

## PART VI

## ENVIRONMENTAL INFORMATION

## 86. (1) The Agency shall—

- (a) gather information on the environment and natural resources;
- (b) subject to any other written law, have access to any data collected on the environment and natural resources;
- (c) analyse information relating to the environment and natural resources;
- (d) disseminate information to public and private users;
- (e) commission studies in demography and trends impacting on environmental and development issues;
- (f) carry out public information and education campaigns in the field of environment;
- (g) exchange information relating to the environment with non-governmental organisations and any other regional and international organisations;
- (h) co-ordinate the management of environmental information with sector ministries;
- (i) advise the Minister on existing information gaps and needs; and
- (j) establish, in consultation with sector ministries, guidelines and principles for the gathering, processing and dissemination of environmental information.

Analysis and dissemination of environmental information

(2) The Director-General may publish any information on the protection, conservation, management and utilisation of the environment and natural resources as the Director-General considers necessary for public education and awareness.

87. The Agency shall establish and operate a Central Environmental Information System in which shall be stored any findings, data and statistics generated by both public and private bodies in the course of environmental observation and management.

Central Environmental Information System

88. (1) The Director-General shall, in consultation with the relevant appropriate authorities, take measures for the integration of environment matters in schools, colleges and institutions of higher learning.

Environmental education and awareness

(2) The Director-General shall plan and conduct programmes aimed at raising awareness of the public on sustainable development and environmental management.

Environmental  
research

**89.** (1) The Agency shall conduct surveys on the state of the environment and may research and forecast environmental changes and undertake other studies that may contribute to the formulation of policies and preparation of action plans and strategies with regard to environmental protection, conservation and management.

(2) Notwithstanding subsection (1), the Minister may designate any institution as an advisory body charged with the responsibility of enhancing of targeted scientific research, and information generation in the field of environment and the monitoring and assessment of effectiveness of actions taken.

Registry of  
environmental  
information

**90.** (1) The Agency shall create and maintain an environmental information registry.

(2) The registry shall contain information relating to the environment, including the following information:

- (a) a list of the Acts, statutory instruments, international environmental agreements to which Zambia is a party, and any policies, plans, guidelines, studies, reports, decisions, recommendations and other publications relating to the environment published by the Agency, the Minister or the Government;
- (b) a list of every environmental management strategy and environmental management strategy review report issued by any Ministry;
- (c) every State of the Environment Report and every National Environmental Action Plan;
- (d) every National Waste Management Strategy;
- (e) a list of each application for a licence or approval under this Act;
- (f) a list of each licence, order and approval issued under this Act; and
- (g) details of all charges laid and convictions entered for contravention of this Act.

(3) The Agency shall keep in the form of paper documents, in one location, copies and information documents of the matters listed in the registry which shall be accessible for public viewing during ordinary business hours.

(4) The registry shall be created no later than one year after the coming into force of this Act.

(5) A person may apply, in writing, to the Director-General requesting that any information that is not in the public domain should not be included in the registry or available to the public, on

the basis that it is proprietary information or for reasons of State security.

(6) Where the Director-General determines that the information referred to in subsection (5) is proprietary information and that maintaining it would not unreasonably prejudice the purpose of this Act or the public interest, the Director-General may exclude the information, or aggregate, edit or otherwise present it in a manner which would protect the interests of concern.

(7) The Director-General shall, where the Director-General determines that any information is proprietary information, advise the applicant, in writing, that the information will be made public within thirty days unless the applicant applies to the Minister for a review of the decision in accordance with Part X, in which case the confidentiality of the information shall be maintained pending the determination of the appeal.

## PART VII

### PUBLIC PARTICIPATION

91. (1) The public have the right to be informed of the intention of public authorities to make decisions affecting the environment and of available opportunities to participate in such decisions.

Public participation in environmental decision-making

(2) The public shall have the right to participate in decisions concerning the formulation of environmental policies, strategies, plans and programmes and to participate in the preparation of laws and regulations relating to the environment.

(3) The Agency and the appropriate authorities shall establish mechanisms to collect and respond to public comments, concerns and questions relating to the environment including public debates and hearing.

92. Public review of documents shall be conducted in the prescribed manner.

Public review

93. Public hearings on any document under public review shall be conducted in the prescribed manner.

Public hearings

94. (1) The Minister may, by statutory instrument, make regulations to enhance the ability of the public to acquire environmental information, to participate in decision-making and to protect the environment.

Regulations relating to public participation

(2) Without limiting the generality of subsection (1), the regulations made under that subsection may provide for—

(a) the rules, procedures and mechanisms for the enhanced provision of information to the public;

- (b) protecting employees from dismissal, discipline, penalty or other forms of coercion or intimidation for complying with this Act or for notifying the Agency or the Ministry of any noncompliance; and
- (c) the rules, procedures and forms in relation to the registry.

## PART VIII

## THE ENVIRONMENT FUND

Establishment  
of Fund

**95. (1)** There is hereby established the Environment Fund.

**(2)** The Fund shall consist of —

- (a) such moneys as Parliament may appropriate for the purpose of the Fund;
- (b) voluntary contributions to the Fund from any person or organisation;
- (c) such sums as may be levied from, or donated by, a person, industry or developer conducting an activity which has, or is likely to have, an adverse effect on the environment;
- (d) any grants mobilised from any source, within or outside Zambia, for the purpose of environmental management and protection;
- (e) interest arising out of any investment of the Fund; and
- (f) such other monies as may be prescribed.

Act No. 7,  
2008

Act No. 10  
2008

**(3)** This Part does not apply to industries, facilities and activities covered by the Environmental Protection Fund established under the Mines and Minerals Development Act, 2008, and the Petroleum (Exploration and Production) Act, 2008.

Administration  
and  
management  
of Fund

**96.** The Fund shall be vested in the Agency and shall be managed and administered in such manner as the Minister may prescribe, by statutory instrument.

Application  
of Fund

**97.** The Fund shall be used for—

- (a) mitigating or restoring environmental degradation and adverse effects on the environment;
- (b) facilitating research to further the requirements of environmental management and sustainable natural resource management; and
- (c) such other purpose as may be prescribed.



98. (1) The Agency shall create a register of the activities, industrial facilities or plants, undertakings or businesses which have, or are likely to have, adverse effects on the environment when operated in a manner that is not in conformity with good environmental practices.

Environmental  
Performance  
Bond

(2) The Minister may, by statutory instrument, make regulations to provide for the depositing, amounts, refunding, confiscation and application of environmental performance bonds and any other matter relating to performance bonds.

99. The financial year of the Fund shall be the period of twelve months ending on 31<sup>st</sup> December in each year.

Financial year

100. (1) The Agency shall cause to be prepared proper books of accounts and other records relating to the Fund.

Statement of  
income and  
expenditure

(2) The Agency shall cause to be prepared an annual statement of the income and expenditure of the Fund to be laid before the National Assembly.

## PART IX

### ENFORCEMENT PROVISIONS

101. (1) An owner of premises or a person undertaking a project shall take all reasonable measures to mitigate any adverse effects not contemplated in the environmental impact assessment made in respect of the premises or the project, and shall prepare and submit an environmental audit report on the measures to the Agency annually or as the Agency may, in writing, require.

Environmental  
audit

(2) The Agency shall carry out an environmental audit of all the activities that are likely to have an adverse effect on the environment.

(3) An inspector may enter upon any land or premises for the purpose of determining the extent to which the activities carried out on the land or premises conform with the environmental impact assessment made in respect of the land or premises.

(4) An owner of premises or a person undertaking a project for which an environmental impact assessment is made shall keep accurate records and make annual reports to the Agency describing the extent to which the project conforms, in operation, with the environmental impact assessment.

102. (1) The Agency shall, in consultation with the relevant agencies or bodies, monitor—

Environmental  
monitoring

- (a) all environmental phenomena with a view to making an assessment of any possible changes in the environment and their possible impacts; or

(b) the operation of any industry, project or activity with a view of determining its immediate and long-term effects on the environment.

(2) An inspector may enter upon any land or premises for the purposes of monitoring the effects upon the environment of any activities carried out on that land or premises.

Prevention  
Order

**103.** (1) Where the Director-General has reasonable grounds to believe that a person is, or will be, conducting an activity, or is or will be in possession or control of a substance or thing that may result in an adverse effect, the Director-General may serve a prevention order on that person.

(2) A prevention order served on a person under subsection (1) may require that person to—

- (a) prepare a written emergency response plan to reduce or eliminate the risk and provide a copy of the plan to the Director-General;
- (b) have any necessary equipment, facilities and trained personnel available to deal with the risk;
- (c) upon an identified event or set of circumstances occurring, implement the plan; and
- (d) take measures that are necessary to ensure that any emergency can be effectively dealt with.

(3) A person on whom a prevention order is served shall comply with the requirements of the order by the date or dates specified in the order and if no date is specified, the person shall comply with the order immediately.

(4) A person who contravenes subsection (3) commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both, and where the person fails to comply with a requirement specified in the prevention order within the specified time, to a further fine not exceeding one thousand penalty units for each day or part of a day after the date specified in the order during which the offence continues.

Protection  
order

**104.** (1) The Director-General may, where the Director-General considers that is necessary to conserve, protect and enhance the environment and natural resources in an area, serve a protection order on—

- (a) the owner, manager or person in control of the premises, vehicle, vessel, aircraft or equipment where the activity is occurring or will occur; or
- (b) any person who caused or permitted the activity.

(2) A protection order may require the person on whom it is served to—

(a) take any measures to avoid, remedy or mitigate any adverse effects and to—

(i) stop the activity that is resulting or is likely to result in, an adverse effect;

(ii) control the activity;

(iii) assess the actual or anticipated extent of the adverse effect;

(iv) remedy any adverse effects caused by the activity;  
or

(v) prevent a recurrence of the activity or the adverse effect;

(b) preserve flora and fauna;

(c) preserve the quality and flow of water in a dam, lake river or aquifer;

(d) preserve any outstanding geological, physiographical, ecological, archaeological or historical features of the area;

(e) preserve scenic view;

(f) preserve the natural contours and features;

(g) prevent or restrict the scope of any agricultural activity in the area; or

(h) create or maintain migration corridors for wildlife.

(3) A person on whom a protection order is served shall comply with the requirements of the order by the date or dates specified in the order and if no date is specified, the person shall comply with the order immediately.

(4) A person who contravenes subsection (3) commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both, and where the person fails to comply with a requirement specified in the protection order within the specified time, to a further fine not exceeding one thousand penalty units for each day or part of a day after the date specified in the order during which the offence continues.

**105.** (1) An inspector shall, where there is a discharge of a contaminant or pollutant into the environment in an amount, concentration or manner that constitutes a risk to human health or

Environmental  
restoration  
order

property, or that causes or has the potential to cause adverse effects, serve an environmental restoration order on—

- (a) the owner, manager or person in control of the premises, vehicle, vessel, aircraft or equipment from which the discharge was or is being made;
- (b) any person who, at the time the discharge occurred, was the owner, manager or person in control of the premises, vehicle, vessel, aircraft or equipment from which the discharge was made; or
- (c) any person who caused or permitted the discharge.

(2) An environmental restoration order may require the person on whom it is served to take any measures that will assist in reducing or eliminating the risk or harm and to take any measures to—

- (a) take such action as will prevent the continuation or cause of pollution;
- (b) restore land, including the replacement of soil, the replanting of trees and other flora and the restoration as far as may be, of outstanding geological, archaeological or historical features of the land or the area contiguous to the land or area as may be specified in the particular order;
- (c) take such action to prevent the commencement or continuation or cause of environmental hazard;
- (d) cease to take any action which is causing or may contribute to causing pollution or an environmental hazard;
- (e) remove or alleviate any injury to land or the environment or to the amenities of the area;
- (f) prevent damage to the land or the environment, aquifers beneath the land and flora and fauna in, on or under or about the land specified in the order or land or the environment contiguous to the land specified in the order;
- (g) remove any waste or refuse deposited on the land or sea specified in the order and dispose of the same in accordance with the provisions of the order;
- (h) require the person on whom it has been served to restore the environment as near as it may be to the state in which it was before the asking of the action which is the subject of the order; and
- (i) prevent the person on whom it is served from taking any action which would or is reasonably likely to cause harm to the environment.

(3) A person on whom an environmental restoration order is served shall comply with the requirements of the order by the date or dates specified in the order and if no date is specified, the person shall comply with the order immediately.

(4) A person who contravenes subsection (4) commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both, and if the person fails to comply with a requirement specified in the order within the specified time, to a further fine not exceeding two thousand penalty units for each day or part of a day after the date specified in the order during which the offence continues.

**106.** (1) The Director-General may, where the Director-General has reasonable grounds to believe that any condition of a licence issued under this Act has been breached, serve a compliance order on the licensee requiring the licensee to remedy the breach within the period stipulated in the order.

Compliance  
order

(2) A compliance order issued under subsection (1) may—

(a) suspend the licence with immediate effect if the Director-General considers that the suspension is necessary to prevent or mitigate an imminent risk of significant adverse effects to the environment or to human health occurring; or

(b) require the licensee to take specified measures to prevent or abate any adverse effect.

(3) The Agency may, where a licensee fails to comply with a compliance order—

(a) take the necessary steps to remedy the breach and recover the cost from the licensee in accordance with section *one hundred and seven*;

(b) vary the conditions of the licence; or

(c) revoke the licence.

(4) A person on whom a compliance order is served shall comply with the requirements of the order by the date or dates specified in the order and if no date is specified, the person shall comply with the order immediately.

(5) A person who contravenes subsection (4) commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both, and if the person fails to comply with a

requirement specified in the compliance order within the specified time, to a further fine not exceeding two thousand penalty units for each day or part of a day after the date specified in the order during which the offence continues.

Cost order

**107.** (1) The Director-General may, where a person fails to comply with a requirement in an order, licence or approval issued under this Act, cause the required measures to be taken and may issue a cost order requiring that person to reimburse the Agency for the cost of taking the measures.

(2) A cost order shall be enforced as if it were an order of court if no application for the review of the cost order is made.

Orders  
initiated by  
public

**108.** (1) A person may, in writing, request the Director-General to issue an order under this Act.

(2) A request made under subsection (1) shall set out the reasons for the request, including the detailed factual grounds upon which the Director-General would have jurisdiction to issue the order.

(3) The Director-General shall consider the request made under subsection (1) and within thirty days shall decide whether or not to issue an order, and shall notify the requesting person, in writing, of the decision, stating the reasons therefor and, if applicable, the date upon which the Director-General intends to issue the order.

(4) Where the Director-General decides not to issue an order, the requesting person may, within ten days of the date of being notified of the decision, apply to the Minister for a review of the decision in accordance with Part X.

(5) Without prejudice to any other grounds for review, an application for review made under subsection (4) may be made on the ground that the Agency has failed to discharge its function under this Act to take all reasonably practicable steps to enforce the Act.

Prosecutions  
initiated by  
public

**109.** (1) A person may, in writing, request the Director-General to investigate an alleged contravention of this Act.

(2) A request made under subsection (1) shall set out the reasons therefor, including the detailed factual grounds for believing that a contravention has occurred.

(3) The Director-General shall consider the request and, within thirty days, shall decide whether or not to commence an investigation, and shall notify the requesting person, in writing, of that decision, stating the reasons therefor, and, if applicable, the date upon which the Director-General intends to commence the investigation.

(4) Where the Director-General decides not to commence an investigation, the requesting person may lay a charge and initiate and conduct the prosecution and may obtain the assistance of any person in doing so.

(5) A person acting under subsection (4) shall, in writing, notify the Director-General prior to laying the charge.

(6) A court shall not award any costs or damages against a person who initiates a prosecution after informing the Director-General in accordance with this section, unless the court finds that the primary motivation for the prosecution was not a concern for the public interest or for the enhancement, protection and conservation of the environment.

**110.** (1) A person may sue for damages in respect of an act or omission that constitutes a contravention of this Act or that is likely to have an adverse effect, whether or not that person or any other person has suffered, or is likely to suffer, any loss or harm from the act or omission. Civil action

(2) The right of action in subsection (1) is in addition to any other legal rights or remedies available to a plaintiff or applicant.

(3) The court shall, in any proceedings under subsection (1), order any damages awarded to a plaintiff or applicant to be applied in the following order:

- (a) to compensate the plaintiff or applicant for any actual legal costs that are not fully compensated by an order against the defendant or respondent, and to compensate the plaintiff or applicant for any damages that that person may have suffered;
- (b) to compensate other parties for any damages suffered and to remedy any adverse effect caused by the act or omission; and
- (c) the balance if any, shall be divided in equal parts between the Fund and the plaintiff.

(4) A court shall not award any costs or damages against a person who initiates civil proceedings under subsection (1) unless the court finds that the primary motivation for the proceedings was not a concern for the public interest or the enhancement, protection or conservation of the environment.

**111.** A court that convicts a person of an offence under this Act may, in addition to any other penalty imposed—

Protection,  
repair and  
costs orders

- (a) order the person to take and pay for measures to avoid,

remedy or mitigate any adverse effects arising from, or likely to arise from, the offence; and

- (b) if the person fails to comply with an order under paragraph (a), issue an order allowing the Director-General to take those measures, and requiring the person to pay the Director-General's costs of so doing.

## PART X

### REVIEWS AND APPEALS

Right of  
review

**112.** (1) A person who is aggrieved with a decision made, or direction given, by the Agency under this Act, may apply to the Board for a review of that decision or direction in the prescribed manner and form.

(2) Without prejudice to any other grounds for review, a person may object to the granting of a licence or other approval under this Act on the basis that the conditions in the licence or approval do not provide adequate protection to the environment or to human beings against the risk of adverse effects, or otherwise fail to give effect to the purpose of this Act.

Review by  
Board

**113.** (1) A person shall submit a review application to the Board within thirty days from the date on which the applicant was given notice of the decision or direction that the applicant wants reviewed.

(2) The Board may accept a review application submitted out of time if it considers that it is equitable to do so.

(3) The Board may, on receiving a review application under subsection (1), cause an inquiry to be conducted concerning the matters raised in the review application by a person or persons appointed by the Board, in writing, for that purpose.

(4) The Board may dismiss a review application and need not cause an inquiry to be conducted if the Board, after considering the review application, considers it to be trivial, frivolous or without merit.

(5) The Board shall, where it dismisses an appeal under subsection (4), notify the applicant in writing of the reasons for the dismissal of the application.

Conduct of  
inquiry

**114.** (1) An inquiry shall be conducted in the prescribed manner.



(2) The person conducting the inquiry shall give the applicant and the person who made the decision or gave the direction an opportunity to be heard and to make written submissions.

(3) An inquiry shall be conducted fairly according to the merits of the case.

**115.** (1) The Minister shall, where the Minister receives an appeal or an application for review under any provision of this Act, consider and determine the review application and may—

Review by  
Minister

- (a) allow the application or appeal wholly or in part;
- (b) dismiss the application or appeal; or
- (c) refer the application or appeal back to the Board with a request for consideration or further consideration of some fact or issue.

(2) In determining a review application, the Minister—

- (a) shall have regard to the purpose of this Act and the principles set out in section six;
- (b) shall have regard to relevant environment policies, guidelines and standards published by the Agency;
- (c) shall have regard to, but is not bound by, the findings and recommendations of the person conducting the inquiry.

(3) The decision of the Minister on a review application shall be given in a written notice delivered to the applicant and to the Director-General, and shall set out the reasons for the decision.

**116.** (1) A person aggrieved with the decision of the Agency may appeal to the Minister within thirty days of the decision.

Appeals

(2) A person aggrieved with the decision of the Minister may appeal to the High Court within thirty days of the decision.

## PART XI

### ENVIRONMENTAL OFFENCES

**117.** A person who—

- (a) wilfully fails to undertake an environmental impact assessment contrary to the provisions of this Act;
- (b) fails to prepare and submit a project brief or an environmental impact assessment report as required under this Act; or
- (c) recklessly or fraudulently makes a false statement on an environmental impact assessment report submitted under this Act;

Offences  
relating to  
hazardous  
waste  
materials,  
chemicals

commits an offence and is liable, upon conviction, to a fine not exceeding seven hundred thousand penalty units or to imprisonment for a period not exceeding seven years, or to both.

Offences  
relating to  
returns and  
records

**118.** A person who—

- (a) fails to keep a record required to be kept under this Act;
- (b) fails to submit a return required for purposes of this Act;
- (c) submits false or misleading information in any return; or
- (d) alters a record required under this Act;

commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both.

Offences  
relating to  
environmental  
standards

**119.** A person who—

- (a) contravenes any environmental standards or guidelines established or prescribed under this Act;
- (b) contravenes a measure prescribed or ordered under this Act; or
- (c) uses the environmental or natural resources in a wasteful or destructive manner contrary to the prescribed standards, measures or guidelines;

commits an offence and is liable, upon conviction, to a fine not exceeding seven hundred thousand penalty units or to imprisonment for a period not exceeding seven years, or to both.

Offences  
relating to  
biological  
diversity

**120.** A person who—

- (a) trades in any component of biological resources contrary to the provisions of this Act or any other written law;
- (b) unlawfully possesses any biological resources; or
- (c) unlawfully disturbs the habitat of a biological resource in contravention of this Act;

commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

Offences  
relating to  
hazardous  
waste  
materials,  
chemicals

**121.** A person who—

- (a) fails to manage any hazardous waste and materials in accordance with this Act;
- (b) imports or exports any hazardous waste contrary to this Act;
- (c) knowingly mislabels any waste, pesticide, chemical, toxic substance or radio-active substance;

- (d) fails to manage any chemical or radio-active substance in accordance with this Act;
- (e) aids or abets illegal trafficking in hazardous waste, chemicals, toxic substances or pesticides;
- (f) disposes of any chemical contrary to this Act or hazardous waste within the Republic; or
- (g) withholds information or provides false information about the management of hazardous wastes, chemicals or radio-active substances;

commits an offence and is liable, upon conviction, to a fine not exceeding one million penalty units, or to imprisonment for a period not exceeding ten years, or to both.

**122.** (1) A person shall not—

- (a) detach, alter or destroy the labelling of a pesticide or toxic substance; or
- (b) use or dispose into the environment a pesticide or toxic substance in contravention of this Act.

Offences relating to pesticides and toxic substances

(2) A person shall not distribute, sell, offer for sale, store, import, export, transport, manufacture, change the composition of, or deal in any manner with any unregistered pesticide or toxic substance or without a licence.

(3) A person who contravenes this section commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

**123.** A person who fails, neglects or refuses to comply with guidelines prescribed to regulate environmentally protected areas commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both.

Offences relating to protected areas

## PART XII

### GENERAL PROVISIONS

**124.** An inspector shall treat as confidential the source of any report of any contravention of this Act and shall not disclose to the owner of the place inspected or that person's representative that a report was made, or divulge any information that might identify the person who made the report.

Confidentiality

**125.** (1) A person who pollutes the environment or contravenes any provision of this Act for which no penalty is

General penalty

provided, is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both.

(2) Except as otherwise specified in this Act, a person who is convicted of an offence that is a continuing one, shall in addition to the penalty specified for the offence, be liable, upon conviction, to a further fine, for each day or part of a day on which the offence continues—

(a) in the case of an individual, not exceeding five hundred penalty units per day on a first conviction, and not more than eight hundred penalty units per day on each subsequent conviction; and

(b) in the case of a body corporate or an unincorporate body, not exceeding one thousand penalty units per day on a first conviction, and not more than two thousand penalty units per day on each subsequent conviction.

(3) A court that convicts a person of an offence under this Act may suspend, revoke or amend any licence issued to that person under this Act.

Offences by  
body  
corporate or  
unincorporate  
body

**126.** Where an offence under this Act is committed by a body corporate or an unincorporate body, every director or manager of the body corporate or unincorporate body shall be liable, upon conviction, as if the director or manager had personally committed the offence, unless the director or manager proves to the satisfaction of the court that the act constituting the offence was done without the knowledge, consent or connivance of the director or manager or that the director or manager took reasonable steps to prevent the commission of the offence.

Presumptions

**127.** (1) For the purposes of this Act, an adverse effect is deemed to have been caused by an act or omission if it is possible that the adverse effect could have resulted from the act or omission, if it was reasonably foreseeable that the effect could have resulted from the act or omission, and if there was no other plausible cause for the adverse effect.

(2) For the purposes of this Act, an act or thing done or omitted to be done by a director, officer, employee or agent of a body corporate or unincorporate body in the exercise of their powers, functions or duties is deemed to be an act or thing done or omitted to be done by the body corporate or unincorporate body.

Civil damages

**128.** (1) The Agency may, without prejudice to any other remedy available under this Act or any other written law, institute

an action against any person for damage caused by that person to the environment.

(2) Any damages payable under this section shall be paid to the Agency.

(3) A court may liquidate the damage done to the environment where the damage to the environment cannot be quantified in a precise manner.

**129.** (1) Subject to the other provisions of this Act, where a person is convicted of an offence under this Act, the court may, on application by an inspector or police officer, in addition to any other penalty imposed, declare any matter, article, vehicle, aircraft, boat or any other conveyance used in the commission of the offence to be forfeited to the State.

Forfeiture  
on  
conviction

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

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

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

(5) The Agency shall, where the article, matter, vehicle, equipment, aircraft, boat or other conveyance is registered in the name of a person other than the convicted person, within seven days after the publication of the notice in the daily newspaper of general circulation in the area, cause a copy to be sent by registered post to the person at the address indicated on the register.

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

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

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

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

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

Cap. 399

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

Cap. 399

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

Disposal of  
matter  
article,  
vehicle,  
aircraft or  
boat

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

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

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

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

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

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

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

(4) Where the matter, article, vehicle, aircraft, boat or conveyance is sold, the proceeds shall be held by the Agency.

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

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

- (a) to prohibit the carrying on of a process or operation causing pollution or which is likely to cause significant damage to human, plant or animal health or the environment; or
- (b) to prohibit the use of any machinery, plant, equipment or appliance whose use is causing or is likely to cause significant damage to human, plant or animal health or the environment;

Disposal of  
matter  
article,  
vehicle,  
aircraft or  
boat

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

Provided that where an inspector suspects that pollution is occurring which poses immediate danger to human life and the environment, the inspector shall, without delay, make the application to court, notwithstanding the seven day notice requirement.

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

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

- (a) that the seven days' notice of the intention to make an application under this section stating the time at which it had been made, has been served on the occupier of the premises;
- (b) that the carrying on or use of the operation or process on any part of the premises is in contravention of the provisions of this Act;
- (c) that the carrying on or use of the operation or process on any part of the premises is causing pollution likely to cause significant damage to human, plant or animal health or the environment; or
- (d) that any machinery, plant, equipment or appliance is being used so as to cause significant damage to human, plant or animal health or the environment;

the court may make an interim order prohibiting either absolutely, or subject to conditions, the use of the plant, machinery, equipment or appliance or the carrying on or use of the operation or process until the earliest opportunity for hearing and determining the application.

(4) Where, after the hearing of the application by an inspector under subsection (1), the court is satisfied on evidence submitted by an inspector and after affording the owner or occupier an opportunity to be heard, the court may—

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



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

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

Summary  
imposition  
of penalties

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

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

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

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

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

- (a) fails to issue a receipt to the person making the payment as required under subsection (5);
- (b) fails to account for any payment made under this section; or
- (c) in any manner, misuses or puts to personal use any payment made under this section;

commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both.

Protected  
disclosure

Act No. 4  
of 2010

Regulations

**133.** A disclosure made by a person who, in good faith, believed at the time of the disclosure that the person was disclosing evidence of an environmental risk is a protected disclosure for the purposes of the Public Interest Disclosure (Protection of Whistleblowers) Act, 2010.

**134.** (1) The Minister may, on the recommendation of the Agency, by statutory instrument, make regulations for the better carrying out of the provisions of this Act.

(2) Without limiting the generality of subsection (1), regulations made under that subsection may—

- (a) prescribe fees or charges payable in respect of any matter arising under, provided for, or authorised by, this Act;
- (b) prescribe offences and fines not exceeding five hundred thousand penalty units or imprisonment for a period not exceeding five years;
- (c) prescribe the forms for applications, licences, approvals, registers, notices, orders and other documents required for the purpose of this Act;
- (d) prescribe the information to be given in returns and other documents delivered or made for the purposes of this Act;
- (e) provide the procedure for the service of notices, orders and documents under this Act and the times at which they shall be taken to have been served; and
- (f) prescribe the procedure for objections, reviews and public inquiries under this Act, and the making, consideration, hearing and determination of objections, reviews and public inquiries.

Repeal of  
Cap 204 and  
Cap. 156 of  
old edition of  
laws

**135.** (1) The Environmental Protection and Pollution Control Act, 1990, and the Natural Resources Conservation Act are hereby repealed.

(2) Notwithstanding subsection (1), the provisions of the Second Schedule shall apply in respect of the matters specified therein.

FIRST SCHEDULE  
(Sections 7 (2) and 11(7))

ADMINISTRATION OF THE AGENCY

PART I

THE BOARD OF THE AGENCY

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

(2) The Board shall meet for the transaction of business at least once in every three months at such places and times as the Board may determine.

(3) A meeting of the Board may be called by the Chairperson upon giving notice of not less than fourteen days, and shall be called by the Chairperson if not less than one-third of the members so request in writing:

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

(4) The Chairperson, or in the absence of the Chairperson, the Vice-Chairperson, with six other members shall constitute a quorum at any meeting of the Board.

(5) There shall preside at any meeting of the Board—

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice-Chairperson;  
or

(c) in the absence of both the Chairperson and the Vice-Chairperson, such other member as the members present may elect for the purpose of that meeting.

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

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

(8) The validity of any proceedings, acts or decisions of the Board shall not be affected by any vacancy in the membership of the

Board or by any defect in the appointment of any member or by reason that any person not entitled to do so, took part in the proceedings.

Committees  
of Board

2. (1) The Board may, for the purpose of performing its functions under this Act, constitute a committee and delegate to the committee such functions of the Board as it considers necessary.

(2) Subject to sub-paragraph (1), the Board may appoint as members of a committee constituted under sub-paragraph (1), persons who are, or are not, members of the Board, except that at least one member of a committee shall be a member of the Board.

(3) A person serving as a member of a committee shall hold office for such period as the Board may determine.

(4) Subject to any specific or general direction of the Board, a committee may regulate its own procedure.

Allowances  
of members

3. There shall be paid to a member of the Board or a member of a committee such allowances as the Board may determine, with the approval of the Minister.

Disclosure  
of interest

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

(2) A disclosure of interest made under sub-paragraph (1) shall be recorded in the minutes of the meeting at which it is made.

Prohibition  
of  
publication  
or  
disclosure  
of  
information  
to  
unauthorised  
persons

5. (1) A person shall not, without the consent in writing given by, or on behalf of, the Agency, publish or disclose to any unauthorised person, otherwise than in the course of duties of that person, the contents of any document, communication or information whatsoever, which relates to or which has come to the knowledge of that person in the course of that person's duties under this Act.

(2) A person who contravenes sub-paragraph (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

(3) A person who, having any information which to the knowledge of that person has been published or disclosed in contravention of sub-paragraph (1), unlawfully publishes or communicates the information to any other person, commits an offence and is liable,

upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

6. An action or other proceeding shall not lie or be instituted against a member of the Board, a committee of the Board or a member of staff of the Agency, for or in respect of any act or thing done or omitted to be done in good faith in the exercise or performance, or purported exercise or performance, of any of the powers, functions or duties conferred under this Act. Immunity

## PART II

### FINANCIAL PROVISIONS

7. (1) The funds of the Agency shall consist of such monies as may— Funds of Agency

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

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

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

(2) The Agency may, subject to the approval of the Minister—

(a) accept monies by way of grants or donations from any source within or outside Zambia;

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

(c) in accordance with the regulations made under this Act, charge and collect fees for services provided by the Agency.

(3) There shall be paid from the funds of the Agency—

(a) the salaries, allowances, pensions and loans of the members of staff of the Agency;

(b) such reasonable travelling and other allowances for the members of the Board and the members of any committee of the Board when engaged in the business of the Agency, at such rates as the Board may, with the approval of the Minister, determine; and

(c) any other expenses incurred by the Agency in the performance of its functions under this Act.

(4) The Agency may invest, in such manner as it considers appropriate, such funds of the Agency which it does not immediately require for the performance of its functions.

- Financial year      **8.** The financial year of the Agency shall be a period of twelve months ending on 31<sup>st</sup> December in each year.
- Accounts            **9.** (1) The Agency shall cause to be kept proper books of account and other records relating to its accounts.
- (2) The accounts of the Agency shall be audited annually by the Auditor-General or an auditor appointed by the Auditor-General.
- (3) The Auditor-General's fees shall be paid by the Agency.
- Annual report      **10.** (1) As soon as practicable, but not later than ninety days after the end of the financial year, the Agency shall submit to the Minister a report concerning its activities during the financial year.
- (2) The report referred to in sub-paragraph (1) shall include information on the financial affairs of the Agency and there shall be appended to the report—
- (a) an audited balance sheet;
- (b) an audited statement of income and expenditure; and
- (c) such other information as the Minister may require.
- (3) The Minister shall, not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subparagraph (1), lay the report before the National Assembly.

## SECOND SCHEDULE

### (Section 135 (2))

#### SAVINGS AND TRANSITIONAL PROVISIONS

- Staff of Council      **1.** (1) For the avoidance of doubt, a person who, before the appointed date, was an officer or employee of the Council, shall continue to be an officer or employee of the Agency, as the case may be, as if appointed or employed under this Act.
- (2) The service of the persons referred to in sub-paragraph (1) shall be treated as continuous service.
- (3) Nothing in this Act, affects the rights and liabilities of any person employed or appointed by the Council before the appointed date.
- Transfer of assets and liabilities      **2.** (1) On or after the appointed date, there shall be transferred to, vest in and subsist against the Agency by virtue of this Act and without further assurance—
- (a) the affairs of the Council; and
- (b) subject to this Act, all property, rights and obligations which, immediately before the appointed date, were the property, rights and obligations of the Council.

(2) Except as provided in this Act, every deed, bond and agreement, other than an agreement for personnel service, to which the Council was a party immediately before the appointed date, whether or not of such a nature that rights, liabilities and obligations could be assigned, shall, unless its subject matter or terms make it impossible that it should have effect as modified, as provided under this paragraph, have effect as if—

- (a) Agency had been party to it;
- (b) for any reference to the Council there was substituted, with respect to anything falling to be done on or after the commencement of this Act, a reference to the Agency; or
- (c) for any reference to any officer of the Council, not being a party to it and beneficially interested, there were substituted, as respects anything falling to be done on or after the appointed date, a reference to such officer of the Agency as the Agency shall designate.

(3) Where under this Act, any assets, rights, liabilities and obligations of the Council are deemed to be transferred to the Agency in respect of which transfer a written law provides for registration, the Agency shall make an application in writing to the appropriate registration authority for registration of the transfer.

(4) The registration authority, referred to in subparagraph (3), shall make such entries in the appropriate register as shall give effect to the transfer and, where applicable, issue to the transferee concerned a certificate of title in respect of the property or make necessary amendments to the register and shall endorse the deeds relating to the title, right or obligation concerned and no registration fees or other duties shall be payable in respect of the transaction.

4. (1) Any legal proceedings or application of the Council pending immediately before the appointed date by or against the Council may be continued by or against the Agency.

Legal  
proceedings

(2) After the appointed date, proceedings in respect of any right, liability or obligation which was vested in, held, enjoyed, incurred or suffered by the Council, may be instituted by or against the Agency.

5. For purpose of this schedule, “appointed date” means such date as the Minister may, by Statutory Instrument, appoint.

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