

CHAPTER 392A**MARINE POLLUTION CONTROL****ARRANGEMENT OF SECTIONS**

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SCHEDULE

CHAPTER 392A

MARINE POLLUTION CONTROL

An Act to prevent, reduce and control pollution of the marine environment of Barbados from whatever source. 1998-40.

(1st May, 2000) Commence-
ment.
2000/39.

1. This Act may be cited as the *Marine Pollution Control Act*. Short title.

2. In this Act Definitions.

"badge" means the identification device provided by the Director under section 9(4);

"Director" means the Head of the Environmental Engineering Division;

"environment" means the land, water and airspace of Barbados and its territorial waters;

"inspector" means a public officer designated as a marine pollution control inspector by the Minister under section 5;

"pollutant" means any substance to which section 4(4) applies;

"pollution" means the release of any pollutant into the environment of Barbados in prohibited concentration levels;

"prohibited concentration" means such level of concentration of any pollutant in the environment as is prohibited pursuant to section 4(4);

3. (1) No person shall release or cause to be released any pollutant into the environment which is in violation of any applicable standards, conditions or requirements specified under this Act or regulations. Offence of polluting the environment.

(2) A person who contravenes the provisions of subsection (1) is guilty of an offence.

Manage-
ment of the
level of
pollution.

4. (1) The Director shall, as soon as practicable after the commencement of this Act, investigate the environment generally and such premises as he thinks necessary in order to

- (a) ascertain the extent of pollution and significant sources of pollution from
 - (i) land based sources,
 - (ii) sea-bed activities,
 - (iii) dumping activities,
 - (iv) airborne sources; and
- (b) characterise or describe that pollution.

(2) The Director shall cause a Register of Pollutants to be maintained in such manner as may be prescribed and the Register shall contain data identifying the quantity, conditions or concentrations relevant to the identification of each pollutant.

(3) The Director shall, with the approval of the Minister, develop and implement a programme for the prevention, reduction and control of pollutants which shall include the registration and further characterisation of significant sources of any ongoing or intermittent releases of pollutants into the environment.

(4) The Director may, subject to subsection (5), and subject to the approval of the Minister, prescribe by order a list of pollutants with their prohibited concentration levels.

(5) Before approving the list of pollutants with their prohibited concentration levels under subsection (4), the Minister shall give notice, by publication at least once per week for at least 2 weeks in the *Official Gazette* and in at least one local daily newspaper published in Barbados, of the items that the Director proposes to include in the list and of the prohibited levels of concentration of each item in the list.

(6) Within 2 weeks of the final publication of the notice under subsection (5), any person may notify the Minister of his objection to the inclusion of any one or more of the items proposed to be included in the list or to the prohibited level of concentration of any item proposed by the Director.

(7) When an objection is made under subsection (6), the Minister shall hold a public enquiry at which the Director shall present the list of pollutants together with their prohibited levels of concentration and any objections made to the list and to the prohibited levels of concentration under subsection (6).

(8) The provisions of the *Schedule* shall apply to an enquiry held pursuant to this section. Schedule.

(9) Where the Minister decides, on considering the report of an enquiry held pursuant to this section

- (a) to approve the inclusion in the proposed list to which objection has been made; or
- (b) to approve the prohibitive level of concentration of the item specified in the list to which objection has been made

he shall notify the objector accordingly and shall publish a notice of his decision in the *Official Gazette*.

(10) Where the Director proposes to change the prohibited level of concentration of any pollutant previously listed under subsection (4), the proposal shall, for the purposes of this section, be treated as a new listing of that item.

5. (1) The Director shall be assisted by such number of public officers as are designated by the Minister to be marine pollution control inspectors. Marine
pollution
control
inspectors.

(2) A marine pollution control inspector shall discharge the various functions as are set out in this Act.

Record keeping and monitoring requirements.

6. The Director may, in the manner prescribed by regulations, require any person who releases a pollutant from any premises, or who engages in the handling of any pollutant on a one-time or periodic basis to

- (a) sample and analyse the pollutant material for specified constituents or characteristics;
- (b) install, use and maintain such monitoring equipment, and implement such monitoring procedures, as may be specified in any permit or licence issued pursuant to this Act or regulations or to any Act or regulations that affect the protection of the marine environment;
- (c) establish and maintain records regarding the sampling, monitoring and environmental activities;
- (d) establish and maintain records regarding pollutant control equipment on the premises including records on control equipment parameters, production variables and other indirect data when direct monitoring is not required;
- (e) submit any reports and compliance certifications that may be required under this Act or regulations; and
- (f) provide such other information as the Director may require.

Power to require reduction in level of pollution.

7. (1) Where any prohibited level of concentration of a pollutant is found to exist, the Director, with the approval of the Minister, may by order, within the time specified in the order

- (a) require any person in occupation of land including land covered by water; or
- (b) where the land is unoccupied, require the owner of land
 - (i) on or under which any pollutant is present; or
 - (ii) from which any pollutant is being released

to take such measures as may be required by the order to reduce the level of concentration of that pollutant.

- (2) The measures referred to under subsection (1) include
- (a) prohibiting, wholly or partly the release of the pollutant; or
 - (b) requiring the diminution or cessation of the release of the pollutant

until the concentration level of the pollutant falls under its prohibited level.

8. (1) Where the person required to take measures under section 7 has failed to comply with an order made under that section within the time prescribed by that order, the Director or inspector may enter on the land in question and execute any work required by the order.

Power to enter on land to reduce level of pollution.

(2) The expenses incurred by the Director in executing any work under subsection (1) shall constitute a debt owed to the Crown by the person who was required to take the measures by an order made under section 7.

9. (1) The Director shall be charged with the responsibility of enforcing the provisions of this Act.

Enforcement responsibility and powers of Director, inspectors.

(2) The Director and every inspector shall have all the powers, rights, privileges and protection of a member of the Police Force in the performance of their duties related to the enforcement functions of the Director under subsection (1); and the specific powers conferred by this Act on the Director or any inspector are conferred without the prejudice to the generality of the powers, rights, privileges and protection mentioned.

(3) When acting on a general or particular request of the Director, a member of the Police Force shall have, in addition to such powers as are conferred on him otherwise than by this Act, all powers conferred on an inspector by this Act.

(4) The Director shall provide himself and each inspector with a badge, which may conveniently be carried by himself and each inspector while engaged in the performance of their duties under subsection (1) of section 10.

Stop, entry
and search.

10. (1) For the purposes of this Act, an inspector acting under the general or particular directions of the Director may, without a warrant or court order, at any reasonable time

- (a) enter and search any place where the inspector reasonably believes an infringement of the provisions of this Act or any Act which affects the protection of the marine environment has occurred or is imminent;
- (b) enter and search any place where the inspector reasonably believes that evidence of infringement of the provisions of this Act or any Act which affects the protection of the marine environment will be found;
- (c) stop and search any vehicle or vessel in relation to which the inspector reasonably believes infringement of the provisions of this Act or any Act which affects the protection of the marine environment has occurred or is imminent;
- (d) stop and search any vehicle or vessel in or on which the inspector reasonably believes that evidence of infringement of the provisions of this Act or any Act which affects the protection of the marine environment will be found;
- (e) require the production of any document which the inspector reasonably believes contains information relevant to an infringement that the inspector reasonably believes has occurred or is imminent and that affects the protection of the marine environment;
- (f) require the production of any document required to be kept under the provisions of this Act or any Act which affects the protection of the marine environment;
- (g) make reasonable inquiries of any person, orally or in writing; and
- (h) exercise any other power related to investigations under the provisions of this Act or any Act which affects the protection of the marine environment, or any regulations made under either Act.

(2) A person who operates a vehicle or vessel shall stop the vehicle or vessel when required to do so by an inspector who identifies himself as such and who is acting under paragraphs (c) and (d) of subsection (1).

(3) An inspector who exercises a power under subsection (1) shall identify himself as such by the production of his badge and shall explain the purpose of the inspection.

(4) A power referred to under paragraph (a) or (b) of subsection (1) shall not be exercised in relation to a dwelling-house except under the authority of an order made under section 11(1).

(5) For the purposes of subsection (1), "search" includes taking samples of substances for the purpose of analysis.

11. (1) Where a magistrate is satisfied, on the evidence on oath of an inspector, that it would be reasonable for that inspector to exercise a power under section 10(1), and that Orders by magistrate.

(a) the power is to be exercised in relation to a dwelling-house; or

(b) the inspector may not be able effectively to carry out his duties without an order under this section for the reason that

- (i) no occupier is present to grant access to a place, vehicle or vessel that is locked or is otherwise inaccessible;
- (ii) a person has prevented the inspector from exercising a power under section 10(1);
- (iii) there are reasonable grounds for believing that a person may prevent the inspector from exercising a power under section 10(1); or
- (iv) there are reasonable grounds for believing that an attempt by the inspector to exercise a power under section 10(1) without the order might otherwise defeat the purpose thereof or endanger human life, human health, property or impact negatively on the marine environment

the magistrate may issue or renew an order authorising the inspector to exercise any power under section 10(1) that is specified in the order for the period of time specified in the order.

(2) An order under this section expires not later than 30 days after the date on which it is made unless renewed and may be renewed for any reason specified in paragraph (b) of subsection (1) before or after expiry for one or more periods each of which is not more than 30 days.

(3) An order under this section shall be carried out during daylight hours unless the order authorises otherwise.

(4) An order under this section may be issued or renewed on application notwithstanding that no notice of the application is given to any person who may be affected thereby.

Appeal to
Judge
against
Director's
order.

12. (1) Any person who is either

(a) required to take measures; or

(b) prohibited from releasing, or required to cease or diminish any release of a pollutant

by an order under section 7 may, within 14 days of the making of the order, appeal to a Judge in Chambers.

(2) The Judge may on an application made under subsection (1), uphold, reverse or suspend the operation of the order for such period as the Judge considers just.

Regulations.

13. (1) The Minister may make regulations

(a) prescribing matters required or permitted by this Act to be prescribed;

(b) establishing standards, conditions or requirements for the purpose of giving effect to the provisions of this Act; and

(c) generally for the purpose of implementing the provisions of this Act.

(2) Regulations made under this Act shall be subject to negative resolution.

14. In the exercise of their functions under this Act, the Minister and the Director shall have regard to the coastal management plan established under the *Coastal Zone Management Act*. Coastal management plan. Cap. 394.

15. Any person who assaults or obstructs the Director, a member of the Police Force or an inspector in the execution of his duty under this Act is guilty of an offence. Assaulting or obstructing the Director.

16. (1) Any person who commits an offence under section 3 of this Act is liable on the first conviction for that offence Penalties.

(a) on indictment, to a fine of \$200 000 or to imprisonment for 5 years, or to both; or

(b) on summary conviction, to a fine of \$100 000 or to imprisonment for 2 years, or to both.

(2) Any person who commits an offence under section 3 of this Act is liable on the second or any subsequent conviction for that offence

(a) on indictment to a fine of \$400 000 or to imprisonment for 7 years, or to both; or

(b) on summary conviction, to a fine of \$200 000 or to imprisonment for 2 years, or to both.

(3) Any person who commits an offence under this Act other than an offence under section 3 is liable on summary conviction to a fine of \$5 000 or to imprisonment for a period of 2 years or to both.

17. (1) Any person who has been convicted of an offence under section 3 and who is the operator of a trade or business from which the pollution emanated, is liable to pay to the court in addition to any penalty ordered by the court under section 16, an amount which is calculated to be equal to the financial gain he would have made as a result of the commission of the offence. Profit element.

(2) The profit element referred to under subsection (1), shall be deemed to be, in the absence of proof to the contrary either by the prosecution or defence, the proportion of the annual net profit of the trade or business of the person convicted which the number of days on which the offence is reasonably assumed to have occurred, bears to the number of days in the last accounting period of the trade or business.

(3) The annual net profit of the trade or business referred to under subsection (2) means the net profit shown by the accounts for the last accounting period.

(4) The last accounting period referred to in subsection (3) means, in the case of a trade or business carried on by a person required by the law of Barbados to publish his audited accounts, the last period in respect of which such audited accounts have, at the date of the offence of which he was convicted, been published.

Cap. 73.

(5) Where subsection (4) does not apply, the accounts for the last accounting period under subsection (3) are the accounts which form the basis of the income tax return under the *Income Tax Act* last submitted by the person convicted at the date of the most recent offence.

(6) Where the court, on the application of the prosecution in a trial for an offence under section 14, orders a certificate containing the information specified in subsection (5), the Commissioner of Inland Revenue shall issue that certificate and the certificate shall constitute for the purposes of that trial, *prima facie* proof of its contents.

(7) Where the accounts referred to in subsection (3) show no net profit, or where there are no such accounts, subsection (2) shall not apply.

(8) Any person who publishes or communicates to any person, other than a person concerned in the conduct of the trial, any information acquired from a certificate under subsection (6) is guilty of an offence.

Power to
institute
proceedings.

18. Where an offence is created by this Act, the Director, an inspector, or a member of the Police Force may, in respect of that offence, institute proceedings in a court.

19. This Act binds the Crown.

Application
to the
Crown.

SCHEDULE

(Section 4(8))

PUBLIC ENQUIRY PROCEDURE

1. Where a public enquiry is to be held under the provisions of this Act, the Minister shall, by instrument in writing, appoint a person suitably qualified or experienced in the subject matter of the investigation to hold the public enquiry on his behalf.

2. Any person so appointed to hold a public enquiry shall have the same powers as regards the regulation of the proceedings of the enquiry and the summoning and examination of witnesses and shall enjoy the same privilege of immunity from suit as a Commissioner appointed under the *Commissions of Enquiry Act*, and that Act shall, *mutatis mutandis*, apply in relation to an enquiry under this *Schedule* and to any person summoned to give or giving evidence at any such enquiry. Cap. 112.

3. The name of every person appointed to hold a public enquiry under this *Schedule* shall be published in the *Official Gazette*.

4. Notice shall be published in 3 issues of the *Official Gazette* and in at least one newspaper published in Barbados of the date appointed by the Minister for the holding of a public enquiry under this *Schedule*, the first such notice being not less than 2 weeks before the date so appointed.

5. The Director shall appear or be represented at every public enquiry convened in accordance with this Act.