeating the same offence or committing other offences.
- (2) Where an offender fails to comply with an order made under paragraph (1)(f) directing the publication of the facts relating to the offence, the Minister may publish the facts in compliance with the order and recover the costs of publication from the offender.
 - (3) Where the court makes an order under paragraph (1)(j) directing an offender to pay costs or the Minister incurs publication costs under subsection (2), the costs constitute a debt due to the Government of The Bahamas and may be recovered in any court of competent jurisdiction.

47. Compensation for loss of property.

Where an offender has been convicted of an offence under this Act, the court may, at the time sentence is imposed and on the application of the person aggrieved, order the offender to pay to that person an amount by way of satisfaction or compensation for loss of or damage to property suffered by that person as a result of the commission of the offence.

48. Protection of Minister and officers from liability.

Nothing done by the Minister or any person acting under the authority of this Act shall, if such a thing was done bona fide for the purposes of executing any of the provision of this Act, subject such persons to any action, liability, claim or demand.

49. Regulations.

The Minister may make regulations for giving effect to and carrying out the purpose, intention and provisions of this Act and without prejudice to the generality of the foregoing, such regulations may provide for —

- (a) pollution and waste
 - (b) climate change
 - (c) environmental impact assessments
 - (d) biodiversity
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- (e) chemicals management
- (f) coastal erosion and rehabilitation; and
- (e) any other areas necessary for the implementation of this Act.

50. Institution of proceedings.

The Attorney General may institute proceedings against any person for an offence against and for the recovery of any fine under this Act.

51. Consequential amendments.

The provisions of other Acts specified in the Schedule are amended to the extent described in the Schedule.

52. Act binds Crown.

This Act binds the Crown.

SCHEDULE

(section 52)

AMENDMENTS TO WRITTEN LAWS