Pollution Control and Waste Management Bill

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Pollution Control and Waste Management Bill

An Act to promote sustainable development; to provide for the establishment of a body corporate to be known as the Pollution Control and Waste Management Agency; to prevent and regulate the discharge of pollutants to the air, water and land; to make provision for the establishment of an appropriate framework for integrated pollution prevention and control; to regulate noise, dust and odour pollution; to establish a system of waste planning and management; and to enable Namibia to comply with its obligations under international law in this regard.

BE IT ENACTED by the Parliament of the Republic of Namibia as follows:

INTERPRETATION

Definitions

1. In this Act, unless the context indicates otherwise:

“Agency” means the Pollution Control and Waste Management Agency established in accordance with section 2 of this Act;

“air” means air that is not enclosed by a building or any other structure;

“air quality action area” means any place or area declared as such under section 20;

“charging scheme” means a scheme prescribed by the Minister in regulations that sets out the charges to be paid to the Agency or a local authority council in connection with applications for licences, the issuing of licences, or for other services performed under this Act.

“competent authority” means a body or person empowered under this Act or a delegation made under this Act to enforce the Act;

“competent licensing authority” means the person or body to which an application for a licence must be made in accordance with this Act;

“discharge” in respect of any substance, means:

(a) any release or emission of the substance into the air;

(b) any release or entry of the substance into water, whether directly or through a pipe or other structure or by any other means; and
any deposit or disposal of the substance on, in or over land.

"environment" means the complex of natural and anthropogenic factors and elements that are mutually interrelated and affect the ecological equilibrium and the quality of life; and the environment includes:

(a) the natural environment being land, water and air, all organic and inorganic material and all living organisms; and

(b) the human environment being the landscape and natural, cultural, historical, aesthetic, economic and social heritage and values;

"Environmental Management Act" means the Environmental Management Act No X of 1999;

"Executive Director" means the Executive Director of the Agency appointed in accordance with section 13;

"hazardous substance" includes any pesticide, herbicide or other biocide, radioactive substance, chemical or other substance and any micro-organism or energy form that has properties that, either by themselves, or in combination with any other thing, make it hazardous to human health or safety, or to the environment, and includes any substance, micro-organism or energy form defined as a hazardous substance in regulations made under section 71;

"hazardous waste" means a hazardous substance that is waste and any waste defined as hazardous waste in regulations made under section 53;

"holder" in relation to waste, means a person in possession of waste, or a person whose activities produce waste, or a person who carries out pre-processing, mixing or other operations that change the nature or composition of waste;

"inspector" means any person appointed in accordance with section 89 of this Act;

"land" includes the surface and subsurface of any land, whether or not it is covered by water;

"litter" means waste that is discarded in any public place or vacant land other than in a designated waste receptacle;
“local authority council” means a local authority council as defined in section 1 of the Local Authorities’ Act No 23 of 1992;

“Management Board” means the Management Board of the Agency established in accordance with section 6;

“Minister” means the Minister of Environment and Tourism;

“Ministry” means the Ministry of Environment and Tourism;

“pollution” means the direct or indirect introduction into the environment as a result of human activity of any substance, energy or thing or combination of these which has or may have a harmful effect on human health, living resources and ecosystems, or which causes or may cause damage to structures or amenities and interference with legitimate uses of the environment;

“pollutant” means any substance, energy or thing, or combination of these which causes or has the capacity to cause pollution, and any thing deemed by regulations to be a pollutant;

“prescribed” means prescribed in regulations;

“prescribed process” means a process that is prescribed in regulations in accordance with section 43 as a process in respect of which an integrated pollution control licence is required;

“process” means any industrial or commercial activity carried out in Namibia, whether in premises or on plant, including any fixed structure or platform in the sea, and which is capable of causing the discharge of pollutants to the environment or the generation of waste;

“recover” in relation to waste, means to recycle, re-use or reclaim waste or any other activity that is undertaken with a view to extracting secondary raw materials or generating heat or any other form of energy from waste, and “recovery” has a corresponding meaning;

“regulations” except where otherwise indicated, means regulations made under this Act;

“sea” means the “territorial sea” as defined in section 2 of the Territorial Sea and Exclusive Economic Zone of Namibia Act 3 of 1990 as amended, the exclusive economic zone as defined in section 4 of that Act and the continental shelf referred to in section 6 of that Act;
"Sustainable Development Commission" means the Commission established under section 8 of the Environmental Management Act;

"waste" means any substance or thing that the holder discards or disposes of, or intends or is required to discard or dispose of, irrespective of its value to any person, and any substance or thing deemed by regulations to be waste;

"waste site" means a landfill site, incinerator, or other facility or place where waste is permanently disposed of or is stored indefinitely;

"water" means water in all its forms wherever located, including water in the sea, on and under land, and in the atmosphere;

"watercourse" means a channel (which may be permanent or temporary) along which water flows or has been known to flow together with the bed of such a channel;

"water quality action area" means any place or area declared as such under section 32.

PART 1

THE POLLUTION CONTROL AND WASTE MANAGEMENT AGENCY

Establishment and composition of the Pollution Control and Waste Management Agency

2. (1) The Pollution Control and Waste Management Agency is hereby established as a body corporate with perpetual succession to undertake the functions assigned or transferred to it under this Act.

(2) The Agency shall have a Management Board constituted in accordance with section 6, an Executive Director appointed by the Minister under section 13, and such other staff as may be necessary from time to time to enable it to fulfil its functions.

Objectives of the Agency

3. (1) The principal objective of the Agency is to secure the effective implementation and enforcement of this Act so as to promote sustainable development.

(2) In order to achieve its principal objective the Agency shall ensure:

(a) the effective control and prevention of pollution in Namibia;
(b) the reduction and minimisation of waste that is generated in Namibia and the management, recycling and disposal of any such waste so as to prevent pollution; and

(c) the regulation of waste imports and exports.

(3) In achieving its objectives, the Agency and any other person exercising powers granted under this Act, shall:

(a) take an integrated and holistic approach to pollution control and waste management in that when licensing the discharge of pollutants, or the disposal of waste, to one medium, the Agency or such other person shall consider the potential effects of such discharges on the environment as a whole; and

(b) have regard to the Principles of Environmental Management contained in section 7 of the Environmental Management Act.

(4) The Minister shall from time to time issue written guidelines to the Agency with regard to the fulfilment by the Agency of its objectives.

(5) In discharging its functions, the Agency and any other person exercising powers granted under this Act shall have regard to any guidelines issued under subsection (4).

(6) The text of any guideline issued under sub-section (4) together with an outline of the action taken by the Agency in response to it shall be included in the next annual report of the Agency following publication of the guideline.

**Functions of the Agency**

4. In order to achieve its objectives, the Agency shall, in addition to any other functions specifically assigned to it under this Act:

(a) issue written guidelines from time to time on the implementation of this Act;

(b) monitor the implementation of, and compliance with, this Act;

(c) monitor the effects of pollution on the environment;

(d) make recommendations to the Minister on pollution control and waste management in Namibia for the effective implementation of this Act;

(e) undertake the functions of a competent licensing authority assigned to it under this Act;
(f) supervise and monitor the implementation by other competent licensing authorities of their functions under this Act;

(g) conduct inspections and take other measures to monitor compliance with this Act and to conduct investigations into alleged violations of this Act;

(h) enforce this Act, either alone or in co-operation with relevant bodies and enforcement agencies, including issuing and enforcing orders;

(i) undertake and promote research into pollution control and waste management;

(j) to the extent practicable, give technical advice to persons applying for licences pursuant to this Act;

(k) monitor and promote Namibia's compliance with its obligations under international law in relation to pollution control and waste management;

(l) periodically review charging schemes established under this Act;

(m) make recommendations to the Minister on the need for regulations and as to the standards to be included in such regulations;

(n) promote training, education and public awareness programmes relating to pollution control and waste management;

(o) maintain a register of local authority councils which have been designated as competent licensing authorities under this Act; and

(p) perform other functions incidental to the exercise by the Agency of any of the above functions or which are assigned to it by the Minister in order to further the purposes of this Act.

Powers of the Agency

5. The Agency may:

(a) acquire, hold and dispose of moveable and immovable property; and

(b) sue and be sued.
Management Board

6. (1) The governing body of the Agency is the Management Board which has the authority, in the name of the Agency, to exercise and perform the functions conferred or imposed on the Agency under this Act.

(2) The Management Board of the Agency shall have not less than five members and not more than seven members of whom:

(a) one person shall be appointed by the Minister who shall be the Chairperson of the Management Board;
(b) one person shall be nominated by the Minister of Agriculture, Water and Rural Development;
(c) one person shall be nominated by the Minister of Health and Social Services;
(d) one person shall be nominated by the Namibian Association of Non-Governmental Organisations to represent Namibian non-governmental organisations whose objective is to promote the protection of the environment; and
(e) one person shall be nominated by the Namibian National Chamber of Commerce and Industry to represent trade and industry in Namibia.

(3) The members of the Management Board shall be appointed by the Minister and shall hold office upon terms and conditions set out in section 8.

(4) If the Minister is not satisfied that a person nominated for appointment to the Management Board has the appropriate knowledge, experience or seniority to make a proper contribution to the functioning of the Management Board, the Minister may, by notice in writing to the nominating body, reject the nomination and request a further nomination.

Functions of the Management Board

7. (1) The Board shall be accountable to the Minister for ensuring the implementation and enforcement of this Act and shall be responsible for supervising the operation of the Agency.

(2) In the exercise of its duty under sub-section (1), the Management Board shall, in addition to any functions specifically assigned to it under this Act:

(a) prepare and submit an annual report to the Minister on the functioning of the Agency;
approve the Agency’s annual accounts;

(c) approve the Agency’s annual budget, workplan, and staffing levels;

(d) periodically review the level of charges payable pursuant to charging schemes and, as appropriate, propose new levels or new charging schemes to the Minister.

Terms of appointment to the Management Board

8. (1) A member of the Management Board shall hold office for a period of three years from the date of appointment and shall be eligible for reappointment.

(2) A member of the Management Board may resign by written notice to the Minister.

(3) The Minister may remove from office any member of the Management Board where the Minister is satisfied that:

(a) the member has been absent from three consecutive meetings of the Management Board without the permission of the Management Board;

(b) the member is an un-rehabilitated insolvent;

(c) the member has been declared mentally ill under any law; or

(d) the member has been convicted of an offence involving an element of dishonesty or a contravention of this Act or any other law concerned with the protection of the environment.

(4) The Minister may at any time remove a member of the Board from office if in the Minister's opinion the member is unable or unfit to discharge the functions of a member or to represent the interests which he or she is required to represent, provided that the member shall be afforded the opportunity to be heard prior to being removed.

(5) Where a member of the Board ceases to hold office as such before the expiration of his or her term of office, the Minister may appoint another person, nominated in accordance with section 6, in his or her stead to hold office for the unexpired period of his or her term of office, provided that where such member has been appointed in terms of sections 6(2)(b) to (l), such other person shall be nominated by the relevant Minister or body referred to in the said sections.

(6) The Minister may from time to time approve other terms and conditions of service for Board members.
Remuneration of Management Board members

9. (1) The Minister shall in consultation with the Minister of Finance determine the remuneration to be paid to members of the Management Board who are not in the full-time employment of the State.

(2) Members of the Management Board may be reimbursed by the Agency for expenses but only in accordance with guidelines approved by the Minister.

Proceedings of the Management Board

10. (1) Meetings of the Management Board shall take place at least four times in each calendar year at places determined by the Management Board.

(2) The chairperson of the Management Board may at any time convene a special meeting of the Management Board.

(3) A quorum for meetings of the Management Board shall be a simple majority of members.

(4) Decisions of the Management Board shall be taken by a simple majority of those members present and voting, save that in the event of deadlock the chairperson shall have a casting vote.

(5) If the chairperson is absent from a meeting or has disclosed an interest in accordance with section 11, those members present shall select one of their number to preside at that meeting for as long as the chairman is absent or is unable to participate by virtue of section 11.

(6) The Management Board shall determine additional rules of procedure which may provide for the establishment of sub-committees, save that sub-committees of the Management Board shall not be established for the purposes of hearing appeals pursuant to this Act.

(7) Minutes shall be kept of proceedings of the Management Board and any sub-committees that are established and shall be evidence of those proceedings if they are signed by the chairperson of the Management Board or any other person chosen to preside at the meeting in accordance with sub-section (5).

Members' interests

11. (1) Any person present at a meeting of the Management Board or a committee of the Management Board at which any matter in which that person, or his or her spouse, is directly or indirectly interested in a private capacity is to be considered, shall, as soon as practicable after the commencement of the meeting, disclose the interest.

(2) Where a disclosure is made in accordance with sub-section (1), it shall be recorded in the minutes and the member shall not take any further part in any
delegation or decision of the Management Board or any of its sub-committees concerning the matter in question.

(3) Provided that the exemption itself shall be minuted, the Minister may exempt in writing any member or members from the provisions of sub-section (2) where the number of members subject to the provisions of that sub-section would otherwise be such as to prevent the transaction of the business of the Management Board, or where the interest disclosed is of a minor nature and the Minister considers the exemption to be appropriate.

(4) An exemption granted under sub-section (3) may be subject to conditions.

Advisory Committees

12. (1) The Minister may at any time establish an advisory committee to advise him or her on matters pertaining to the policy, scientific and/or technical aspects of pollution control and waste management.

(2) An advisory committee shall consist of experts from government, local authority councils, the private sector and/or non-government organisations, appointed by the Minister on such terms as he or she considers appropriate.

(3) An advisory committee shall regulate its own meetings and proceedings in such manner as it considers appropriate and shall provide advice on any matter referred to it by the Minister under sub-section (1).

(4) An advisory committee shall be discharged upon submission of its opinion on the matter referred to it, unless the Minister directs that the committee shall remain in existence for a specified period to provide further advice in accordance with this section.

Executive Director and staff of the Agency

13. (1) The Executive Director of the Agency shall be appointed by the Minister on the nomination of the Management Board for a term of five years and shall be eligible for re-appointment.

(2) The Executive Director shall be responsible for managing the affairs of the Agency in accordance with the policies and directions of the Management Board.

(3) The Management Board shall approve the creation of additional posts in the Agency, including the post of Deputy Director, and in creating such posts shall specify whether the appointment of staff to those posts is to be undertaken by the Management Board, the Executive Director or some other officer employed by the Agency.
(4) The Prime Minister may, at the request and with the consent of the Agency and the public officer concerned, approve the secondment of a public officer to the Agency on terms and conditions specified by the Prime Minister.

(5) The Agency may, with the approval of the Prime Minister, offer any public officer seconded to the Agency permanent employment on terms and conditions stipulated by the Management Board, which if accepted will have the result that the person ceases to be in the service of the Government from the date of acceptance.

**Staff remuneration**

14. (1) Subject to the approval of the Minister, the Management Board shall determine the level of remuneration payable to the employees and officers of the Agency, including salaries, allowances, pensions and gratuities.

(2) In determining remuneration levels, in accordance with sub-section (1), the Management Board shall not be required to adhere to civil service salary scales.

**Accounts and Audits**

15. (1) The Agency shall:

(a) keep proper accounts and proper accounting records; and

(b) prepare in respect of each accounting year, a statement of accounts giving a true and fair view of the financial state of affairs and the income and expenditure of the Agency.

(2) Every statement of accounts shall comply with any requirements prescribed in writing by the Minister including, but not limited to, requirements as to the format and content of the statement and the methods and principles according to which it is to be prepared.

(3) The Minister may specify an accounting year other than March to February.

(4) The statement of accounts of the Agency shall be audited annually to the satisfaction of the Auditor General by an auditor appointed for each accounting year by the Minister provided such an auditor is registered in accordance with the Public Accountant’s and Auditors Act No 51 of 1951.

(5) A copy of the audited accounts and the auditor’s report shall be sent by the Agency to the Minister as soon as reasonably practicable after the report is delivered to the Agency.

(6) The Agency’s audited accounts and the report of the auditor shall be tabled in the National Assembly by the Minister within fourteen days of receipt thereof if the National Assembly is then in ordinary session, or if the National Assembly is then
not in ordinary session, within fourteen days of the commencement of its next ensuing ordinary session.

(7) Within 30 days of receipt, the Minister shall lay a copy of the audited accounts and any auditor's report before the National Assembly.

Budget and source of funds

16. The funds of the Agency shall consist of:

(a) moneys appropriated by Parliament to finance any of its functions;

(b) revenue generated from charging schemes established pursuant to this Act;

(c) fines and fees receivable by it on the conclusion of court proceedings; and

(d) such other moneys as may accrue to it from any other source.

Winding up and judicial management

17. The Agency shall not be wound up or placed under judicial management except by or under the authority of an Act of Parliament.

PART 2

AIR POLLUTION

Air quality monitoring

18. (1) The Agency shall undertake and co-ordinate the monitoring of Namibia's air quality by reference to the air quality objectives prescribed in regulations made under section 19.

(2) The Agency may, with the approval of the Minister, delegate its duty under sub-section (1) to a local authority council or any other body where in the opinion of the Agency and the Minister that local authority council or other body has sufficient resources and expertise to undertake such tasks effectively.

(3) The Minister may, on the recommendation of the Agency and after consultation with the Minister responsible for health and social services, issue instructions from time to time on the monitoring of air quality, including in relation to the analysis of samples and measurement methods to be used, which instructions shall be binding on any local authority council or body to whom responsibilities have been delegated under this section.
Regulations

19. (1) The Minister may, on the recommendation of the Agency and after consultation with the Minister responsible for health and social services, make regulations establishing standards, objectives or requirements in relation to air quality and activities liable to cause air pollution.

(2) Without limiting the generality of sub-section (1), regulations under this section may:

(a) specify limits for emissions to the air of pollutants from fixed or moving sources and may relate to a particular pollutant or to a combination of pollutants;

(b) specify air quality objectives as a concentration in the air, or as a mass deposited on a specified area, of a particular pollutant or combination of pollutants which is not to be exceeded for specified periods and under specified conditions;

(c) specify standards for processes to reduce or treat pollutants;

(d) specify the standards and specifications for the composition of any type of fuel, the combustion of which may lead to the release of pollutants to air;

(e) specify standards relating to the specification or design of any product or process which may lead to the release of pollutants to the air;

(f) specify standards relating to the emission of pollutants by motor vehicles;

(g) specify the procedures for measuring compliance with any such standards;

(h) require operators of specified processes to monitor emissions of specified substances into the air and report the results of monitoring to the Agency;

(i) require any authority or person responsible under this Act for monitoring air quality to report to the Agency on the results of air quality monitoring and to notify the Agency whenever any air quality objective is not met in any area;

(j) require any persons to report air pollution incidents to the Agency;
require applications for air pollution licences to be accompanied by an environmental assessment report prepared in accordance with the provisions of the Environmental Management Act;

create offences relating to the failure by any person to adhere to any such standards or requirements, and prescribe penalties for such offences.

(3) Standards contained in regulations made under this section may apply throughout Namibia or only to specified areas.

Air quality action areas

20. (1) Where it is necessary to reduce levels of air pollution, which for the avoidance of doubt includes pollution caused by dust, so as to ensure compliance with air quality standards or to protect human health or the environment, the Minister may on the recommendation of the Agency and after consultation with the Minister responsible for health and social services, declare any place or area in Namibia to be an air quality action area.

(2) Following the designation of an air quality action area, the Agency shall, in conjunction with any local authority council having competence within the boundaries of the air quality action area, promptly prepare, adopt and implement a detailed plan of action to improve air quality within that area.

(3) The provisions of an action plan issued pursuant to sub-section (2) shall be binding on the relevant competent licensing authority.

Air pollution licences

21. (1) Subject to sub-section (4), no person shall discharge or cause to be discharged any pollutant to the air from a process except under and in accordance with the provisions of an air pollution licence issued under section 23.

(2) The Minister may by regulation:

(a) exempt persons carrying out specified processes from the need to hold a licence in accordance with this section; and

(b) specify minimum emission levels below which a licence shall not be required.

(3) A person who discharges or causes to be discharged any pollutant to the air contrary to this section commits an offence and shall be liable on conviction to a fine not exceeding N$ 100 000, 00 or a term of imprisonment not exceeding fifteen years or to both.
(4) A person who discharges or causes to be discharged any pollutant to the air shall not require a licence under this section if the discharge is made in the course of a prescribed process, in respect of which that person holds an Integrated Pollution Control Licence issued under Part 4.

Application procedure

22. (1) An application for an air pollution licence in respect of a process that is not permanently located within the area of jurisdiction of a local authority council or which is permanently located within the area of jurisdiction of a local authority council that has not been designated a competent licensing authority pursuant to subsection (3) shall be made in writing to the Executive Director of the Agency in accordance with the provisions of Part 9, and the Agency shall be the competent licensing authority for the purposes of this Act.

(2) An application for an air pollution licence in respect of a process that is permanently located within the area of jurisdiction of a local authority council, that has been designated as a competent licensing authority pursuant to sub-section (3) shall be made in writing to that local authority council in accordance with the provisions of Part 9, and that local authority council shall be the competent licensing authority for the purposes of this Act.

(3) The Minister may direct from time to time by notice in the Gazette that any local authority council is to be the competent licensing authority in respect of processes located within the boundaries of that local authority council for the purposes of this Part.

(4) A direction under subsection (3):

(a) shall only be made where, in the view of the Minister, the local authority council concerned has sufficient technical or other resources to act as the competent licensing authority; and

(b) may be made on the request of either the local authority council concerned or the Agency.

(5) The Agency shall maintain a register of local authorities that have been designated as competent licensing authorities in accordance with sub-section (3).

Determination of applications for air pollution licences

23. In determining each application for the grant or variation of an air pollution licence, the competent licensing authority shall have regard to:

(a) the requirements of section 82;
(b) any air emission standards, air quality objectives and other relevant standards relating to air pollution set out in regulations;

c) the provisions of the relevant applicable action plan, if the process is located within an air quality action area;

d) the contents of any environmental assessment report submitted in respect of the application and the comments and recommendations of the Sustainable Development Commission; and

e) the best practicable means for reducing and preventing the discharge of pollutants to the air.

Term and conditions of air pollution licences

24. (1) An air pollution licence issued under section 23 shall be valid for a period of five years.

(2) An air pollution licence issued under section 23 shall be subject to:

(a) any general conditions prescribed in regulations; and

(b) any specific conditions endorsed on the licence by the competent licensing authority.

(3) Without limiting the generality of sub-section (2), air pollution licences may include conditions, in relation to discharges to air:

(a) requiring the licence holder to use the best practicable means to reduce and prevent the discharge of pollutants;

(b) specifying the amount of pollutants that may be discharged over a specified period;

(c) specifying the location of any chimneys, pipes or structures from which the permitted discharges are to take place;

(d) specifying any treatment processes to which pollutants are to be subjected prior to their discharge;

(e) specifying the design, construction, operation and maintenance of any structures necessary for the treatment of pollutants or which regulate or control the manner or place of their discharge;
(f) requiring monitoring and reporting by the licence holder of the amount or rate of discharges; and

(g) providing for seasonal and other variations in the amount of pollutants that may be discharged.

(4) A licence holder who fails to comply with any conditions contained in an air pollution licence commits an offence and shall be liable on conviction to a fine not exceeding N$ 100,000.00 or to imprisonment for a period not exceeding fifteen years or to both.

**Best practicable means**

25. (1) For the purposes of section 23(e) and section 24(3)(a), “best practicable means” in relation to the discharge of pollutants to the air means the best means for preventing or minimising harm to the environment or human health arising from the discharge, having regard, among other things, to:

(a) the nature of the discharge and the sensitivity of the receiving environment to the effects of the discharge;

(b) the financial implications, and the effects on the environment, of the means to be employed, when compared with other means; and

(c) the current state of technical knowledge and the likelihood that the means can be successfully applied.

(2) For the purposes of sub-section (1) “means” includes the number, qualifications, training and supervision of persons employed in the process, and the design, construction, lay-out and maintenance of the buildings and premises in which the process is carried on, as well as the technical means and technology employed to carry on the process.

**Fees and charges**

26. Applications for air pollution licences shall be subject to a prescribed charging scheme in accordance with Part 12.

**Power to vary, transfer, renew, suspend or revoke an air pollution licence**

27. Air pollution licences may be varied, transferred or renewed by the competent licensing authority on the application of the licence holder and may be varied, suspended or revoked by the competent licensing authority, in accordance with section 84.
Register of air pollution licences

28. (1) Every competent licensing authority shall maintain a register of air pollution licences in accordance with the provisions of Part 9 of this Act.

(2) Every competent licensing authority that is a local authority council shall periodically forward details of the contents of its register to the Agency in a manner to be prescribed by regulations.

Transitional provisions: existing operations

29. (1) A person holding a registration certificate issued under the Atmospheric Pollution Prevention Ordinance No 11 of 1976 shall within three months of the entry into force of this Act give written notice of that registration certificate to the competent licensing authority.

(2) A registration certificate notified in accordance with subsection (1) shall continue in force for a further three years from the date of notification unless during that period it is replaced by an air pollution licence issued under this Act.

(3) If a person fails to notify the competent licensing authority in accordance with sub-section (1), any registration certificate issued under the Atmospheric Pollution Prevention Ordinance No 11 of 1976 shall cease to be valid at the end of the period specified in sub-section (1).

PART 3
WATER POLLUTION

Water quality monitoring

30. (1) The Agency shall undertake and co-ordinate the monitoring of water quality in Namibia by reference to the water quality objectives prescribed in regulations under section 31.

(2) The Agency may, with the approval of the Minister, delegate its duty under sub-section (1) to a local authority council or any other body where in the opinion of the Agency and the Minister the local authority council or other body has sufficient resources and expertise to undertake such tasks effectively.

(3) The Minister may from time to time on the recommendation of the Agency and after consultation with the Minister responsible for water affairs, issue instructions on the monitoring of water quality in relation to the analysis of samples and measurement methods to be used, which instructions shall be binding on any local authority council or body to whom responsibilities have been delegated under this section.
31. (1) The Minister may, on the recommendation of the Agency and after consultation with the Minister responsible for water affairs, make regulations establishing standards, objectives or requirements in relation to water quality and activities liable to cause water pollution.

(2) Without limiting the generality of sub-section (1), regulations under this section may:

(a) specify limits for discharges of pollutants to water from fixed or mobile sources;

(b) specify limits for the discharge of pollutants to land where this is liable to cause water pollution indirectly;

(c) specify water quality objectives in respect of particular waters by reference to the concentration of specified pollutants, or combination of pollutants, which is not to be exceeded for specified periods and under specified conditions and the use or uses for which the water in question is to be put;

(d) specify standards for the pre-treatment or purification of pollutants;

(e) specify the procedures for determining compliance with any such standards;

(f) restrict or prohibit specified activities within water quality action areas declared pursuant to section 32 where this is reasonably necessary to achieve the objectives for which the area was declared;

(g) require applications for water pollution licences to be accompanied by an environmental assessment report prepared pursuant to the Environmental Management Act; and

(h) create offences relating to the failure by any person to adhere to any such standards or requirements, and prescribe penalties for such offences.

(3) Standards contained in regulations made under this section may apply throughout Namibia or only in specified areas.

Water quality action areas

32. (1) The Minister may, on the recommendation of the Agency and after consultation with the Minister responsible for water affairs, declare any place or area in
Namibia to be a water quality action area, where in the opinion of the Minister it is necessary to reduce levels of water pollution so as to ensure compliance with water quality objectives or to protect human health or the environment.

(2) Following the designation of a water quality action area, the Agency shall, after consultation with the Minister responsible for water affairs and any local authority council having competence within the boundaries of the water quality action area, promptly prepare, adopt and implement a detailed plan of action to improve water quality within that area.

**Discharge of pollutants or waste to water or a watercourse**

33. (1) Subject to sub-section (4) and section 34, no person shall cause or permit the discharge of pollutants or waste into any water or watercourse.

(2) A person who causes or permits the discharge of pollutants or waste contrary to subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding N$ 100 000.00 or to imprisonment for a period not exceeding fifteen years or to both.

(3) For the avoidance of doubt, a person contravenes this section if that person causes or permits the discharge of pollutants or waste into:

   (a) any natural watercourse, whether or not located on private land or enclosed by private land;

   (b) any artificial watercourse, the water in which may flow into a natural watercourse;

   (c) the sea from a vessel or other structure in the sea or from land in Namibia through a pipe or other structure into the sea.

(4) This section does not apply to:

   (a) the discharge of non-hazardous domestic waste from a private dwelling; or

   (b) the discharge of pollutants or waste to a sewer or sewage treatment works which is maintained by a local authority council, in accordance with a permit issued under drainage regulations issued by that local authority council.

**Defences**

34. A person shall not be guilty of an offence under section 33 in respect of the discharge of pollutants or waste into water or a water-course if:
(a) the discharge is made under and in accordance with the provisions of a water pollution licence issued under this Part;

(b) the discharge is made under and in accordance with the provisions of an Integrated Pollution Control licence issued under Part 4;

(c) the discharge is made in accordance with the requirements of any international agreement concerning marine pollution from vessels, to which Namibia is a party, or where applicable in accordance with the requirements of any Namibian legislation on marine pollution from vessels in so far as these are more strict than the international requirements;

(d) the discharge is caused or permitted in an emergency in order to avoid danger to life or health and the person who causes or permits the discharge informs the Agency as soon as reasonably practicable after the discharge has occurred, and takes all reasonable steps to minimize the extent of the discharge and its effects on the environment.

Application for a water pollution licence

35. An application for a water pollution licence shall be made in writing to the Executive Director of the Agency in accordance with the provisions of Part 9.

Determination of applications for water pollution licences

36. (1) In determining each application for the grant or variation of a water pollution licence, the Executive Director shall have regard to:

(a) the requirements of section 82;

(b) any water emission standards, water quality standards and other relevant standards relating to water pollution set out in regulations, relating to the water or watercourse into which it is proposed that the discharge will be made;

(c) the contents of any environmental assessment report submitted in respect of the application and the comments and recommendations of the Sustainable Development Commission; and

(d) the provisions of the relevant applicable action plan, if the activity to which the application relates is located within a water quality action area.
(2) Before making a determination as to whether or not a licence should be granted, and as to the conditions to be included in such a licence, the Executive Director shall consult with the Minister responsible for water affairs.

(3) The Agency shall not issue a water pollution licence under this section unless the Minister responsible for water affairs has been notified of the application and:

(a) a written agreement has been reached between the Agency and the Minister responsible for water affairs concerning the proposed application and any conditions to be included in a licence; or

(b) the Minister responsible for water affairs has failed to respond within the period prescribed under section 80.

Term and conditions in licences

37. (1) A water pollution licence issued under section 36 shall be valid for a period of five years.

(2) A water pollution licence issued under section 36 shall be subject to:

(a) such general conditions as may be prescribed in regulations; and

(b) such specific conditions as may be endorsed on the licence by the Agency.

(3) Without limiting the generality of section (2), water pollution licences may include conditions, in relation to discharges to water:

(a) specifying the amount of pollutants that may be discharged over a specified period;

(b) specifying the location of any pipes or structures from which the permitted discharges are to take place;

(c) specifying any treatment or pre-treatment processes to which pollutants are to be subjected prior to their discharge;

(d) specifying the design, construction, operation and maintenance of any structures necessary for the treatment or pre-treatment of pollutants or which regulate or control the manner or place of their discharge;

(e) requiring monitoring and reporting of the amount or rate of discharges by the licence holder; and
(f) providing for seasonal and other variations in the amount of pollutants which may be discharged.

(4) A licence holder who fails to comply with any conditions contained in a water pollution licence commits an offence and shall be liable on conviction to a fine not exceeding N$ 100 000,00 or to imprisonment for a period not exceeding fifteen years or to both.

**Fees and charges**

38. Water pollution licences shall be subject to a prescribed charging scheme in accordance with Part 12.

**Power to vary, transfer, renew, suspend or revoke a water pollution licence**

39. Water pollution licences may be varied, transferred or renewed by the Agency on the application of the licence holder and may be varied, suspended or revoked by the Agency, in accordance with section 84.

**Power to carry out water protection works**

40. (1) Subject to sub-section (2), where it appears to the Agency that any pollutant or waste has been, or is likely to be, discharged into any water or watercourse, the Agency may carry out works and operations for the purpose of:

(a) preventing or reducing the discharge of the pollutant or waste into the water or watercourse;

(b) removing or disposing of the pollutant or waste;

(c) remedying or mitigating any pollution caused by the presence of the pollutant or waste in the water or watercourse; or

(d) restoring the waters or watercourse, including any flora and fauna dependent on the waters or the watercourse, to their state immediately before the pollutant or waste entered the waters or the watercourse, in so far as it is reasonably practicable to do so.

(2) Nothing in sub-section (1) shall entitle the Agency to impede or prevent the making of any discharge under and in accordance with a water pollution licence issued under section 36.

(3) Subject to sub-section (4), where the Agency carries out any works or operations mentioned in sub-section (1), it shall be entitled to recover the costs reasonably incurred by it in doing so from any person who:
(a) caused or permitted the pollutant or waste in question to be present in the waters or the watercourse; or

(b) caused or permitted the pollutant or waste in question to be present at the place from which it was likely, in the opinion of the Agency, to enter the waters or the watercourse.

(4) No costs shall be recoverable from a person under sub-section (3) for any works or operations in respect of a discharge, or the prevention of a discharge, where the discharge was made, or would have been made, by that person under and in accordance with a water pollution licence issued under section 36 or an Integrated Pollution Control Licence issued under section 46.

(5) Where the Agency is entitled to recover costs pursuant to this section, it shall do so in accordance with the procedures set out in section 94.

Register of water pollution licences

41. The Agency shall maintain a register of water pollution licences in accordance with the provisions of Part 9 of this Act.

Transitional provisions: existing operations

42. (1) A person holding an exemption issued under section 21 of the Water Act No 54 of 1956 shall within three months of the entry into force of this Act give written notice of that exemption to the Agency. An exemption notified in accordance with sub-section (1) shall continue in force for a further three years from the date of notification unless during that period it is replaced by a water pollution licence issued under this Act.

(2) If a person fails to notify the Agency in accordance with sub-section (1), any exemption issued under section 21 of the Water Act No 54 of 1956 shall cease to be valid at the end of the period specified in sub-section (1).
PART 4

INTEGRATED POLLUTION CONTROL

Prescribed processes

43. (1) If the Minister, on the recommendation of the Agency and after consultation with the Ministers responsible for health and social services, and water affairs respectively, considers that a process creates a risk of pollution to more than one environmental medium and that such a risk could be reduced by adopting an integrated approach to pollution control and licensing, the Minister may by regulations specify that process to be a prescribed process.

(2) Regulations under subsection (1) may specify a process to be a prescribed process by reference to:

(a) the characteristics or nature of the process;
(b) the substances used in the process;
(c) the substances which may be discharged into the environment in carrying out the process;
(d) the wastes which may be generated by the process;
(e) the place or area in which the process is undertaken; and
(f) any other circumstances relating to the process.

(3) Regulations under sub-section (1) may:

(a) prescribe separately in respect of each environmental medium, the substances the discharge of which into that medium is to be subject to control; and
(b) specify that a process is only to be prescribed by reference to minimum threshold levels of specified substances used in the process.

(4) Regulations under sub-section (1) shall specify the date on which a process is to become a prescribed process ("the effective date") and shall include transitional provisions in respect of existing processes that will become prescribed processes on the effective date.
Integrated Pollution Control Licences

44. (1) No person shall undertake a prescribed process or cause such a process to be undertaken, after the effective date, except under and in accordance with the provisions of an Integrated Pollution Control Licence.

(2) A person who undertakes a prescribed process or who causes such a process to be undertaken without an Integrated Pollution Control Licence contrary to sub-section (1) commits an offence and shall be liable on conviction to a fine not exceeding N$ 100,000.00 or to imprisonment for a period not exceeding ten years or to both.

Application for an Integrated Pollution Control Licence

45. (1) Every application for an Integrated Pollution Control Licence shall be made to the Executive Director of the Agency in accordance with Part 9 and shall be accompanied by an environmental assessment report prepared pursuant to the provisions of the Environmental Management Act.

(2) If the prescribed process to which the licence application relates is likely to give rise to the discharge of pollutants or waste to water or a watercourse, before determining such an application the Executive Director shall consult with the Minister responsible for water affairs.

(3) If the prescribed process to which the licence application relates is likely to give rise to the discharge of pollutants or waste to sewers, before determining such an application the Executive Director shall consult with the local authority council responsible for such sewers and the Minister responsible for water affairs.

(4) If the prescribed process to which the licence application relates is likely to give rise to the discharge of pollutants or waste to the air, before determining such an application the Executive Director shall consult with the Minister responsible for health and social services.

(5) If the prescribed process to which the licence application relates is likely to involve activities regulated pursuant to the Petroleum (Exploration and Production) Act No. 2 of 1991 or the Minerals (Prospecting and Mining) Act No. 33 of 1992, before determining such an application the Executive Director shall consult with the Minister responsible for the administration of those Acts.

Determination of applications for Integrated Pollution Control Licences

46. (1) In determining whether or not to grant an Integrated Pollution Licence and the conditions to be included in any such licence the Executive Director shall have regard to:

(a) the requirements of section 82;
any emission standards, quality objectives and other relevant standards relating to air or water pollution or waste management set out in regulations;

the provisions of any relevant applicable action plans, if the process is located within an air quality action area or a water quality action area;

the contents of the environmental assessment report submitted in respect of the application and the recommendations of the Sustainable Development Commission;

the best available techniques not entailing excessive costs for preventing the discharge of prescribed substances into the environment, or where that is not practicable by such means, for reducing the discharge of such substances to a minimum and for rendering harmless any such substances which are so discharged; and for rendering harmless any other pollutants which might cause harm if discharged to the environment.

(2) If the process is likely to involve the release of substances into more than one environmental medium, in determining whether or not to grant an Integrated Pollution Control Licence and the conditions to be included in any such licence the Executive Director shall also ensure that the best practicable environmental option is adopted, in respect of the substances that may be discharged, for minimising the pollution that may be caused by those substances to the environment taken as a whole.

(3) An Integrated Pollution Control Licence shall not be granted unless the Executive Director reasonably considers that the applicant will be able to carry out the process so as to comply with the conditions to which the licence would be subject.

Terms and conditions of Integrated Pollution Control Licences

47. (1) An Integrated Pollution Control Licence shall be valid for a term of five years.

(2) Every Integrated Pollution Control Licence shall be subject to:

(a) the general condition that in carrying out the process to which the licence relates, the licence holder must use the best available techniques not entailing excessive cost:

(i) for preventing the discharge of prescribed substances into the environment, or where that is not practicable by such means, for reducing the discharge of such substances to a minimum and for rendering harmless any such substances that are so discharged; and
(ii) for rendering harmless any other pollutants that might cause harm if discharged to the environment;

(b) the general condition that the licence holder must remedy any damage caused to the environment by the process to which the licence relates in so far as the damage is not authorised by the licence;

(c) any other general conditions that are prescribed in regulations; and

(d) any other specific conditions that are considered appropriate by the Executive Director for achieving the general condition referred to in sub-clause (a) and for ensuring that the best practicable environmental option referred to in section 46(2) is adopted.

(3) Without limiting the generality of sub-section (2), specific conditions may specify, in relation to discharges to air, water and/or land:

(a) the amount of pollutants which may be discharged over a specified period;

(b) the location of any chimneys, pipes or structures from which the permitted discharges are to take place;

(c) any treatment or pre-treatment processes to which pollutants are to be subjected prior to their discharge;

(d) the design, construction, operation and maintenance of any structures necessary for the treatment or pre-treatment of pollutants or which regulate or control the manner or place of their discharge;

(e) requirements relating to the management, including treatment, storage and disposal, of any waste generated by the process to which the licence relates;

(f) requirements for monitoring and reporting the amount or rate of discharges of pollutants by the licence holder; and

(g) seasonal and other variations in the amount of pollutants which may be discharged; and

(h) requirements relating to the closure and remediation of the site after the activities authorised by the licence have ceased.
(4) References to the best available techniques not entailing excessive costs, in relation to a process, include, in addition to references to any technical means and technology, references to the number, qualifications, training and supervision of persons employed in the process and the design, construction, lay-out and maintenance of the buildings and premises in or on which the process is carried on.

(5) In this section the word “available” means commercially available on the world market and is not restricted to availability in Namibia.

(6) In determining the question of “excessive costs” the Executive Director shall have regard to the long-term costs of the effects of the process to Namibia’s environment and to other sectors of the economy, including tourism, as well as to the costs to the applicant of installing and maintaining the techniques.

(7) The Executive Director may not issue any licence or prescribe any conditions that will allow a licence holder to contravene the minimum standards prescribed in or under this Act.

(8) A licence holder who fails to comply with any conditions contained in an Integrated Pollution Control Licence commits an offence and shall be liable on conviction to a fine not exceeding N$ 100 000,00 or to imprisonment for a period not exceeding fifteen years or to both.

Fees and charges

48. Integrated Pollution Control Licences shall be subject to a prescribed charging scheme in accordance with Part 12.

Power to vary, transfer, renew, suspend or revoke an Integrated Pollution Control Licence

49. Integrated Pollution Control Licences may be varied, transferred or renewed by the Agency on the application of the licence holder and may be varied, suspended or revoked by the Agency, in accordance with section 84.

Register of Integrated Pollution Control Licences

50. The Agency shall maintain a register of Integrated Pollution Control Licences in accordance with the provisions of Part 9 of this Act.

Transitional provisions: existing operations

51. Any regulations made in accordance with section 43 shall also specify the transitional arrangements which are to apply to processes in operation before the effective date which after the effective date will be classified as prescribed processes.
PART 5

NOISE, DUST AND ODOUR POLLUTION

Nuisance

52. (1) No person may cause, permit or carry out any activity that gives rise to noise, dust or odour to the extent that, in the opinion of the competent authority, it creates or is likely to create a nuisance.

(2) For the purposes of this Part, "competent authority" in relation to the control of noise, dust and odour means:

(a) the local authority council in relation to noise, dust and odour generated within the boundaries of its jurisdiction; and

(b) the Agency in relation to noise, dust and odour generated in all other areas.

Abatement notice

53. (1) If, in the opinion of the competent authority, a person is contravening section 52 or any regulation made under this Part, it may serve an abatement notice on the person responsible for the contravention.

(2) The abatement notice may contain directions:

(a) requiring the activity to be stopped;

(b) imposing conditions under which the activity may continue;

(c) requiring the implementation of mitigatory measures to minimise the nuisance;

(d) specifying the time period within which the directions must be carried out;

(e) requiring compliance with any regulation made under this Part; or

(f) requiring any other measures which will further the purposes of this Act.

(3) In determining whether or not a noise, dust or odour constitutes a nuisance, the competent authority shall have regard to:

(a) the time of day or night at which the noise, dust or odour is generated;
the ambient noise, dust or odour levels in the area;
the extent to which the activity which is causing the noise, dust or odour is in conflict with permitted land uses in the area; and
any other factors that the competent authority regards as material.

(4) A person who fails to comply with an abatement notice served pursuant to this section commits an offence and shall be liable on conviction to a fine not exceeding N$ 100 000,00 or to imprisonment for a period not exceeding ten years or to both.

Regulations

54. The Minister may, on the recommendation of the Agency, make regulations concerning:

(a) standards for noise, dust or odour emissions generated under specified circumstances or during the course of particular activities;

(b) product or process standards in so far as they may have a bearing on noise, dust or odour pollution; or

(c) any other matter that will control noise, dust or odour pollution.

PART 6

WASTE MANAGEMENT

General Prohibition and Duty of Care

55. (1) No person may produce, collect, transport, sort, recover, treat, store, dispose of or otherwise manage waste in a manner that results in or creates a significant risk of harm to human health or the environment.

(2) Every person who produces, collects, transports, sorts, recovers, treats, stores, disposes of or otherwise manages waste shall take all reasonable measures to prevent any other person contravening sub-section (1) in relation to that waste.

(3) A person who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding N$ 100 000,00 or to a period of imprisonment not exceeding ten years or to both.

Waste Management Plans

56. (1) The Agency shall, within three years of this Act coming into force, prepare and submit to the Minister for approval a draft National Waste Management Plan.
(2) The draft National Waste Management Plan shall be prepared in accordance with the requirements of the Minister, as laid down in regulations, and shall include, among other things:

(a) a description of the quantities and types of waste generated in Namibia;

(b) a description of the existing methods and systems for the collection, transport, storage, treatment and disposal of waste in Namibia, including an inventory of existing waste disposal sites together with a description of their physical environment;

(c) an analysis of anticipated current and future needs for additional capacity and infrastructure for the collection, transport, storage, treatment and disposal of waste in Namibia;

(d) short, medium and long-term objectives concerning waste management, including specific measures to minimise the generation of waste and to promote the reduction, re-use and recycling of waste; and

(e) a description of measures for achieving the objectives of the Agency set out in section 3.

(3) Before submitting the draft National Waste Management Plan to the Minister for approval, the Agency shall comply with any measures prescribed under subsection 4 concerning the publication of the draft Plan and the participation of the public in the plan-making process.

(4) Prior to approving the draft National Waste Management Plan, the Minister shall make regulations concerning the publication of the draft Plan and the participation of the public in the plan-making process, which shall ensure that members of the public are given sufficient opportunity to comment on the draft Plan or substantial revisions to such a Plan.

(5) The Minister shall table a copy of the National Waste Management Plan in the National Assembly within thirty days of approving it if the National Assembly is then in ordinary session, or if the National Assembly is not then in ordinary session, within fourteen days of the commencement of its next ensuing ordinary session.

(6) The Minister shall cause the National Waste Management to be periodically reviewed and updated as necessary.

(7) Every local authority council shall, within two years of the approval of the National Waste Management Plan, prepare and submit to the Agency for approval a local waste management plan for its area of jurisdiction, that:
(a) conforms to the requirements of the Minister, as laid down in regulations;
(b) conforms with the National Waste Management Plan; and
(c) includes the information set out in sub-section (2) above in respect of its area of jurisdiction.

(8) Any local authority council may apply to the Minister for an exemption from the requirement set out in sub-section (7) for a specified period and the Minister may grant such an exemption for a period of up to three years where he is satisfied that there are valid reasons for doing so.

(9) Every local authority council shall:
(a) seek to implement its local waste management plan; and
(b) periodically review its local waste management plan.

(10) In cases where there is no local authority council, the Agency may prepare local waste management plans for specific areas where this is reasonably necessary in the opinion of the Executive Director.

Regulations

57. (1) The Minister may, on the recommendation of the Agency, make regulations establishing standards, objectives or requirements in relation to any activities relating to waste, including disposal, that are liable to cause pollution.

(2) Without limiting the generality of sub-section (1), regulations under this section may:
(a) require measures to promote and ensure the reduction, re-use, recycling and recovery of waste;
(b) restrict the locations at which any activities relating to waste, including disposal, may be carried out;
(c) establish standards for the storage and transport of waste;
(d) establish standards for the disposal of waste, including standards relating to the siting, design, construction, operation, maintenance and management of waste disposal sites and facilities;
(e) define and classify different types of waste, including hazardous waste and clinical waste;
(f) require the separation of types of waste at any stage in any activity relating to waste;

(g) specify standards relating to the packaging and labelling of waste and for documents accompanying consignments of waste in transit; and

(h) require monitoring and reporting of any activities relating to waste by the person carrying out the activity.

**Waste Management Licence**

58. (1) Subject to section 60 and sub-section (4), no person shall collect, transport, store, treat, recover or dispose of waste except under and in accordance with the provisions of a waste management licence issued under section 62.

(2) For the avoidance of doubt, a person who operates a waste site shall be treated for the purposes of subsection (1) as a person who disposes of waste.

(3) A person who collects, transports, stores, treats, recovers or disposes of waste contrary to this section commits an offence and shall be liable on conviction to a fine not exceeding N$ 100 000,00 or to a period of imprisonment not exceeding ten years or to both.

(4) A person who stores, treats, recovers or disposes of waste shall not require a licence under this section if the activity involving the waste is a prescribed process, or forms part of a prescribed process, in respect of which that person holds an Integrated Pollution Control Licence issued under Part 4, except in so far as the activity involves the final disposal of waste by deposit in or on land.

**Waste Site Licence**

59. (1) Subject to section 60, every person who owns a waste site, shall hold and comply with a waste site licence issued under section 62.

(2) A person who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding N$ 100 000,00 or to a period of imprisonment not exceeding ten years or to both.

**Exemptions**

60. The Minister may by regulations exempt specified categories of waste and/or persons carrying out specified activities in relation to waste, from the application of some or all of the licensing provisions in sections 58 and 59.
Application procedure

61. (1) An application for a waste management licence shall be made in writing to the Executive Director of the Agency in accordance with the provisions of Part 9, and the Agency shall be the competent licensing authority for this purpose.

(2) The Minister may, by notice published in the Gazette, designate any local authority council to be a competent licensing authority for the purpose of subsection (4).

(3) A designation under sub-section (2):

(a) shall only be made where the Minister is of the opinion that the local authority council concerned has sufficient technical or other resources to act as the competent licensing authority; and

(b) may be made on the request of either the local authority council concerned or the Agency.

(4) Subject to sub-section (5), an application for a waste site licence in respect of a waste site that is located within the area of jurisdiction of a local authority council that has been designated as a competent licensing authority shall be made in writing to that local authority council in accordance with the provisions of Part 9.

(5) Sub-section (4) shall not apply to an application for a waste site licence where:

(a) the local authority council is the owner or operator of the waste site; or

(b) the application relates to a waste site where the storage or disposal of hazardous waste will be undertaken.

(6) Where any of the conditions set out in sub-section (5) apply, or where no designation has been made under sub-section (2), an application for a waste site licence shall be made to the Executive Director of the Agency in accordance with the provisions of Part 9 and the Agency shall be the competent licensing authority for this purpose.

(7) Every application for a waste management licence or a waste site licence shall be accompanied by:

(a) an environmental assessment report prepared pursuant to the Environmental Management Act; and

(b) details of every other waste management licence or waste site licence held or applied for by the applicant in Namibia or any
equivalent licences held by the applicant in any foreign country.

Determination of applications for waste management licences and waste site licences

62. (1) In determining an application for the grant of a waste management licence or a waste site licence, the competent licensing authority shall have regard to:

(a) the requirements of section 82;

(b) such National Waste Management Plan and relevant local waste management plans as may currently be in place;

(c) the contents of the environmental assessment report submitted in respect of the application and the comments and recommendations of the Sustainable Development Commission;

(d) the expertise and experience of the applicant in carrying out the proposed activity;

(e) the financial resources of the applicant in so far as these are considered by the competent licensing authority to be relevant to the application; and

(f) any relevant standards for the management and disposal of waste which are prescribed by the Minister pursuant to section 57.

(2) No waste management licence or waste site licence shall be granted unless the applicant can demonstrate that the applicant has:

(a) adequate expertise and experience in carrying out the proposed activity;

(b) adequate financial resources; and

(c) a legal right to use or occupy the land on which the proposed activity will be carried out.

(3) A waste management licence shall not be issued to a person authorising that person to undertake waste disposal or storage at a waste site unless there is in force a waste site licence in respect of that site.
Terms and conditions of licences

63. (1) A waste management licence issued under section 62 shall be valid for a period of five years and shall contain details of the waste collection, transport, storage, recovery, treatment and/or disposal activities that are authorised by the licence.

(2) A waste site licence issued under section 62 shall remain in force until it is revoked by the competent licensing authority in accordance with section 65 or until its surrender is accepted by the competent licensing authority in accordance with section 66.

(3) The competent licensing authority shall review every waste site licence at least once every five years.

(4) A waste management licence and a waste site licence shall be subject to:

(a) any general conditions prescribed in regulations; and

(b) any specific conditions endorsed on the licence by the competent licensing authority.

(5) Without limiting the generality of sub-section (4), waste management licences and waste site licences may include conditions:

(a) specifying the type or types of waste to which the licence relates;

(b) specifying the design, construction, operation and maintenance of any site or facility at which the activity in respect of which the licence relates is carried out;

(c) requiring the use, and specifying the design, construction, operation and maintenance, of any equipment in carrying out the activity in respect of which the licence relates;

(d) specifying any separation and/or treatment processes to which waste is to be subjected prior to its carriage, disposal, handling or any other activity; and

(e) requiring monitoring and reporting by the licence holder of the licenced activities.

(6) Every waste management licence authorising the licence holder to store or dispose of waste at a waste site shall be subject to and shall require the holder of that licence to comply with any conditions contained in the waste site licence issued in respect of that site.
(7) The Executive Director may not issue any licence or prescribe any conditions that will allow a licence holder to contravene the minimum standards prescribed by this Act.

Fees and charges

64. Applications for waste management licences and waste site licences shall be subject to a prescribed charging scheme in accordance with Part 12.

Power to vary, transfer, renew, suspend or revoke a waste management licence or a waste site licence

65. Waste management licences and waste site licences may be varied, transferred or renewed on the application of the licence holder and may be varied, suspended or revoked by the competent licensing authority, in accordance with section 84.

Surrender of waste site licences

66. (1) The holder of a waste site licence may not surrender the licence unless the competent licensing authority accepts the surrender of the licence in accordance with this section.

(2) An application for the surrender of a waste site licence shall be made in writing to the competent licensing authority in accordance with the provisions of Part 9.

(3) Upon receipt of an application for the surrender of a waste site licence the competent licensing authority shall inspect the waste site to which the licence relates and:

(a) if the competent licensing authority is satisfied that there is no significant risk of harm to human health or the environment being caused directly or indirectly by the waste disposed of at the waste site, it shall accept the surrender of the licence;

(b) if the competent licensing authority is not satisfied under paragraph (a), it shall refuse to accept the surrender of the licence, and shall notify the applicant of the measures that the authority requires the applicant to take to enable the authority to accept the surrender of the licence, which must be designed to remove the risk of harm and may include the preparation and implementation of a waste site closure remediation plan.

(4) If the holder of the waste site licence fails to take the measures referred to in sub-section (3)(b), the competent licensing authority may take the measures and recover the reasonable costs incurred in doing so from the licence holder.
(5) Where the surrender of a waste site licence is accepted under subsection (3), the competent licensing authority shall issue to the applicant a certificate of completion stating that it is satisfied in respect of the measures stated in sub-section (3)(a) and, on the issue of the certificate, the licence shall cease to have effect.

Register of waste management licences and waste site licences

67. (1) Every competent licensing authority shall maintain a register of waste management licences and waste site licences in accordance with the provisions of Part 9.

(2) Every competent licensing authority that is a local authority council shall periodically forward details of the contents of its register to the Agency in a manner to be prescribed by regulations.

Duties of local authorities

68. Within its area of jurisdiction every local authority council shall:

(a) take all practical measures to promote and support the minimisation of waste and the recovery of waste, particularly at the point at which it is produced;

(b) provide litter receptacles in public places;

(c) collect and dispose of, or arrange for the collection and disposal of, all household waste in accordance with this Act;

(d) prepare and submit to the Agency a local waste management plan in accordance with the requirements of section 56;

(e) report annually to the Agency on the nature and quantity of each type of waste generated and disposed of within its area of jurisdiction and on the implementation of its local waste management plan; and

(f) carry out such other waste management functions as are assigned or delegated to it by this Act or regulations.

Litter offence

69. A person who disposes of waste in such a manner that it becomes litter or is likely to become litter commits an offence and shall be liable on conviction to a fine not exceeding N$ 5 000.00 or to imprisonment for a period not exceeding six months or to both.
Import and export of waste

70. (1) No person shall import hazardous waste into Namibia.

(2) Subject to sub-section (4), no person shall import non-hazardous waste into Namibia for final disposal or long-term storage at a waste site.

(3) Subject to subsection (4), no person shall import non-hazardous waste into Namibia for recycling or for use as a raw material except pursuant to a waste import licence issued under this section.

(4) Sub-sections (2) and (3) do not apply to waste generated in the ordinary course of operations of a ship or aircraft in the course of travelling to Namibia from outside Namibia.

(5) For the purposes of subsection (2) the incineration of waste shall be deemed to be a final disposal of that waste even if it leads to the generation of heat or power and such waste shall not be classified as a raw material for the purpose of subsection (3).

(6) No person shall export any waste from Namibia except under and in accordance with a waste export licence issued under this section.

(7) An application for a waste import licence or a waste export licence shall be made to the Executive Director of the Agency in accordance with the provisions of Part 9 and shall be accompanied by an environmental assessment report prepared pursuant to the Environmental Management Act.

(8) In determining every application for a waste import or waste export licence the Executive Director shall:

(a) have regard to Namibia’s obligations under international law;

(b) have regard to the contents of the environmental assessment report submitted in respect of the application and the recommendations of the Sustainable Development Commission; and

(c) in the case of an waste import licence, have regard to the need to balance the short term economic benefits to the importer against the economic and environmental costs to Namibia of subsequently disposing of the waste.

(9) A waste import licence or a waste export licence shall be valid for a period of up to one year and shall be subject to:

(a) any general conditions prescribed in regulations; and
(10) Without limiting the generality of subsection (9), waste import licences and waste export licences shall be subject to conditions:

(a) specifying the type or types of waste to which the licence relates;

(b) specifying standards relating to the packaging and labelling of the waste and the documents which are to accompany consignments of the waste in transit; and

(c) requiring monitoring and reporting of the movement of consignments of the waste.

(11) The Minister shall, following consultations with the Sustainable Development Commission and with the Agency, make regulations concerning the import and export of waste.

(12) A person who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding N$ 200 000,00 or to a period of imprisonment not exceeding twenty years or to both.

**Waste Site Restoration Orders**

71. (1) Where it appears to the Agency that any waste has been deposited in breach of this Act or in breach of a condition of a waste management licence or a waste site licence, the Agency may serve a waste site restoration order on a person referred to in sub-section (2) requiring that person, within a specified time, to remove the waste and to restore the site to a condition satisfactory to the Agency, and to take any other measures stipulated in the order that the Agency considers appropriate to remedy or mitigate any pollution, or reduce the risk of pollution, caused by the presence of the waste.

(2) A waste site restoration order under sub-section (1) may be served on:

(a) any person who the Agency has reason to believe deposited the waste; and/or

(b) any person who the Agency has reason to believe caused or permitted the waste to be deposited.

(3) Where a person fails to comply with a waste site restoration order within the time specified in the order, the Agency may carry out any works or operations specified in the order that have not been carried out, and shall be entitled to recover the costs reasonably incurred by it in doing so from the person or persons on whom the order was served.
(4) No costs shall be recoverable from a person under sub-section (3) for any works or operations in respect of any deposit of waste that was made, caused or permitted by that person under and in accordance with a waste management licence or a waste site licence issued under section 62.

(5) Where the Agency is entitled to recover costs pursuant to this section, it shall do so in accordance with the procedures set out in section 94.

(6) A person who fails to comply with a waste site restoration order served pursuant to this section commits an offence and shall be liable on conviction to a fine not exceeding N$ 200 000,00 or to a period of imprisonment not exceeding twenty years or to both.

**Transitional provisions: waste**

72. (1) For the purpose of this section:

(a) “waste management” means the collection, transport, storage, treatment, recovery or disposal of waste; and

(b) a “relevant person” means any person who upon the entry into force of this Act:

(i) undertakes waste management; and/or

(ii) owns a waste site.

(2) Within six months of the entry into force of this Act, every relevant person shall notify the Agency in writing of their name and address, and shall provide a brief written description of the waste management activities which they undertake and/or the waste site which they own.

(3) A relevant person who has given notice in accordance with subsection (2) shall not be liable to prosecution under this Act for any activity which would otherwise be unlawful, provided they apply for any waste management licence or waste site licence required under this Act within a period of one year from the date on which they gave notice in accordance with subsection (2).

(4) In the event that an application made by a relevant person for a waste management licence or a waste site licence is unsuccessful, such a person shall not be liable to prosecution under this Act in respect of activities undertaken between the date of the application and the determination of that application provided they cease the activity which is the subject of the application within six months of the date of the determination of the application.
PART 7

HAZARDOUS SUBSTANCES

Regulations

73. (1) The Minister may, on the recommendation of the Agency and after consultation with the Minister responsible for health and social services, make regulations establishing standards or any other requirements in relation to hazardous substances.

(2) Without limiting the generality of sub-section (1), regulations made under this section may:

(a) define and classify hazardous substances;

(b) regulate the storage, labelling and transport of hazardous substances and products containing hazardous substances;

(c) regulate or restrict the import of hazardous substances or products containing hazardous substances;

(d) regulate or restrict the disposal of hazardous substances and products containing hazardous substances;

(e) establish a licensing system for hazardous substances which may require any person engaged in the import, export, storage, transport or use of specified hazardous substances or products containing hazardous substances to hold a licence; and

(f) regulate any other activities relating to the handling or use of hazardous substances and products containing hazardous substances as may be necessary to prevent pollution of the environment or harm to human health.

Power to require the provision of information concerning hazardous substances

74. (1) Any person who sells, stores, transports or uses any hazardous substances or products containing hazardous substances shall notify the competent authority, in accordance with sub-section (2), of the presence and quantity of those substances.

(2) Where hazardous substances or products containing hazardous substances are sold, stored, transported or used within the area of jurisdiction of a local authority council, that local authority council shall be the competent authority for the purposes of sub-section (1), and in any other case the Agency shall be the competent authority for the purposes of that sub-section.
(3) Sub-section (1) shall not apply to domestic products containing hazardous substances that are used for ordinary domestic purposes within the boundaries of a dwelling house.

Register of hazardous substances

75. (1) The competent authority for the purposes of section 74 shall maintain a register of substances notified in accordance with that section and the register shall be maintained in accordance with the provisions of Part 10.

(2) Every competent authority which is a local authority council shall periodically forward details of the register required under subsection (1) to the Agency.

(3) The Agency shall prepare brief descriptions of hazardous substances, including information on their characteristics and effects, listed in registers required under subsection (1) which shall be made available to members of the public on request and free of charge.

PART 8

ACCIDENT PREVENTION POLICIES AND EMERGENCY RESPONSE PLANS

National Emergency Response Plan

76. The Minister shall, after consultation with other relevant Ministries and with the Agency, develop, publish and periodically review a National Emergency Response Plan establishing measures to be taken and procedures to be followed in the event of a major pollution incident in Namibia, whether on land or at sea.

Accident Prevention Policies and Emergency Response Plans

77. (1) The Minister may by regulations require any person in possession of specified hazardous substances or products containing hazardous substances, or any person carrying on a specified activity involving a significant risk of harm to human health or the environment, to take measures to limit the risk of accidents occurring as a result of those substances or activities.

(2) Without limiting the generality of sub-section (1), regulations made under this section may require any person having control over the specified substances or activities:

(a) to develop, and periodically review, an accident prevention policy and an emergency response plan, with the objectives of preventing accidents occurring and of limiting the consequences of any accidents that do occur;
(b) to lodge copies of the accident prevention policy and emergency response plan with the Agency;

c) to ensure that copies of the accident prevention policy and emergency response plan are open to inspection by members of the public free of charge during normal working hours and that members of the public are afforded reasonable facilities for obtaining, on payment of reasonable charges, copies of the policy and plan;

d) to provide the Agency with such additional information regarding the measures they have taken to prevent accidents and to limit their consequences, as the Agency may reasonably require; and

e) following an accident involving specified substances or activities, to take measures to limit the consequences of the accident, to remedy any harmful effects of the accident on human health and the environment, and to provide information to the Agency on the details of the accident and the measures taken.

(3) The provisions of section 88 relating to exclusion of information from registers shall apply, with the appropriate amendments, to the provisions of this section on access of the public to accident prevention policies and emergency response plans.

PART 9

COMMON LICENSING PROVISIONS

Licence applications

78. (1) In this Part, “application” means an application for the issue, variation, renewal, transfer or surrender of a licence required under this Act.

(2) An application shall be made in writing to the competent licensing authority.

(3) An application shall be accompanied by:

(a) details of the applicant and of the activity to which the application relates, including the nature and location of the activity and its actual and potential effects on the environment;

(b) any additional information prescribed in regulations;

(c) any additional information reasonably required by the competent licensing authority to make a determination;
(d) the appropriate fees payable in accordance with the relevant charging scheme, if any; and

(e) documentary evidence that the necessary steps have been taken to publicise the application in accordance with section 79.

Public participation in application procedures

79. (1) Members of the public shall be given sufficient opportunity to comment on licence applications and to participate in the decision-making process, and the Minister shall make regulations concerning the publication of applications and the participation of the public in application procedures.

(2) Without limiting the generality of sub-section (1), regulations made under that sub-section may provide for:

(a) the advertisement of the application in a national newspaper;

(b) the broadcast of the application on national and local radio stations;

(c) the display of notices of the application at the site of the proposed activity and in prominent places in the area concerned;

(d) the calling of public meetings;

(e) the distribution of written notices of the application to persons owning or occupying land in the vicinity of the activity to which the application relates; and

(f) the request for written submissions on the application from members of the public.

(3) Irrespective of the contents of any regulations made pursuant to sub-section (2) any member of the public shall have the right to make written submissions to the competent licensing authority in respect of any application.

Consultation with relevant Ministries

80. After consultation with the relevant Ministries, the Minister shall make regulations determining the time-table and procedures to be followed in respect of the consultation process envisaged in sections 36 and 45, which shall include provisions on:

(a) the method of communication between the Agency and the relevant Ministry;
the exchange of further information between the Agency and the relevant Ministry; and

(c) the communication of the comments and recommendations of the relevant Ministry.

Requests for additional information

81. (1) The competent licensing authority may request such additional information as it reasonably requires for the determination of an application, from the person making the application.

(2) If an applicant fails to provide the additional information requested within a reasonable period specified in writing by the competent licensing authority, the competent licensing authority may deem the application to be withdrawn.

Determination of applications

82. (1) In determining each application, the competent licensing authority shall:

(a) have regard to the principal objective of the Agency set out in section 3(1) and the duties of the Agency set out in section 3(2);

(b) act in accordance with the duties set out in section 3(3);

(c) have regard to the comments of any person required to be consulted pursuant to this Act or any regulations;

(d) have regard to any guidance issued by the Minister in respect of the activity to which the application relates;

(e) have regard to the outcome of any public consultation process undertaken, and any objections, written submissions and comments received, in accordance with this Act; and

(f) have regard to any environmental assessment report submitted in respect of the application and the recommendations of the Sustainable Development Commission.

(2) The competent licensing authority shall ensure that a licence is only granted if, and subject to the conditions necessary to ensure that, the activity to which the application relates can be carried out in compliance with the relevant standards prescribed in this Act and in regulations.

(3) As soon as reasonably practicable after the determination of any application, the competent licensing authority shall notify the applicant in writing of the
decision and the reasons on which it is based and shall also cause the decision and the reasons to be made available to the public.

(4) Every licence granted pursuant to this Act shall contain:

(a) a description of the activity or activities authorised by the licence including the nature and location of the activity, and details of the discharges authorised by the licence;

(b) details of the licence holder;

(c) the conditions attached to the licence; and

(d) any other information prescribed in regulations.

(5) If a competent licensing authority has not determined an application within four months from the date on which the application was made, that application shall be deemed to have been refused.

Transfer and surrender of licences

83. (1) A licence granted pursuant to this Act is personal to the person to whom it was granted and it may only be transferred with the consent of the competent licensing authority that issued it, in accordance with section 84.

(2) Subject to section 66 in relation to waste site licences, licences issued pursuant to this Act may be surrendered if the licence holder is no longer carrying out the activity to which the licence relates.

(3) The Minister may make regulations concerning the procedures to be followed in connection with the surrender of licences.

Power to vary, transfer, renew, suspend and revoke licences

84. (1) The competent licensing authority may, on the application of the licence holder, vary, transfer or renew a licence issued under this Act, on such conditions as the authority considers necessary to prevent or mitigate harm to the environment or human health.

(2) The competent authority may, in accordance with the powers set out in Part 11, vary, suspend or revoke a licence issued under this Act at any time if:

(a) the licence holder has failed to comply with a condition of the licence; or

(b) the licence holder is convicted of an offence under this Act or any regulations.
(3) The competent licensing authority may, by notice in writing to the
licence holder, vary the conditions of a licence issued under this Act at any time if it
appears to the authority that this is necessary to better prevent or mitigate harm to the
environment or human health.

(4) The Minister may make regulations to vary general conditions contained
in licences issued under this Act.

Licensing appeals

85. A person may appeal against a decision of a competent licensing
authority in accordance with the provisions of section 114 where that person:

(a) has made an application which has been refused;
(b) has been granted a licence which is subject to conditions that
the person considers to be unreasonable;
(c) holds a licence which has been varied, suspended or revoked by
the competent licensing authority; or
(d) has submitted written objections to a successful application in
accordance with section 79.

PART 10

REGISTERS

Duty to maintain registers

86. (1) Every competent licensing authority shall maintain a register
containing:

(a) details of all licences issued by it pursuant to this Act;
(b) details of all applications made to it in respect of the grant of
any new licences, or the variation or modification of licences;
(c) details of any monitoring information required to be filed with
the Agency by the licence holder in accordance with the
conditions of any licence; and
(d) details of any enforcement action taken by the competent
authority in respect of the licence.

(2) Every competent authority which is a local authority council shall
periodically forward details of the register required under subsection (1) to the Agency.

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Public access to registers

87. (1) Every competent licensing authority shall ensure that any registers established and maintained in accordance with sections 75 and 86 are open to inspection by members of the public free of charge during normal working hours and shall provide facilities to enable members of the public to obtain, on payment of reasonable charges, copies of entries in the register.

(2) Subsection (1) shall also apply to the register of competent licensing authorities required to be kept by the Agency pursuant to section 4 of this Act in so far as the right of public access is concerned.

Exclusion of information from the registers

88. (1) No information may be included in a register required to be maintained under this Part if, and so long as, in the opinion of the Minister, the inclusion of such information would be contrary to national security.

(2) A person may apply to the Executive Director of the Agency for a ruling that information concerning a licence or licence application that would otherwise be included in a register be excluded on the grounds that:

(a) the information is commercially confidential; and

(b) the availability of such information on the register would cause that person economic harm or loss.

(3) Before excluding information from a register pursuant to sub-section (2) the Executive Director shall require the production of evidence of the harm or economic loss which the applicant claims would otherwise be caused.

(4) In reaching a determination as to whether or not to exclude information from a register, the Executive Director shall have regard to the need to balance the public interest in promoting access to environmental information against the interests of the applicant.

PART II

ENFORCEMENT POWERS

Inspectors

89. (1) The Executive Director may designate in writing any employee of the Agency, or any official of a local authority council or of any government department, to be an inspector for the purposes of this Act.
(2) Inspectors may be appointed either by name or ex officio, but no such appointment may be made unless the person is suitably qualified for the role of inspector.

Powers of inspectors

90. (1) An inspector may, for the purposes of this Act, without a warrant or court order, at any reasonable time and with any reasonable assistance:

(a) enter into or upon any building, vehicle, land or other place, other than a place actually used solely as a dwelling;

(b) stop any vehicle that the officer reasonably believes:

   (i) is being operated in contravention of this Act;

   (ii) is discharging or has discharged a pollutant in contravention of this Act; or

   (iii) is licensed or is required to be licensed under this Act;

(c) take samples;

(d) take photographs and videos;

(e) require any person to give their name, address and identification and to provide information which is reasonably necessary for the inspector to determine whether or not an offence has been committed under this Act;

(f) record or copy any information by any method;

(g) require the production of any document, record or other thing that is required to be kept under this Act or regulations, and any other document or record that is related to the purposes of the inspection, including information that is recorded in computerised form;

(h) inspect, seize and take copies of any documents that may constitute evidence of the commission of an offence under this Act;

(i) make reasonable inquiries of any person, orally or in writing;

(j) seize any vehicle or equipment that the inspector has reasonable grounds to believe has been used in the commission of an offence under this Act; and
(k) remove any waste or other substance or thing deposited or discharged in contravention of this Act.

(2) An inspector acting under sub-section (1) shall, at the request of the occupier of any building, vehicle, land or other place the inspector wishes to enter, show his or her identification card and a certificate of his or her appointment as an inspector and shall explain the purpose of the inspection.

(3) Where an inspector is taking action under sub-section (1) and has provided identification in accordance with sub-section (2), any person shall immediately comply with a reasonable request of the inspector to do anything that is necessary in order to enable the inspector to carry out that action.

(4) A person who hinders, obstructs or assaults an inspector in the course of carrying out his or her duties under this section commits an offence and shall be liable on conviction to a fine not exceeding N$ 5 000,00 or to a period of imprisonment not exceeding one year or to both.

Enforcement Notice

91. (1) If the competent licensing authority has reason to believe that any condition of a licence issued under this Act has been breached, the authority may serve an enforcement notice on the licence holder requiring that person to remedy the breach within a reasonable period stipulated in the notice.

(2) The enforcement notice may:

(a) suspend the licence with immediate effect if the authority considers that this is necessary to prevent or mitigate an imminent risk of significant harm to the environment or to human health occurring; and

(b) require the licence holder to take specified measures to prevent or abate any harm to the environment or human health.

(3) If the licence holder fails to comply with the enforcement notice the competent licensing authority may:

(a) take the necessary steps to remedy the breach and recover the cost from the licence holder in accordance with section 94;

(b) vary the conditions of the licence; and/or

(c) revoke the licence.

(4) Any person on whom an enforcement notice is served shall immediately comply with the notice and any person who fails to do so commits an offence and shall
be liable on conviction to a fine not exceeding N$ 100 000,00 or to a period of imprisonment not exceeding ten years or to both.

**Protection Order**

92. (1) If the Agency has reasonable grounds to believe that an activity is resulting in or is likely to result in pollution, the Agency may serve a protection order on:

(a) the owner, manager or person in control of the premises, vehicle 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 take any measures that will assist in avoiding, remedying or mitigating the pollution and without limiting the generality of the foregoing, to take any measures:

(a) to stop the activity that is resulting or is likely to result in pollution;

(b) to control the activity;

(c) to assess the actual or anticipated extent of the pollution;

(d) to remedy any pollution caused by the activity; and/or

(e) to prevent a recurrence of the activity or the pollution.

(3) Any person on whom a protection order is served shall immediately comply with the order and any person who fails to do so commits an offence and shall be liable on conviction to a fine not exceeding N$ 100 000,00 or to a period of imprisonment not exceeding ten years or to both.

**Emergency Protection Order**

93. (1) Any inspector who observes the discharge of a pollutant into the environment in an amount, concentration or manner that constitutes a significant risk to human health or the environment, may serve an emergency protection order on:

(a) the owner, manager or person in control of the premises, vehicle 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 or equipment from which the discharge was made; and/or

(c) any person who caused or permitted the discharge.
(2) An emergency protection order may require the person on whom it is served to take any measures that will assist in reducing or eliminating the risk of harm and, without limiting the generality of the foregoing, to take any measures:

(a) to immediately stop the discharge;
(b) to immediately stop the activity or process that is creating the significant risk to human health or the environment;
(c) to control the discharge;
(d) to assess the actual or anticipated extent of the effect of the discharge on human health and the environment;
(e) to clean up or remove the pollutant or other substance from any place; and/or
(f) to prevent a recurrence of the discharge.

(3) Any person on whom an emergency protection order is served shall immediately comply with the order and any person who fails to do so commits an offence and shall be liable on conviction to a fine not exceeding N$ 100 000,00 or to a period of imprisonment not exceeding ten years or to both.

Cost Orders

94. (1) If any person fails to comply with a requirement to take measures specified in an order, notice or licence issued under this Act, the Executive Director may cause the required measures to be taken and may issue a cost order requiring that person to reimburse the Agency, or the other competent licensing authority as the case may be, for the reasonable cost of taking the measures.

(2) A cost order may be enforced as if it were an order of court, save that any person served with such a cost order shall be entitled, within ten days of receipt thereof, to make written representations to the Executive Director as to why the cost order should not be enforced.

(3) No costs shall be recoverable from a person under this section for any measures in respect of a discharge, or the prevention of a discharge, where the discharge was made, or would have been made, by that person under and in accordance with a licence issued under this Act.

Water Protection Works and Waste Site Restoration Orders

95. The provisions of this Part do not derogate from the powers of the Agency under section 40 in respect of water protection works and the powers of the Agency under section 71 in respect of waste site restoration orders.
Administrative penalties

96. (1) If the Minister considers that an offence under this Act could appropriately be dealt with by way of administrative penalty, the Minister may by regulation specify that offence to be a prescribed offence for the purposes of this section and shall specify the penalty payable under this section in respect of that offence.

(2) For the purposes of this section a prescribed offence means an offence which has been prescribed in regulations made by the Minister under sub-section (1) as an offence in respect of which an administrative penalty notice may be served.

(3) An inspector who has reasonable grounds to believe that a person has committed a prescribed offence under this Act may serve an administrative penalty notice on that person.

(4) An administrative penalty notice served under sub-section (3) shall:

(a) specify the date and nature of the alleged offence;

(b) contain a summary of the facts on which the allegation is based in sufficient detail for the person on whom the notice has been served to reasonably be able to understand the nature of the allegation;

(c) specify the amount of the administrative penalty payable in respect of the alleged offence, which shall be the amount prescribed in regulations made under sub-section (1);

(d) specify the maximum penalty to which the person on whom the notice has been served would be liable if convicted of the alleged offence by a court and any other matters which the inspector considers relevant to the imposition of a penalty;

(e) set out the provisions of this section; and

(f) give details, including the address of the court to which payment is to be made in accordance with subsection (5).

(5) A person on whom an administrative penalty notice has been served shall within 28 days of receiving the administrative penalty notice, either:

(a) deny the offence by notice in writing to the Executive Director, attaching a copy of the administrative penalty notice; or

(b) admit the offence by notice in writing to the Executive Director and:

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(i) pay the administrative penalty into court in accordance with the notice; and

(ii) send proof of payment under sub-paragraph (i) above to the Executive Director within 28 days of payment.

(6) A person on whom an administrative penalty notice has been served shall be liable, in the discretion of the prosecuting authorities, to prosecution in respect of the alleged offence and to punishment by the court up to the maximum penalty applicable to that offence, if they have:

(a) denied having committed an offence as described in the notice;
(b) admitted the offence but failed to pay the administrative penalty into court in accordance with sub-section (5)(b); or
(c) failed to respond to the administrative penalty notice in accordance with sub-section (5).

(7) If an administrative penalty is paid into court in accordance with sub-section (5), the bringing of proceedings and the imposition of penalties are prevented to the same extent as they would be if the person on whom the administrative penalty notice was served had been convicted by a court of, and punished for, the alleged offence.

PART 12

CHARGING SCHEMES

Nature of charging schemes

97. On the recommendation of the Agency and with the concurrence of the Minister responsible for finance, the Minister may by regulation establish charging schemes in respect of:

(a) any applications pursuant to this Act relating to licences issued by the Agency and any competent licensing authority, referred to in this Part as a “licensing charging scheme”;

(b) other activities of the Agency performed pursuant to this Act, referred to in this Part as a “general charging scheme”.

Licensing charging schemes

98. (1) In respect of applications made pursuant to this Act, a charging scheme may provide that charges are payable to the competent licensing authority in respect of:
(a) applications for the issue, variation, renewal, transfer or surrender of a licence;

(b) the issue, variation, renewal, transfer or surrender of a licence;

(c) the engagement by the competent licensing authority of external expertise where reasonably necessary to evaluate an application under sub-section (a);

(d) the subsistence of a licence; and

(e) inspections carried out in order to ensure compliance with licence conditions.

(2) A charging scheme may, for the purposes of subsection (1)(b) impose:

(a) a single charge for the whole period;

(b) separate charges in respect of different parts of any such period; or

(c) both a single and separate charges.

(3) A charging scheme may provide for different charges to be payable according to:

(a) the type of licence in question;

(b) the description of the authorised activity in question;

(c) the scale on which the authorised activity is carried out;

(d) the type of substances used in the course of the activity;

(e) the quantities of specified substances used in the course of the activity;

(f) the type and/or quantity of pollutants or waste which are generated in the course of the activity;

(g) the number of different authorised activities carried on by the same person.

(4) A charging scheme shall specify:

(a) in relation to any charge prescribed by the scheme, who is liable to pay the charge; and
(b) the time and manner in which the charges prescribed by the scheme are to be paid.

**General charging schemes**

99. A charging scheme established in respect of other activities undertaken by the Agency may:

(a) make provision for different charges to be payable by different persons or categories of person in respect of the same activity; and

(b) allow for charges to be levied for inspections carried out other than under section 98(1)(e).

**Common provisions on charging schemes**

100. The Minister may on the recommendation of the Agency and with the concurrence of the Minister responsible for finance by regulation:

(a) revoke, vary or amend any previous charging scheme; and

(b) establish transitional or consequential provisions for the purposes of any charging scheme.

**Establishment of charging schemes**

101. In determining the proposed level of charges in respect of licensing charging schemes, both the Agency and the Minister shall:

(a) seek to ensure that the fees payable are set at a level that is sufficient to recover the administrative costs of the competent licensing authority in undertaking the activity to which the charge relates; and

(b) have regard to the principles contained in section 7 of the Environmental Management Act and in particular the desirability of setting charges at levels which may have the effect of reducing levels of waste generation or the discharge of pollutants.

**Approval of charging schemes**

102. (1) Before recommending a charging scheme to the Minister, the Agency shall:

(a) submit a draft copy of the proposed charging scheme to the Sustainable Development Commission for its comments; and
(b) publish a notice in such a manner as it considers appropriate for bringing it to the attention of persons likely to be affected by the scheme:

(i) setting out its proposals; and

(ii) specifying the period within which representations or objections may be made to the Agency.

(2) The Agency shall submit its recommendations concerning a new or revised charging scheme to the Minister together with the comments from the Sustainable Development Commission and representations made in response to a notice under sub-section (1)(b).

(3) In making regulations to establish a charging scheme recommended by the Agency, the Minister shall have regard to any comments received from the Sustainable Development Commission and any representations made under sub-section (1)(b)(i).
PART 13
GENERAL PROVISIONS

Offence of falsifying information

103. Any person who falsifies any information required to be given pursuant to this Act commits an offence and shall be liable on conviction to a fine not exceeding N$ 100 000,00 or to a period of imprisonment not exceeding ten years or to both.

Contravention of this Act

104. Any person who contravenes any section of this Act for which a penalty is not specified shall be liable on conviction to a fine not exceeding N$ 100 000,00 or to a period of imprisonment not exceeding ten years or to both.

Offences by bodies corporate

105. Where an offence under any provision of this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director or manager of the body corporate, or any other person in control of the polluting activity, such a person as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Deprivation of monetary benefits

106. Any court that convicts a person of an offence under this Act shall summarily and without pleadings inquire into the monetary benefit acquired or saved by the person as a result of the commission of the offence, and may, in addition to any other penalty imposed, impose a fine in an amount equal to the court’s estimation of that monetary benefit, despite any maximum penalty elsewhere provided.

Continuing offences

107. Any person who has been convicted of an offence under this Act, and who after such conviction persists in the course of conduct which constituted the offence, shall be guilty of a continuing offence and liable on conviction to a fine not exceeding N$ 1 000,00 or to imprisonment for a period not exceeding twenty days or to both in respect of every day for which he or she has so persisted.

Presumptions

108. For the purposes of this Act, pollution of the environment is deemed to have been caused by an act or omission if it is possible that the pollution could have resulted from the act or omission, if it was reasonably foreseeable that the pollution could
have resulted from the act or omission, and if there was no other plausible cause for the pollution.

**Documentary evidence**

109. In any proceedings under this Act, an official document that purports to be signed by the Minister, the Executive Director or an inspector shall be received in evidence as proof, in the absence of evidence to the contrary, of the facts stated in the document without proof of the signature or position of the person appearing to have signed the document.

**Defences**

110. Except as otherwise specified in this Act, in any prosecution under this Act it is a defence for the person charged to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

**Prosecutions initiated by the public**

111. (1) Any person may make a written request to the Executive Director to investigate an alleged offence under this Act.

(2) A request made under subsection (1) shall set out the reasons why it has been made including a description of the facts which are alleged to constitute an offence and the section or sections of this Act which are alleged to have been violated.

(3) The Executive Director shall consider a request made under subsection (1) and shall with six weeks notify the requesting person as to whether or not he intends to commence an investigation of the alleged offence.

(4) The requesting person may lay a charge and initiate and conduct a prosecution in respect of the alleged offence if:

(a) the Executive Director fails to respond to the written request within the period specified in subsection (3);

(b) the Executive Director indicates that he does not intend to commence an investigation; or

(c) the Executive Director does not commence an investigation within eight weeks of the request made under subsection (1).

(5) A person laying a charge under subsection (4) shall notify the Executive Director prior to laying the charge and shall not be required to provide security for such action.
(6) In the event that a prosecution brought under subsection (4) is not successful, no order for costs shall be made against the prosecutor unless the court finds that:

(a) the primary motivation for the prosecution was not a concern for the public interest or the protection of the environment; or

(b) the prosecution was manifestly unfounded, trivial or vexatious.

Payment of fines

112. Notwithstanding the provisions of any other Act, any fine paid pursuant to a conviction for an offence under this Act shall be divided into equal parts with one part being paid to the Agency and the other part to the treasury.

Appeals

113. (1) A person may appeal against a decision of a local authority council or the Agency in respect of:

(c) the issue of any notice or order on that person under this Act; or

(d) the determination of an application for the issue, variation, renewal, transfer or surrender of a licence under this Act.

(2) An appeal against a decision of a local authority council shall be made to the Management Board.

(3) An appeal against a decision of the Executive Director shall be made to the Minister.

(4) The Minister shall make regulations concerning appeals under this section and in particular:

(a) the period within which and the manner in which appeals are to be brought; and

(b) the manner in which appeals are to be conducted.

(5) Where an appeal is successful the person or body that heard the appeal shall at the same time, as appropriate:

(a) cancel the decision and revoke the notice or order to which the appeal relates; or
(b) re-determine the application after which it shall be the duty of the competent licensing authority which originally determined the application to give effect to the new determination.

(6) The Minister or the Management Board may dismiss an application for an appeal to him or it if after considering the application the Minister or the Management Board considers it to be trivial, frivolous or manifestly without merit.

(7) The Minister or the Management Board shall notify the applicant in writing of the reasons for dismissing an application for an appeal pursuant to sub-section (6) and the applicant may appeal against the decision to any competent court.

Regulations

114. (1) The Minister may make regulations on the recommendation of the Agency to better administer this Act and to facilitate the achievement of the purposes of this Act and the objectives of the Agency.

(2) Without limiting the generality of sub-section (1), the Minister may make regulations:

(a) in respect of matters which are incidental or supplementary to any matter in respect of which the Minister is expressly authorised to make regulations under this Act;

(b) prescribing offences against regulations made under this Act and prescribing fines not exceeding N$ 100 000,00 and/or imprisonment for a period not exceeding five years in respect of any one offence;

(c) prescribing the forms of applications, licences, approvals, consents, registers, notices, orders and other documents required for the purposes of this Act, and authorising the Executive Director to prescribe such forms;

(d) prescribing requirements as to information to be given in or in connection with applications and other documents delivered or made for the purposes of this Act, and the evidence to be supplied in support;

(e) containing transitional provisions following the entry into force of this Act;

(f) providing the procedures 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
prescribing the procedures to be followed for appeals under this Act, and the making, consideration, hearing and determination of appeals.

Codes of Practice

115. (1) The Minister may, on the advice of the Agency and after consulting relevant parties, issue codes of practice for the purposes of this Act and may amend or revoke them in the same manner.

(2) A code issued under this section may incorporate by reference any other relevant document, either as it is in force at the time the code is issued or as it may be subsequently amended.

(3) A failure on the part of any person to follow any guidance contained in a code issued under this section shall not of itself render that person liable to proceedings of any kind.

(4) If it is alleged in a proceeding that a person has contravened a provision of this Act in relation to which a code of practice was in effect at the time of the alleged contravention, the code of practice is admissible in evidence in that proceeding and proof that the person complied with the relevant provision of the code may be relied on by the defence as tending to establish the person’s innocence and conversely, proof that the person failed to comply with the relevant provision of the code may be relied on by the prosecution as tending to establish the person’s guilt.

(5) The Minister shall cause any code issued or revised under this section to be published and made available for sale at a reasonable cost to the public.

International Obligations

116. (1) After signing an international agreement designed to control pollution of the environment or regulate the management of waste, the Minister shall as soon as practicable:

(a) cause the agreement to be ratified;

(b) present any necessary bills to Parliament for passage and assent to be made into law; and

(c) take appropriate measures to give effect to the agreement, including making regulations.

(2) A court of competent jurisdiction may use any international agreement designed to control pollution of the environment or regulate the management of waste, which has been ratified by Namibia, as an aid to interpreting any domestic legal rule of
Namibia that can reasonably be regarded as being intended to implement the requirements of that agreement.

(3) The Minister, on the recommendation of the Agency, may make regulations:

(a) to implement any international agreement designed to control pollution of the environment or regulate the management of waste that has been ratified by Namibia; and

(b) to bring the laws of Namibia into conformity with laws, standards, guidelines and practices applied internationally or in the region, provided that these regulations do not conflict with the purposes of this Act.

Application to the State

117. The State, including all Ministries, Regional and Local Authorities, Chiefs, Traditional Authorities and Communal Land Boards shall be subject to the provisions of this Act and any regulations made under it.

Repeal and amendment of laws

118. Subject to section 119, the laws referred to in Schedule 1 are repealed or amended as set out in that Schedule.

Transitional provisions and saving

119. (1) Notwithstanding section 118, regulations that are made and notices that are issued under the Acts referred to in Schedule 1 remain in force unless amended or revoked by another regulation or Act.

(2) Notwithstanding section 119, licences and permits issued under, and other rights, privileges, duties, obligations and liabilities acquired under the laws referred to in Schedule 1, remain in force unless specifically abrogated, rescinded, revoked, repealed, suspended or otherwise changed by any other law; but shall have no effect on the rights, privileges, duties, obligations and liabilities created in this Act, except as specified in this Act.

Short title and commencement

120. This Act may be cited as the Pollution Control and Waste Management Act and shall come into operation on [ ].
SCHEDULE 1
REPEALS AND AMENDMENTS

1. The Atmospheric Pollution Prevention Ordinance No 11 of 1976 is repealed in its entirety.

2. The Hazardous Substances Ordinance No 14 of 1974 is repealed in its entirety.

3. Section 21 of the Water Act No 54 of 1956 is repealed.