ENVIRONMENTAL MANAGEMENT ACT, 2000

Arrangement of Sections

PART I

PRELIMINARY

Section

1. Short title and alteration of the Constitution
2. Interpretation
3. Act binds the State
4. Objects of the Act
5. Policy direction from the Minister

PART II

ESTABLISHMENT AND ORGANISATION OF THE ENVIRONMENTAL MANAGEMENT AUTHORITY

6. Establishment, incorporation and constitution of the Authority
7. Seal of the Authority
8. Meetings
9. Delegation
10. Managing Director
11. Appointment of personnel
12. Limitation of personal liability
13. Committees, working groups and advisory councils
14. Annual report
15. Guidelines to be made by the Board

PART III

FUNCTIONS AND POWERS OF THE AUTHORITY

Functions

16. General functions of the Authority
17. Information
18. Development of National Environmental Policy
19. Development of Environmental Code

Powers

20. General powers of the Authority
21. Appointment of inspectors
22. Powers of entry and inspection
23. Obtaining information and samples
24. Use of Force
25. Emergency response activities

PART IV

RULES AND PUBLIC PARTICIPATION

26. Rules
27. Rulemaking process
28. Public comment procedure
29. Preservation of administrative record
30. Jurisdiction and standard for appeal

PART V

ENVIRONMENTAL MANAGEMENT

General

31. Compliance with National Environmental Policy
32. Arrangements with governmental entities
33. Environmental Officers
34. Environmental incentive programmes

Assessment of Environmental Impacts

35. Certificate of environmental clearance
36. Issue or refusal of Certificate
37. Monitoring
38. Relationship with other governmental entities
39. Exceptions
40. Appeals

Protection of Natural Resources

41. Designation of environmentally sensitive areas and species
42. Notice of proposed action
43. Control and management
44. Exception
45. Co-ordination
46. Appeals

Pollution and Hazardous Substances

47. Recordkeeping and monitoring requirements
48. General permit conditions

Air and Noise Pollution

49. Management of air and noise pollution
50. Air pollution permits
51. Prohibited air and noise pollution

Water Pollution

52. Management of water pollution
53. Water pollution permits
54. Prohibited water pollution

Wastes

55. Waste management
56. Identification of hazardous wastes
57. Waste permits and licences
58. Waste prohibitions

Hazardous Substances and Spills

59. Management of hazardous substances
60. Hazardous substance prohibitions
61. Notification of spills, releases and other incidents

PART VI

COMPLIANCE AND ENFORCEMENT

62. Environmental requirements
63. Notice of violation
64. Issue of Administrative Order
65. Administrative Orders
66. Administrative civil assessment
67. Application for enforcement
68. Other actions by the Authority
69. Direct private party actions
70. Criminal offence for knowing or reckless endangerment
71. Liability of private and public officials

PART VII

Environmental Trust Fund and Finances

72. Establishment and purposes of the Fund
73. Trustees for the Fund
74. Resources of the Fund
75. Investment of Fund monies
76. Exemption from taxes
77. Borrowing by the Fund
78. Use of Fund monies
79. Finances of the Authority
80. Financial accounting by the Trustees

PART VIII

Environmental Commission

81. Establishment and jurisdiction of Commission
82. Constitution of Commission
83. Salary, allowances, and conditions of service
84. Procedure and jurisdiction of Commission
85. Notices of appeal
86. Hearing and determination of appeals
87. Statement of case for opinion of Court of Appeal
88. Order for deferment
89. Direct private party action

PART IX

Miscellaneous

90. Regulations for the Commission
91. Service of documents on the Authority
92. Legal proceedings
93. Intervention by the Attorney General
94. Ethical standards and prohibitions
95. Conflict of interest
96. Regulations
97. Validation of acts or omissions
98. Repeal of Act No. 3 of 1995

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Fifth Session Fifth Parliament Republic of Trinidad and Tobago

REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 3 of 2000

[L.S.]

AN ACT to repeal and re-enact the Environmental Management Act, 1995 and to validate all acts and things done thereunder.

[Assented to 8th March, 2000]

WHEREAS, the Government of the Republic of Trinidad and Tobago (hereinafter called "the Government") is committed to developing a national strategy for sustainable development, being the balance of economic Preamble

growth with environmentally sound practices, in order to enhance the quality of life and meet the needs of present and future generations:

And whereas, management and conservation of the environment and the impact of environmental conditions on human health constitute a shared responsibility and benefit for everyone in the society requiring co-operation and co-ordination of public and private sector activities:

And whereas, while several public authorities and other institutions have been performing various environmental functions and services under existing laws, there is need for a co-ordinated approach to ensure the application of those laws is consistent with the Government's commitment:

And whereas, sustainable development should be encouraged through the use of economic and non-economic incentives, and polluters should be held responsible for the costs of their polluting activities:

And whereas, in furtherance of its commitment, the Government is undertaking the establishment and operation of an Environmental Management Authority to co-ordinate, facilitate and oversee execution of the national environmental strategy and programmes, to promote public awareness of environmental concerns, and to establish an effective regulatory regime which will protect, enhance and conserve the environment:

And whereas, for the purpose of supporting and strengthening the role of the said Authority, the Government is also undertaking the establishment of the Environmental Commission which would be endowed with the power to enforce the policies and programmes of the Authority:

And whereas, it is enacted by subsection (1) of section 54 of the Constitution that Parliament may alter any of the provisions thereof:

And whereas, it is provided by subsection (2) of the said section 54 that insofar as it alters certain provisions of the Constitution a Bill for an Act of Parliament under the said section 54 shall not be passed by Parliament unless at the final vote thereon in each House it is supported by the votes of not less than two-thirds of all the members of each House:

And whereas, it is intended by this Act to alter the Constitution.

ENACTED by the Parliament of Trinidad and Tobago as follows: Enactment

PART I

PRELIMINARY

1. (1) This Act may be cited as the Environmental Management Act, 2000. Short title and alteration of the Constitution

(2) This Act shall be construed as altering sections 104 to 107, 136 and 137 of the Constitution.

2. In this Act, unless the context otherwise requires— Interpretation

"air pollutant" means any pollutant released into or which otherwise has an impact on the atmosphere or climate;

"Authority" means the Environmental Management Authority established under section 6;

"Board" means the Board of Directors of the Environmental Management Authority appointed under section 6;

"Commission" means the Environmental Commission established under section 81;

"environment" means all land, area beneath the land surface, atmosphere, climate,

surface, surface water, groundwater, sea, marine and coastal areas, seabed, wetlands and natural resources within the jurisdiction of Trinidad and Tobago, and "environmental" shall have the corresponding meaning;

"Environmental Officer" means any person authorised under section 33;

"environmental requirement" means any of those provisions specifically identified under section 62;

"environmentally sensitive area" means a portion of the environment so designated under section 41;

"environmentally sensitive species" means any species of living plant or animal so designated under section 41;

"Fund" means the Environmental Trust Fund established under section 72;

"governmental entity" means any—

(a) department of government;

(b) statutory body; and

(c) other enterprise or institution which, in whole or in part, is publicly funded or owned by the government;

"handling" in relation to any hazardous substance or waste means the manufacture, import, export, processing, treatment, packaging, storage, transportation, use, collection, disposal, or other related activities;

"hazardous substance" means any substance which, by reason of its chemical or

physical properties, and based on technical, scientific and medical evidence is determined to cause through handling or from a release, harm to human health or the environment;

"inspector" means an individual appointed under section 21;

"Managing Director" means the Managing Director of the Authority appointed under section 6;

"natural resources" means the living plants, animals, organisms and other biological factors within the environment, and the geologic formations, mineral deposits, renewable and non-renewable assets, and the habitat of the living plants, animals, organisms and other biological factors;

"noise pollution" means any disturbance of the environment by a pollutant consisting of sound or other vibrations;

"person" includes any individual or any firm, business, company, enterprise, body corporate, trust, un-incorporated association, partnership, or governmental entity, however constituted;

"pollution" means the creation or existence of any deviation from natural conditions within the environment, which based on technical, scientific or medical evidence is determined to cause or to be likely to cause harm to human health or the environment, resulting from—

(a) the presence or release of any substance; or

(b) any other type of disturbance, whether by noise, energy,

radiation, temperature variation, vibration, or objectionable odors; and

"pollutant" shall have the corresponding meaning;

"premises" means any location within the environment, and any facility, building, process, equipment, development, or natural or man-made structure at such location, from or on which pollutants may be released or hazardous substances may be handled;

"process" means any activity associated with any premises or vehicle which is capable of releasing a pollutant or hazardous substance into the environment;

"programme" includes—

(a) the particular objective to be achieved by a course of action;

(b) the policies to be developed or implemented, and the procedures to be followed, in achieving that objective; and

(c) the allocation of resources and personnel directed towards giving effect to that course of action;

"release" includes any disposing, spilling, emitting, leaking, or other incidence of discharge into the environment of any hazardous substance or pollutant;

"rule" means a rule made in accordance with section 26 unless otherwise specified;

"vehicle" means any form of conveyance or transportation—

(a) from which pollutants may be released; or

(b) used for or in connection with the handling of any wastes or hazardous substances;

"waste" includes any material discarded or intended to be discarded which—

(a) constitutes garbage, refuse, sludge, or other solid, liquid, semisolid or gaseous material resulting from any residential, community, commercial, industrial, manufacturing, mining, petroleum or natural gas exploration, extraction or processing, agricultural, health care, or scientific research activities; or

(b) is otherwise identified by the Authority as a waste under section 55;

"water pollutant" means any pollutant released into or which otherwise has an impact on the surface water, sea, groundwater, wetlands, or marine areas within the environment.

Act binds the State

3. This Act binds the State.

Objects of the Act

4. The objects of this Act are to—

(a) promote and encourage among all persons a better understanding and appreciation of the environment;

(b) encourage the integration of environmental concerns into private and public decisions;

(c) ensure the establishment of an integrated environmental management system in which the Authority, in consultation with other persons, determines priorities and facilitates co-ordination among governmental entities to effectively harmonise activities designed to protect, enhance and conserve the environment;

(d) develop and effectively implement written laws, policies and other programmes for and in relation to—

(i) the conservation and wise use of the environment to provide adequately for meeting the needs of present and future generations and enhancing the quality of life;

(ii) the Government's commitment to achieve economic growth in accordance with sound environmental practices;

(iii) the Government's international obligations; and

(e) enhance the legal, regulatory and institutional framework for environmental management.

Policy direction from the Minister

5. The Minister may from time to time give the Authority directions of a special or general character in the exercise of the powers conferred and the duties imposed on the Authority by or under this Act.

PART II

ESTABLISHMENT AND ORGANISATION OF THE ENVIRONMENTAL MANAGEMENT AUTHORITY

Establishment, incorporation and constitution of the Authority

6. (1) There is hereby established a body corporate to be known as the Environmental Management Authority, which shall be governed by a Board of

Directors consisting of the persons appointed in accordance with this section.

(2) The President shall appoint—

(a) a Chairman;

(b) nine other members drawn from the following disciplines or groups, namely, environmental management, ecology, environmental health, engineering, labour, community-based organisations, business, economics, public administration, law and non-profit environmental non-governmental organisations.

(3) The Board shall appoint a Managing Director who shall be the Chief Executive Officer and an *ex officio* member.

(4) A member of the Board other than the *ex officio* member shall be appointed for a term not exceeding five years, and under such terms and conditions of service as the President may fix in the instrument of appointment.

(5) The Board shall select from among its members a Deputy Chairman.

(6) The Board shall appoint a corporate Secretary who shall be an employee of the Authority.

(7) The Chairman may resign from office by an instrument in writing addressed to the Minister, and any other member of the Board other than the *ex officio* member may resign from office by an instrument in writing addressed to the Chairman.

(8) The President may at any time revoke the appointment of a member of the Board other than the *ex officio* member.

(9) The names of members appointed to the Board shall be published in the *Gazette* and at least one daily newspaper of general circulation.

Seal of the Authority

7. (1) The Seal of the Authority shall be kept in the custody of the Chairman, the Deputy Chairman or the Secretary, as the Board may be determine, and may be affixed to instruments in the presence of the Chairman, or in the Chairman's absence of the Deputy Chairman, and of the Secretary.

(2) The Seal of the Authority shall be attested by the signature of the Chairman, or in the Chairman's absence the Deputy Chairman, and the Secretary.

(3) All documents other than those required by law to be made under seal may be made by, and all decisions of the Board, may be signified under the hand of the Chairman or in the Chairman's absence, the Deputy Chairman or Secretary.

Meetings

8. (1) The Board shall meet at least once in each month and at such other times, and at such place, as the Chairman determines is necessary for the efficient performance of its functions.

(2) The Chairman may at any time call a special meeting of the Board and shall call such meeting within seven days of the receipt of a requisition for that purpose addressed to the Chairman and signed by any three members of the Board.

(3) The Chairman, or in the Chairman's absence the Deputy Chairman, shall preside at all meetings of the Board, and where both the Chairman and the Deputy Chairman are for any reason unable to preside at a meeting, the members present may appoint a member to preside at that meeting.

(4) The quorum of the Board shall consist of seven members.

(5) Decisions of the Board shall be adopted by a majority of the votes and in a case in which the voting is equal, the member presiding at the meeting shall in addition to that member's original vote have a casting vote.

(6) Minutes of each meeting of the Board shall be taken in proper form and kept by the Secretary, and shall be confirmed by the Board.

(7) Subject to this section, the Board may by resolution regulate its own proceedings.

Delegation

9. The Authority may, either generally or on such terms and conditions as it thinks fit, delegate any of its functions or powers to—

(a) the Managing Director; or

(b) any governmental entity.

Managing Director

10. (1) The Managing Director shall be entitled to such salary, remuneration, allowances and other conditions of service—

(a) as the Board, with the approval of the Minister may determine; or

(b) in accordance with the terms or arrangements under any grant from an entity providing funding for such matters.

(2) The Managing Director shall implement the programmes of the Board.

(3) The Managing Director may, either generally or on such terms and conditions as he thinks fit, delegate to any personnel of the Authority, by instrument in writing, such of his functions or powers as he thinks fit.

Appointment of personnel

11. The Authority shall appoint such personnel as it considers necessary on such terms and conditions as it thinks fit.

Limitation of personal liability

12. No personal liability shall attach to any member of the Board, personnel of the Authority or Environmental Officer for—

(a) any act or omission of the Authority; or

(b) anything done, permitted to be done or omitted in good faith in the course of operations of the Authority by the Board, any personnel of the Authority or any Environmental Officer.

Committees, working groups and advisory councils

13. (1) The Board may appoint such committees, working groups or advisory councils as it thinks fit to assist in the performance of its functions or to further the objects of this Act.

(2) One of the committees established by the Board shall—

(a) investigate, assess and report on the effectiveness of co-ordination between the Authority and other governmental entities, including the functioning of Environmental Officers, and make appropriate recommendations to the Board; and

(b) not later than three months after the end of each calendar year, submit a report of its operations, with recommendations to the Board.

(3) Personnel of the Authority and other governmental entities shall co-operate fully with and provide information requested by, any committees, working groups or advisory councils established by the Board.

Annual report

14. (1) The Chairman of the Board shall, not later than four months after the end of each calendar year, submit to the Minister an annual report which shall include—

(a) an assessment of the state of the environment;

(b) a description of the activities of the Authority during the preceding year

including an assessment of the effectiveness of co-ordination between the Authority and other governmental entities and its plans and programmes for the current year;

(c) copies of any reports submitted by the Trustees of the Fund as required under section 80(5), including the audited annual report of the Fund;

(d) an accounting of any financial assistance or other support, and disclosure of the specific programmes and activities involved, with respect to matters not processed through or accounted for by the Fund, as required under section 79.

(2) The Minister shall cause a copy of any report submitted pursuant to subsection (1) to be laid before Parliament within twenty-eight days of its receipt by the Minister, or if Parliament is not then in session, within twenty-eight days of the commencement of its next session.

Guidelines to be made by the Board

15. The Board may, by resolution, make guidelines for its own procedure.

PART III

Functions and Powers of the Authority

General functions of the Authority

16. (1) The general functions of the Authority are to:

(a) make recommendations for a National Environmental Policy;

(b) develop and implement policies and programmes for the effective management and wise use of the environment, consistent with the objects of this Act;

(c) co-ordinate environmental management functions performed by persons in Trinidad and Tobago;

(d) make recommendations for the rationalisation of all governmental entities performing environmental functions;

(e) promote educational and public awareness programmes on the environment;

(f) develop and establish national environmental standards and criteria;

(g) monitor compliance with the standards criteria and programmes relating to the environment;

(h) take all appropriate action for the prevention and control of pollution and conservation of the environment;

(i) establish and co-ordiante institutional linkages locally, regionally and internationally;

(j) perform such other functions as are prescribed; and

(k) undertake anything incidental or conducive to the performance of any of the foregoing functions.

(2) In performing its functions, the Authority shall facilitate co-operation among persons and manage the environment in a manner which fosters participation and promotes consensus, including the encouragement and use of appropriate means to avoid or expeditiously resolve disputes through mechanism for alternative dispute resolution.

Information

17. (1) The Authority shall compile information relating to the environment.

(2) The Authority may subject to subsections (3) and (4), make such information available to any person upon receipt of a written request and payment of the prescribed fee.

(3) When complying with a request made under subsection (2), the Authority shall not disclose or provide any information—

(a) that is subject to a trade secret or confidentiality claim by a person supplying the information, without the prior consent of that person; or

(b) if the Authority determines that disclosure of the information would compromise its enforcement programme or be contrary to the national interest.

(4) The Authority shall provide a written explanation of any refusal to make information available when requested by a person under this section.

Development of National Environmental Policy

18. (1) In furtherance of section 16(1)*(a)*, the Board shall prepare and submit to the Minister, not later than two years after the commencement of this Act or such other time as the Minister may direct by Order, recommendation for a comprehensive National Environmental Policy (hereinafter called "the Policy") in accordance with the objects of this Act including—

(a) incorporation into the Policy of provisions which seek to encourage the establishment of institutional linkages locally, regionally and internationally to further the objects of this Act;

(b) an analysis of the legislative, regulatory and practical issues impacting upon the development and successful implementation of the Policy; and

(c) a programme for promoting the Policy and seeking an effective commitment from all groups and citizens in the society to achieve the stated objectives in the Policy.

(2) In preparing its recommendations as provided in subsection (1), the Board shall develop and submit to the Minister a report which may—

(a) describe the general environment and environmental conditions within Trinidad and Tobago;

(b) specify the general environmental quality objectives to be achieved and maintained under the Policy;

(c) describe the ecological and other balances required to be maintained for the conservation of natural resources and protection of the environment;

(d) specify the elements or areas of the environment which require special protection;

(e) identify specific beneficial uses of the environment to be permitted or protected by the Policy;

(f) describe the indicators, parameters or criteria which will be used in measuring environmental quality; and

(g) establish a programme by which the environmental quality objectives, balances, beneficial uses and protections referred to in the foregoing paragraphs are to be achieved and maintained.

(3) After considering the recommendations and report developed by the Board, the Minister shall cause a draft of the Policy to be—

(a) prepared by the Board; and

(b) submitted for public comment in accordance with section 28.

(4) After considering the public comments received on the draft Policy, the Board shall submit a revised draft Policy to the Minister for approval.

(5) The Policy may be revised from time to time in accordance with the procedures specified in this section.

(6) The Minister shall, within one month of the approval of any policy submitted under subsection (4), cause the policy to be laid in Parliament.

Development of Environmental Code

19. (1) Within three years after the commencement of this Act or such other time as the Minister may by Order direct, the Authority shall—

(a) undertake a comprehensive evaluation of the written laws and various programmes which address environmental issues; and

(b) develop and submit to the Minister a draft Environmental Code providing for the overall consolidation, rationalisation and modernisation of such laws and programmes.

(2) When developing the draft Environmental Code, the Authority shall consider and where appropriate, seek to incorporate—

(a) the imposition of product charges where the product manufacturing process or usage is a significant source of pollution; and

(b) the adjustment of direct government subsidies, or the establishment of tax differentiation or tax incentives, to encourage beneficial environmental activities or to ensure that pricing reflects environmental costs more adequately.

General powers of the Authority

20. (1) The Authority has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

(2) Without limiting the generality of subsection (1), the Authority has power to—

(a) acquire information relevant for the performance of its functions;

(b) require the payment of charges and fees under such circumstances as may be prescribed;

(c) enter into contracts;

(d) acquire, hold and dispose of real and personal property;

(e) occupy, use and control any land or building owned or held under lease by any governmental entity and made available to the Authority for its purposes;

(f) accept gifts, devises and bequests made to the Authority whether on trust or otherwise, and act as trustee of moneys or other property vested in the Authority upon trust; and

(g) do anything incidental to any of its powers.

Appointment of inspectors

21. (1) The Authority may by instrument in writing appoint as an inspector, any—

(a) personnel of the Authority;

(b) Environmental Officer; or

(c) other individual retained by the Authority,

and specify in that instrument the powers that such person may exercise as an inspector under this Act.

(2) The Authority shall cause to be issued to each inspector, an identity card in the form determined by the Board containing a photograph of the holder.

Powers of entry and inspection

22. (1) Subject to subsection (2), any inspector shall, upon presentation of his identity card and reasonable evidence of his authorisation by the Authority to the

occupier or person in charge of any premises or vehicle, be allowed entry into such premises or vehicle for the purpose of—

(a) developing or assisting in the development of any programme or standard under this Act;

(b) monitoring compliance with any environmental programme, standard, condition, permit, licence or requirement under this Act;

(c) obtaining information and samples, and confiscating any article relevant to an offence or violation; and

(d) carrying out any provision or requirement of this Act.

(2) An inspector shall not be permitted to enter such premises or vehicle, or obtain any information under this Part, unless—

(a) the occupier or the person in charge of the premises or vehicle consents to the entry; or

(b) where the occupier or the person in charge of the premises or vehicle does not consent, the Authority first obtains a warrant issued by a justice of the peace or magistrate.

Obtaining information and samples

23. (1) In the course of any entry permitted by section 22, an inspector shall, where necessary and relevant to any environmental programme, standard, condition, permit, licence or requirement under this Act, be allowed to review and copy any documents and records, take photographs, inspect any premises or vehicle, and take samples for purposes of laboratory analysis of any air, water, soil or other material from such premises or vehicle.

(2) If any samples are taken pursuant to subsection (1), the owner or operator of such premises or vehicle shall, upon request, be provided with a

receipt for the sample collected which identifies the types of analyses to be performed, and a portion of the sampled material properly collected in an appropriate container.

(3) In any instance where the Authority requests any information from a person under this section, and the person asserts a claim that the information provided to the Authority should be treated as a trade secret or confidential business information, the Authority shall treat such information as confidential unless—

(a) the person does not disclose any valid basis for the confidentiality claim, within fourteen days after receipt of a request by the Authority; or

(b) the Authority determines that the public interest in disclosing the information clearly outweighs any prejudice to the person who has supplied the information to the Authority, and the Authority provides such person with a reasonable opportunity to contest such determination in the Commission prior to any public disclosure of the information.

Use of force

24. If the use of force is required in executing a warrant, performing an inspection, obtaining samples or other information, or performing any other function under this Act, the inspector shall be accompanied by a police officer who shall render such reasonable assistance as may be necessary.

Emergency response activities

25. Whenever the Authority reasonably believes that a release or threat of release of a pollutant or hazardous substance, or any other environmental condition, presents a threat to human health or the environment, the Authority may, after consultation with the Minister and in co-ordination with other

appropriate governmental entities, undertake such emergency response activities as are required to protect human health or the environment, including—

(a) the remediation or restoration of environmentally degraded sites;

(b) the containment of any wastes, hazardous substances or environmentally dangerous conditions; and

(c) such other appropriate measures as may be necessary to prevent or mitigate adverse effects on human health or the environment.

PART IV

Rules and Public Participation

Rules

26. The Minister may, in accordance with section 27, make rules subject to negative resolution of Parliament, for the following:

(a) procedures for the registration of sources from which pollutants may be released into the environment and the characterisation of such sources;

(b) the quantity, condition or concentration of pollutants or substances containing pollutants that may be released into the environment generally or by specific sources or categories of sources;

(c) procedures and standards with respect to permits or licences required for a person to install or operate any process or other source from which pollutants will be or may continue to be released into the environment;

(d) the form and manner of —

(i) applying for any licence, permit or certification that may be required or granted by the Authority;

(ii) revoking, suspending, varying or cancelling a permit or licence or a condition in that permit or licence;

(e) procedures, standards and guidelines for the formal designation and protection of "environmentally sensitive areas" or "environmentally sensitive species" under section 41;

(f) incentive programmes or mechanisms which encourage the use of effective environmental systems and the achievement of improvements in environmental quality, as provided in section 34;

(g) designation of hazardous substances or categories of hazardous substances under section 59, and the performance standards, procedures, safeguards and licensing or permitting requirements in accordance with which such hazardous substances shall be handled;

(h) the procedure to be followed by any person required to apply for and receive a certificate of environmental clearance, and the standards for preparation and submission of any environmental impact assessment which may be required under sections 35 to 38 inclusive;

(i) the definition of various categories of waste under sections 55 to 57 inclusive, the requirements with respect to the handling and disposal of such categories of waste, and the licensing of facilities at which such wastes are handled or disposed;

(j) procedures and standards for the periodic or continual monitoring of pollutant releases in conjunction with any process, activity, vehicle or premises;

(k) the establishment of ambient environmental quality criteria and standards which may be taken into account in setting any general, categorical or source-specific limitations under paragraph *(b)* for any new or continued release of pollutants into the environment;

(l) the design, construction, operation, maintenance and monitoring of facilities or processes for the control of pollution and the handling of wastes; and

(m) any other matter required to be, or which may be prescribed by the Authority.

Rule making process

27. (1) In the course of developing rules, the Minister shall—

(a) submit draft rules for public comment in accordance with section 28;

(b) consider the public comments received and revise the rules as he thinks fit;

(c) cause the rules to be published in the *Gazette* and laid thereafter in Parliament.

(2) Any rules made by the Minister shall become effective when the rule is published in the *Gazette* or at such later time as may be specified in the rule.

Public comment procedure

28. (1) Where a provision of this Act specifically requires compliance with this section, the Authority shall—

(a) publish a notice of the proposed action in the *Gazette* and at least one daily newspaper of general circulation—

(i) advising of the matter being submitted for public comment,

including a general description of the matter under consideration;

(ii) identifying the location or locations where the administrative record is being maintained;

(iii) stating the length of the public comment period; and

(iv) advising where the comments are to be sent;

(b) establish and maintain an administrative record regarding the proposed action and make such administrative record available to the public at one or more locations.

(2) The administrative record required under subsection (1) shall include a written description of the proposed action, the major environmental issues involved in the matter under consideration, copies of documents or other supporting materials which the Authority believes would assist the public in developing a reasonable understanding of those issues, and a statement of the Authority's reasons for the proposed action.

(3) The Authority shall receive written comments for not less than thirty days from the date of notice in the *Gazette* and, if the Authority determines there is sufficient public interest, it may hold a public hearing for discussing the proposed action and receiving verbal comments.

Preservation of administrative record

29. The Authority shall keep available at the public locations, for not less than forty-five days after publication of notice of the final action in the *Gazette,* the administrative record, together with copies of documents constituting the final action, a response to the public comments and an identification of the basis for the final action.

30. (1) Where the appeal of an action submitted for public comment in accordance with section 28 is provided for under this Act, the action may be appealed to the Commission by any interested person on the ground that the Authority failed to comply with the requirement for public participation in section 28. Jurisdiction and standard for appeal

(2) For the purposes of subsection (1), "interested person" means any person who submitted a written comment on the proposed action during the public comment period.

PART V

ENVIRONMENTAL MANAGEMENT

31. The Authority and all other governmental entities shall conduct their operations and programmes in accordance with the National Environmental Policy established under section 18. Compliance with National Environmental Policy

32. (1) The Authority shall, not later than three months after the commencement of this Act, initiate consultation with the other governmental entities performing various environmental management functions, with the objective of formulating Memoranda of Understanding or other arrangements between the Authority and such other governmental entities, which shall establish the mechanisms for co-ordination across jurisdictional lines and provide for the implementation of integrated environmental management programmes. Arrangements with governmental entities

(2) Memoranda of Understanding or other arrangements developed under subsection (1), and any other such arrangements developed thereafter, may be amended from time to time in order to further the objects of this Act.

33. (1) The Authority may, in co-ordination with other governmental entities whose personnel may be affected and pursuant to an arrangement as provided Environmental Officers

in section 32, authorise Environmental Officers from among those individuals employed within such governmental entities.

(2) Environmental Officers may be authorised, by instrument in writing signed by the Managing Director, to—

(a) assist in maintaining intragovernmental co-ordination, communication and institutional linkages for the development, integration and effective implementation of the various policies, laws, regulations, rules, guidelines, programmes and other activities designed to protect and conserve the environment; and

(b) carry out on the Authority's behalf such functions as may be agreed to between the Authority and the other governmental entity.

Environmental incentive programme

34. (1) The Authority shall develop, promote and implement appropriate incentive programmes which encourage the voluntary use of effective environmental management systems and the achievement of improvements in environmental quality, including—

(a) the establishment of a voluntary facility environmental audit programme which allows for the exercise of enforcement discretion by the Authority with respect to liability which might otherwise arise, if an offence or violation is detected as a result of such an audit programme and voluntarily disclosed to the Authority;

(b) the establishment of environmental certification or labelling programmes which allow the Authority to distinguish or designate specific persons, activities or

products which the Authority certifies as demonstrating or representing significant environmental management qualities;

(c) the operation of deposit-refund systems for specified materials to increase the level of recycling reuse or other authorised disposition; and

(d) any other programmes or mechanisms which may further the objects of this Act.

(2) With the approval of the Minister, the Authority may impose pollution charges or user fees to encourage the protection and conservation of the environment.

(3) For the purposes of this section, "facility environmental audit programme" means a comprehensive investigation and evaluation system designed and implemented at a facility for the purpose of—

(a) detecting and preventing violations of environmental requirements or the commission of offences under this Act; and

(b) identifying opportunities for achieving improvements in environmental programmes at the facility.

Certificate of environmental clearance

35. (1) For the purpose of determining the environmental impact which might arise out of any new or significantly modified construction, process, works or other activity, the Minister may by order subject to negative resolution of Parliament, designate a list of activities requiring a certificate of environmental clearance (hereinafter called "Certificate").

(2) No person shall proceed with any activity which the Minister has designated as requiring a Certificate unless such person applies for and receives a Certificate from the Authority.

(3) An application made under this section shall be made in accordance with the manner prescribed.

(4) The Authority in considering the application may ask for further information including, if required, an environmental impact assessment, in accordance with the procedure prescribed.

(5) Any application which requires the preparation of an environment impact assessment shall be submitted for public comment in accordance with section 28 before any Certificate is issued by the Authority.

Issue or refusal of Certificate

36. (1) After considering all relevant matters, including the comments or representations made during the public comment period, the Authority may issue a Certificate subject to such terms and conditions as it thinks fit, including the requirement to undertake appropriate mitigation measures.

(2) Where the Authority refuses to issue a Certificate, it shall provide to the applicant in writing its reasons for such action.

Monitoring

37. The Authority shall monitor the performance of the activity to ensure compliance with any conditions in the Certificate, and to confirm that the performance of the activity is consistent with—

(a) the description provided in the application for a Certificate; and

(b) the information provided in any environmental impact assessment.

Relationship with other governmental entities

Chap. 35:01

38. (1) Where an activity designated under subsection 35(1) constitutes a development requiring the express grant of permission under the Town and Country Planning Act, the developer shall deal directly with the entity responsible for town and country

planning with respect to the application for a Certificate and any environmental impact assessment which may be required.

(2) If the approval of any other entity is required under a written law with respect to the proposed activity, the issue of a Certificate shall not affect in any way the requirement to obtain such other approval before the proposed activity may proceed.

(3) In any instance where the Authority determines that an environmental impact assessment is required for an activity at any location, no other entity shall grant any permit, licence, or other documentary authorisation with respect to such activity, until a Certificate has been issued by the Authority.

Exceptions

39. Sections 35 to 38 inclusive shall not apply to—

(a) any activity with respect to which, prior to the date on which review under this section first became applicable, all final approvals necessary to proceed already had been obtained from all other governmental entities requiring such approvals; and

(b) any activity with respect to which, prior to the effective date on which review under this section first became applicable, outline planning permission or full planning permission under the Town and Country Planning Act had already been obtained.

Appeals

40. Any final decision by the Authority to refuse issuance of a Certificate or to issue a certificate with conditions may be appealed to the Commission by the person seeking such Certificate.

Designation of environmentally sensitive areas and species

41. (1) The Authority may prescribe in accordance with section 26*(e)* the designation of a defined portion of the environment within Trinidad and Tobago as an

"environmentally sensitive area", or of any species of living plant or animal as an "environmentally sensitive species", requiring special protection to achieve the objects of this Act.

(2) For the purpose of subsection (1), designation shall be made by Notice published in the *Gazette*.

Notice of proposed action

42. In pursuance of section 41(1), the Notice shall include—

(a) a comprehensive description of the area or species to be so designated;

(b) the reasons for such designation; and

(c) the specific limitations on use of or activities within such area or with regard to such species which are required to adequately protect the identified environmental concerns.

Control and management

43. Any designation of an "environmentally sensitive area" or "environmentally sensitive species"—

(a) may permit the wise use of such area or species and provide for the undertaking of appropriate mitigation measures, but shall not otherwise be deemed to authorise or permit any activity not previously authorised or permitted with respect to such area or species; and

(b) shall only require compliance with the specific limitations on use or activities specified in the designation.

Exception

44. Sections 41 to 43 shall not apply to any activity with respect to which, prior to the date of designation of an "environmentally sensitive area" or "environmentally sensitive species", all final approvals necessary to proceed had already been obtained from or for which application had been made to all governmental entities requiring such approvals.

Co-ordination

45. For the purposes of sections 41 to 43 inclusive, the Authority shall co-ordinate with any governmental entities having responsibility for planning and management in such areas or with respect to such species.

Appeal

46. Any final action designating an "environmentally sensitive area" or "environmentally sensitive species" shall be capable of appeal to the Commission.

Recordkeeping and monitoring requirements

47. The Authority may, as prescribed by rule, require any person who releases a pollutant from any premises or vehicle, or who engages in the handling of any hazardous substance, on a one-time or periodic basis to—

(a) sample and analyse such pollutant or hazardous substance, or material which has become contaminated with such pollutant or hazardous substance, for specified constituents or characteristics;

(b) install, use, and maintain such monitoring equipment, and implement such environmental audit procedures, as may be specified in any permit or licence issued pursuant to this Act;

(c) establish and maintain records regarding such sampling, monitoring, and environmental auditing activities;

(d) establish and maintain records regarding pollution control equipment on the premises (including records on control equipment parameters, production variables and other indirect data when direct monitoring is not required);

(e) submit reports and compliance certifications; and

(f) provide such other information as the Authority may require.

General permit conditions

48. (1) Where an application is made under section 50(3), 53(3), 57(4) or 60(2) for the grant of a permit or licence under section 50(1), 53(1), 57(1) or 60(1), respectively, and the Authority requires further information for the purpose of dealing with the application, the Authority may require the person to provide results of research or analysis to be undertaken by such person.

(2) The Authority may, as prescribed by rule, revoke, suspend, vary or cancel any provision in such permit or licence where the Authority determines such action is necessary.

(3) Any conditions imposed in respect of a permit, or a revocation, suspension, variation or cancellation takes effect when notice is served on the holder of the permit or such later time as the Authority may direct in the notice.

(4) Any such revocation, suspension, variation or cancellation of a permit or licence shall be capable of appeal to the Commission by the permit or licence holder.

Management of air and noise pollution

49. (1) The Authority shall, as soon as practicable after the commencement of this Act, investigate the environment generally and such premises and vehicles as it thinks necessary for the purpose of—

(a) ascertaining the extent of air and noise pollution and the significant sources of pollutants which by their release cause or contribute to such pollution; and

(b) characterising or describing that pollution.

(2) The Authority shall cause a register of air and noise pollutants to be maintained as prescribed by rule, which shall contain data identifying the quantity, conditions or concentrations relevant to the identification of each pollutant.

(3) The Authority shall develop and implement a programme for the management of such pollution which shall include the registration and further characterisation of significant sources of any ongoing or intermittent releases of air or noise pollutants into the environment.

Air pollution permits

50. (1) The Authority may require and grant permits to authorise any process releasing air pollutants subject to such terms and conditions as it thinks fit.

(2) The terms and conditions of a permit may relate to the design, construction, operation, maintenance and monitoring of the facility and processes releasing air pollutants.

(3) A person shall apply to the Authority for the grant of an Air Pollution Permit in accordance with the form as determined by the Authority.

Prohibited air and noise pollution

51. (1) No person shall release or cause to be released any air pollutant into the environment which is in violation of any applicable standards, conditions or permit requirements under this Act.

(2) No person shall emit or cause to be emitted any noise greater in volume or intensity than prescribed in rules made under section 26 or by any applicable standards, conditions or requirements under this Act.

Management of water pollution

52. (1) The Authority shall, as soon as practicable after the commencement of this Act, investigate the environment generally and such premises and vehicles as it thinks necessary for the purposes of—

(a) ascertaining the extent of water pollution and significant sources of water pollutants; and

(b) characterising or describing that pollution.

(2) The Authority shall cause a register of water pollutants to be maintained as prescribed by rule, which shall contain data identifying the quantity, conditions or concentrations relevant to the identification of each pollutants.

(3) The Authority shall develop and implement a programme for the management of such pollution which shall include the registration and further characterisation of significant sources of any ongoing or intermittent releases of water pollutants into the environment.

Water pollution permits

53. (1) The Authority may require and grant permits to authorise any process releasing water pollutants subject to such terms and conditions as it thinks fit.

(2) The terms and conditions of a permit may relate to the design, construction, operation, maintenance, and monitoring of the facilities and processes releasing water pollutants.

(3) A person shall apply to the Authority for the grant of a water pollution permit in accordance with the form as determined by the Authority.

Prohibiting water pollution

54. No person shall release or cause to be released any water pollutant into the environment which is in violation of any applicable standards, conditions or permit requirements under this Act.

Waste management

55. (1) The Authority shall, as soon as practicable after the commencement of this Act, investigate the environment generally and such premises and vehicles as it thinks necessary for the purposes of—

(a) ascertaining the volume and nature of wastes which are handled and disposed into the environment; and

(b) identifying and characterising the different categories and the significant sources of such wastes.

(2) The Authority shall develop and implement a programme for the management of such wastes which may include the registration and further characterisation of significant sources of wastes being disposed into the environment.

Identification of hazardous wastes

56. The Authority shall as soon as practicable after the commencement of this Act, submit to the Minister a programme to define those wastes which should be deemed "hazardous wastes", to establish requirements for the handling and disposal of hazardous wastes, to establish appropriate standards and design criteria for hazardous waste handling and disposal facilities, and to establish licensing and permitting requirements with respect to such wastes.

Waste permits and licences

57. (1) The Authority may require and grant a permit to authorise any person's waste disposal activities, or licences for the operation of any waste handling facility, subject to such terms and conditions as it thinks fit.

(2) The terms and conditions of a licence under this section may relate to the design, construction, operation, maintenance and monitoring of any waste handling facility.

(3) The terms and conditions of a permit under this section may relate to a person's handling of any waste.

(4) A person shall apply to the Authority for the grant of such licence or permit as prescribed by rule.

Waste prohibitions

58. No person shall handle or dispose of any waste or hazardous waste in a manner which is in violation of any applicable licence, permit, standards, conditions or requirements under this Act.

Management of hazardous substances

59. The Authority shall, as soon as practicable after the commencement of this Act, submit to the Minister a programme for the designation of specific hazardous

substances and performance standards and procedures for the safe handling of such hazardous substances.

Hazardous substance prohibitions

60. (1) After final designation of such specific hazardous substances and the establishment of the performance standards and procedures under section 26, a person shall not handle, or cause to be handled by any other person through contract, agreement or other arrangement, any hazardous substance except in accordance with—

(a) such performance standards and procedures; or

(b) a licence or permit granted by the Authority.

(2) A person shall apply to the Authority for the grant of a licence or permit as prescribed by rule.

Notification of spills, releases and other incidents

61. (1) As soon as practicable after the commencement of this Act, and thereafter as appropriate, the Authority shall investigate and designate categories of circumstances involving accidental spills or other releases of pollutants, or other incidents with respect to hazardous substances, which may present a risk to human health or the environment.

(2) The designation of such categories by the Authority shall be submitted for public comment in accordance with section 28.

(3) After the final designation of any categories under this section, any person in charge of any premises or vehicle shall, as soon as he has knowledge of a release or other incident referred to in this section associated with such premises or vehicle, notify the Authority of such release or incident and provide to the Authority—

(a) a brief description of the release or incident;

(b) an assessment of any damages or potential risks to human health or the environment associated with the release or incident;

(c) a description of the response measures taken and to be taken to address and otherwise mitigate damages or contamination resulting from the release or incident.

(4) The Authority shall investigate and evaluate any such release or incident as it thinks fit, and may—

(a) respond to the release or incident as authorised under section 25; and

(b) develop and implement appropriate environmental programmes, standards, conditions, permits, licences or requirements designed to avoid such releases or incidents in the future.

PART VI

COMPLIANCE AND ENFORCEMENT

Environmental requirements

62. For the purposes of this Part and Part VIII, "environmental requirement" means the requirement upon a person to—

(a) comply with the procedures for the registration of sources from which pollutants may be released into the environment;

(b) comply with the procedures and standards with respect to permits or licences required for any person to install or operate any process or source from which pollutants will be or may continue to be released into the environment;

(c) provide in a timely manner complete and accurate information in any required submission to or communication with the

Authority or in response to any inspection or request for information by the Authority;

(d) refrain from any unauthorised activities impacting on the environment in an "environmentally sensitive area" or with respect to an "environmentally sensitive species";

(e) comply with the performance standards, procedures, licensing or permitting requirements established for the handling of hazardous substances;

(f) apply for and obtain a Certificate of Environmental Clearance;

(g) comply with the conditions and mitigation measures in any such certificate;

(h) comply with the procedures and standards with respect to the periodic or continual monitoring of pollution or releases of pollutants or conditions required under a permit or licence;

(i) provide timely and accurate notification with respect to an accidental or unauthorised release of a pollutant, or other incident with respect to a hazardous substance;

(j) control the release of pollutants in such a manner as to comply with any permit or licence granted under section 50(1), 53(1), 57(1) or 60(1);

(k) submit timely payment of required fees or charges payable to the Authority; and

(l) comply with all other procedures, standards, programmes and requirements in such a manner as may be prescribed by rule or regulation.

Notice of violation

63. (1) Where the Authority reasonably believes that a person is in violation of an environmental requirement, the Authority shall serve a written notice of violation (hereinafter called "Notice") on such person in a form determined by the Board, which shall include—

(a) a request that the person make such modifications to the activity within a specified time, as may be required to allow the continuation of the activity; or

(b) an invitation to the person to make representations to the Authority concerning the matters specified in the Notice within a specified time.

(2) Where a matter specified in the Notice may be satisfactorily explained or otherwise resolved between the person and the Authority—

(a) the Authority may cancel the Notice or dismiss the matters specified in the Notice; or

(b) an agreed resolution may be reduced in writing into a Consent Agreement.

Issue of Administrative Order

64. The Authority may issue an Administrative Order under section 65 where the person—

(a) fails to make representations to the Authority within the time specified in the Notice; or

(b) is unable to resolve with the Authority all matters specified in the Notice.

Administrative Orders

65. (1) An Administrative Order served by the Authority shall, where appropriate—

(a) specify details of the violation of one or more environmental requirements;

(b) direct the person to immediately cease and desist from the violation or specify a date for coming into compliance;

(c) direct the person to immediately remedy any environmental conditions or damages to the environment arising out of the violation or specify a date by which such remedial activities shall be completed;

(d) direct the person to undertake an investigation regarding any environmental circumstances or conditions within such person's responsibility or control, including any release of a pollutant into the environment or the handling of any hazardous substance;

(e) direct the person to perform any monitoring or recordkeeping activities which may be required under section 47;

(f) include a proposed administrative civil assessment made by the Authority;

(g) direct a person to comply with any other requirement under this Act.

(2) Directives contained in an Administrative Order served upon a person shall be deemed final and conclusive after the expiry of twenty-eight days, unless within such period the person—

(a) appeals the Administrative Order to the Commission;

(b) reaches an agreement with the Authority which is reduced in writing into a Consent Agreement; or

(c) obtains an extension of time from the Authority which is confirmed in writing.

(3) Any Administrative Order shall contain a notice advising of the matters in subsection (2).

Administrative civil assessment

66. (1) For the purposes of sections 65 and 81(5)*(d)*, the Authority or the Commission may make an administrative civil assessment of—

(a) compensation for actual costs incurred by the Authority to respond to environmental conditions or other circumstances arising out of the violation referenced in the Administrative Order;

(b) compensation for damages to the environment associated with public lands or holdings which arise out of the violation referenced in the Administrative Order;

(c) damages for any economic benefit or amount saved by a person through failure to comply with applicable environmental requirements; and

(d) damages for the failure of a person to comply with applicable environmental requirements, in an amount determined pursuant to subsections (2) and (3).

(2) In determining the amount of any damages to be assessed under subsections (1)*(c)* and *(d)*, the Authority or the Commission shall take into account—

(a) the nature, circumstances, extent and gravity of the violation;

(b) any history of prior violations; and

(c) the degree of willfulness or culpability in committing the violation and any good faith efforts to co-operate with the Authority.

(3) The total amount of any damages under subsection (1)*(d)*, shall not exceed—

(a) for an individual, five thousand dollars for each violation and, in the case of continuing or recurrent violation, one thousand dollars per day for each such

instance until the violation is remedied or abated; or

(b) for a person other than an individual, ten thousand dollars for each violation and, in the case of continuing or recurrent violations, five thousand dollars per day for each such instance until the violation is remedied or abated.

Application for enforcement

67. (1) The Authority may file any Consent Agreement or final Administrative Order and an application for enforcement with the Commission.

(2) Where an Administrative Order contains a proposed administrative civil assessment, that assessment is not enforceable until such time as the Commission makes an Order determining the amount of such assessment.

Other actions by the Authority

68. Whenever the Authority reasonably believes that any person is currently in violation of any environmental requirement, or is engaged in any activity which is likely to result in a violation of any environmental requirement, the Authority may in addition to, or in lieu of, other actions authorised under this Act—

(a) seek a restraining order or other injunctive or equitable relief, to prohibit the continued violation or prevent the activity which will likely lead to a violation;

(b) seek an order for the closure of any facility or a prohibition against the continued operation of any processes or equipment at such facility in order to halt or prevent any violation; or

(c) pursue any other remedy which may be provided by law.

Direct private party actions

69. (1) Any private party may institute a civil action in the Commission against any other person for a claimed violation of any of the specified environmental requirements identified in section 62, other than paragraphs *(c)*, *(d)* and *(l)*, save where—

(a) the complainant has given written notice of such claimed violation to the Managing Director of the Authority at least sixty days prior to the commencement of the civil action;

(b) the complainant has served a copy of the complaint on the Managing Director within twenty-eight days of the date on which the complainant was first authorised to bring such an action.

(c) the Authority has not commenced an enforcement action under sections 63 to 67 inclusive or through other appropriate means available to it under section 68 regarding such claimed violation; and

(d) the Authority has not elected to assume responsibility for taking enforcement action under sections 63 to 68 inclusive within sixty days after the filing of a direct private party action by the complainant.

(2) For purposes of this section, any individual or group of individuals expressing a general interest in the environment or a specific concern with respect to the claimed violation shall be deemed to have standing to bring a direct private party action.

(3) In any such action under this section, the Authority or the Attorney General may intervene at any time as a matter of right.

(4) This section shall come into force and effect on a date to be fixed by the President.

Criminal offence for knowing or reckless endangerment

70. (1) Any person who through the release or handling of any pollutant or hazardous substance, or the arrangement for another person through any contract or other agreement to release or handle any pollutant or hazardous substance, knowingly or recklessly endangers human life or health, commits an offence, and is liable on conviction on indictment, to a fine of one hundred thousand dollars and imprisonment for two years.

(2) Any person who knowingly or recklessly undertakes or conspires to allow any activity in an "environmentally sensitive area" or with respect to an "environmentally sensitive species" designated under section 41, which may have an adverse impact on the environment within such area or on such species, commits an offence and is liable, on conviction on indictment, to a fine of one hundred thousand dollars and imprisonment for two years.

(3) A complaint for any offence under this section shall be made within three years from the commencement of this Act, or from the time when an action giving rise to such offence is first discovered by the Authority.

(4) For the purposes of this section, endangerment of human life or health means placing one or more persons in danger of death or serious bodily injury, including unconsciousness, extreme pain, or physical or mental impairment.

(5) Any action under this section may be in addition to any other action taken by the Authority under this Part.

Liability of private and public officials

71. Where a violation of any environmental requirement has been committed by a person (other than an individual), any individual who at the time of the violation was a director, manager, supervisor,

partner or other similar officer or responsible individual, or who was purporting to act in such capacity, may be found individually liable for that violation if, having regard to the nature of his functions in that capacity, the resources within his control or discretion, and his reasonable ability to prevent the violation—

(a) the violation was committed with his direct consent or connivance; or

(b) he, with knowledge, did not exercise reasonable diligence to prevent the commission of the violation.

PART VII

ENVIRONMENTAL TRUST FUND AND FINANCES

Establishment and purposes of the Fund

72. There is hereby established an Environmental Trust Fund which shall be used to fund the operations of the Authority and for other purposes authorised under this Act, including—

(a) incentive measures for reducing environmental pollution, protecting the environment and conserving natural resources;

(b) demonstration projects of innovative technologies which reduce pollution, or which reduce or eliminate the use of hazardous substances or the generation of wastes;

(c) emergency response activities to address actual or potential threats to human health or the environment, including remediation or restoration of environmentally degraded sites, containment of any wastes, hazardous substances or other environmentally dangerous conditions, or

other appropriate precautionary measures to prevent significant adverse effects on human health or the environment; and

(d) public awareness and education programmes to enhance the understanding of environmental protection and natural resource management issues within Trinidad and Tobago.

Trustees for the Fund

73. (1) Five members of the Board of Directors of the Authority (other than the Managing Director) shall be designated by the President to act as Trustees for the Fund and shall be responsible for its administration.

(2) Service as a Trustee shall terminate automatically at such time as a Trustee ceases to be a member of the Board.

Resources of the Fund

74. The resources of the Fund shall consist of—

(a) such amounts as may be appropriated annually or for special purposes by Parliament for the use and operations of the Authority;

(b) such amounts which the Authority may collect as payments for services rendered, fees due regarding permits, applications or licences under this Act, fees due for the review and processing of applications for a Certificate of Environmental Clearance and any environmental impact assessments required under section 35, fees charged for the reasonable cost of providing environmental information to interested persons, or fees due from the users of properties under the administration and control of the Authority;

(c) such amounts which are provided to the Authority or the Government of the Republic of Trinidad and Tobago by foreign states, international organisations, multilateral or bilateral lending agencies, private individuals, foundations, corporations or other entities to further the objects of the Act and the National Environmental Policy under section 18;

(d) such amounts borrowed by the Authority consistent with section 77; and

(e) any other sums or amounts to which the Fund may make a lawful claim.

Investment of Fund monies

75. (1) All monies which comprise the Fund and which do not have to be used immediately to defray expenses as provided for in section 78, shall be invested in such a manner as the Trustees consider fit which is designed to preserve the principal and achieve a reasonable rate of return and such investments shall be approved either generally or specifically by the Board.

(2) The Trustees shall possess the authority necessary, either directly or through authorised agents, to undertake such investments as are authorised under subsection (1), including the power to buy and sell such securities or other obligations as the Board determines to be appropriate.

Exemption from taxes

76. The Fund and the Authority shall be exempted from stamp duty, corporation tax, customs duties, value added taxes, motor vehicle taxes, fees, charges, assessments, levies and imposts on any income or profits or on assets which are acquired for use by the Fund or the Authority.

Borrowing by the Fund

77. (1) Subject to subsection (2), the Authority may borrow any money required by it, for the efficient exercise of its functions or for meeting its obligations.

(2) Borrowing may be effected only with the approval of the Minister to whom responsibility for finance is assigned as to the amount, the sources of borrowing, and the terms and conditions of the loan, and may be either general or limited to a particular transaction and may be either unconditional or subject to conditions.

(3) The Authority may not pledge its assets as security for any loan, without the written approval of the Minister to whom responsibility for the environment is assigned.

(4) The Authority is a statutory authority for the purposes of the Guarantee of Loans (Statutory Authorities) Act.

Chap. 71:81

Use of Fund monies

78. (1) Contributions to the Fund may be designated for specific projects or made subject to specific conditions, in which case such contributions shall be preserved and utilised solely for the designated purpose. In all other instances, the trustees are authorised to pay for any of the following matters out of the general resources of the Fund—

(a) the operating expenses of the Authority, including the remuneration of members and personnel thereof;

(b) the capital expenses, including maintenance and insurance of the property under the administration and control of the Authority;

(c) any payment toward the purchase of real property by the Authority to further the objects of this Act; and

(d) any other expenses which are lawfully related to the activities of the Authority.

(2) While funding for the Authority generally shall be processed through the Fund, the Authority also

shall be authorised to receive and utilise direct financial assistance or other support for specific projects or activities which will not be processed through or accounted for by the Fund, where such method of financial management is required as a condition established by an entity providing support to the Authority.

(3) Any sums of money recovered against the Authority for an action of the Authority, its personnel or any Environmental Officer acting in good faith in the course of the operations of the Authority, shall be paid out of the Fund.

Finances of the Authority

79. (1) All salaries and direct expenses of the Authority shall be paid out of the Fund or in accordance with any grant or arrangement made with any entity providing funding for such matters.

(2) The Authority shall cause to be kept proper accounts and records of its transactions and financial affairs.

(3) In the event conditions attached to financial assistance or other support for specific programmes or activities require that such assistance or support be processed otherwise than through the Fund, the Authority shall—

(a) maintain a proper audited accounting system; and

(b) disclose such matters in its annual report as required under section 14.

(4) The Authority shall, not later than the first day of July in each year prepare and submit to the Minister the estimates of revenue, other financial resources and expenditures of the Authority for the next financial year in such form as the Minister may direct.

(5) All monies collected by the Authority by way of an administrative civil assessment under section 66, shall be deposited with the Comptroller of Accounts for the account of the Consolidated Fund.

Financial accounting by the Trustees

80. (1) The Board may, by resolution, make rules for the system of accounting for the finances of the Fund, consistent with the best commercial accounting and financial standards.

(2) The Trustees shall keep proper accounts and other records in respect of the Fund in accordance with the Exchequer and Audit Act, and the Fund shall be audited annually by the Auditor General or by an auditor appointed in each year by the Board of Directors with the written consent of the Auditor General.

Chap. 69:01

(3) The Trustees of the Fund shall, not later than three months after the end of each financial year, submit to the Board of Directors a report dealing generally with the proceedings and policies of the Fund during the preceding financial year and also containing financial statements and any other information relating to the Fund and its support of activities through the Authority as may be requested by the Board.

(4) The financial year of the Fund shall be 1st October to 31st September in each year.

(5) The Chairman of the Board shall submit to the Minister a copy of every report submitted under this section.

PART VIII

ESTABLISHMENT AND JURISDICTION OF ENVIRONMENTAL COMMISSION

Establishment and jurisdiction of Commission

81. (1) A tribunal to be known as the Environmental Commission is hereby established for the purpose of exercising the jurisdiction conferred upon it by this Act or by any other written law.

(2) The Commission shall consist of a Chairman and such other members, including a Deputy Chairman, as may be appointed under or in pursuance of section 82.

(3) The Commission shall be a superior court of record and have an official seal which shall be judicially noticed, and shall have in addition to the jurisdiction and powers conferred on it by this Act, all the powers inherent in such a court.

(4) The Commission shall have the power to enforce its own orders and judgments, and the same power to punish contempts as the High Court of Justice.

(5) The Commission shall have jurisdiction to hear and determine—

(a) appeals from decisions or actions of the Authority as specifically authorised under this Act;

(b) applications for deferment of decisions made under section 25 or deferment of designations made under section 41;

(c) applications by the Authority for the enforcement of any Consent Agreement or any final Administrative Order, as provided in section 67;

(d) administrative civil assessments under section 66;

(e) appeals from the designation of "environmentally sensitive areas or environmentally sensitive species" by the Authority pursuant to section 41;

(f) appeals from a decision by the Authority under section 36 to refuse to issue a certificate of environmental clearance or to grant such a certificate with conditions;

(g) appeals from any determination by the Authority to disclose information or

materials claimed as a trade secret or confidential business information under section 23(3);

(h) complaints brought by persons pursuant to section 69, otherwise known as the direct private party action provision; and

(i) such other matters as may be prescribed by or arise under this Act or any other written law where jurisdiction in the Commission is specifically provided.

(6) A Registrar of the Commission and such other officers, clerks and employees as may be required to carry out the business of the Commission shall be appointed in the manner authorised by the law.

Constitution of Commission

82. (1) The Commission shall be comprised of a full-time Chairman, and five other members including a Deputy Chairman each of whom may be appointed to serve in a full-time, part-time or periodic capacity as may be required to fulfill the objects of this Act.

(2) The Chairman and Deputy Chairman of the Commission shall each be an attorney-at-law of not less than ten years standing, and shall be appointed by the President.

(3) The members of the Commission, other than the Chairman and Deputy Chairman, shall be appointed by the President from among such persons as appear to the President to be qualified by virtue of their knowledge of, or experience in environmental issues, engineering, the natural sciences or the social sciences.

(4) All members of the Commission shall hold office under such requirements and conditions of service and for such term, not less than three years, as may be determined by the President and set forth in the terms of reference at the time of their appointment, and shall be eligible for reappointment.

(5) Notwithstanding that his term of office has expired, any member of the Commission may, with the permission of the President acting on the advice of the Chairman of the Commission, continue in office for such a period after the expiry of his term, as may be necessary to deliver judgment, or to do any other thing in relation to proceedings that were commenced before such member prior to the expiry of his term of office.

(6) Any member of the Commission may, at any time by notice in writing to the President, resign his office.

(7) The President may remove from office any member of the Commission for inability, misbehaviour or on the ground of any employment or interest which is incompatible with the functions of a member of the Commission.

(8) Where any member of the Commission is ill, or otherwise unable to act, or where his office is vacant, the President may appoint a person to act in the stead of such member during his illness or incapability or until the office is filled, as the case may be.

(9) No defect in the qualifications or appointment of any member of the Commission shall vitiate any proceedings thereof.

Salary, allowances, and conditions of service

83. (1) There shall be paid to each member of the Commission, and to a person appointed to act in or perform the functions of any member of the Commission, such salary or remuneration and such allowances as may be prescribed by Order of the President and such salary or remuneration and allowances shall be a charge on the Consolidated Fund.

(2) Such other conditions of service shall be applicable to the Chairman, Deputy Chairman and other members of the Commission as may be prescribed by Order of the President.

(3) The salary, remuneration, allowances and the other conditions of service of the Chairman, Deputy Chairman and of any other member of the Commission shall not be altered to his disadvantage after being appointed to the Commission or during his tenure of office.

Procedure and jurisdiction of Commission

84. (1) The jurisdiction and powers of the Commission may be exercised by the Chairman or the Deputy Chairman and two other members selected by the Chairman or Deputy Chairman, for the purpose of any case or proceeding which may be brought before the Commission.

(2) Notwithstanding subsection (1), the jurisdiction of the Commission may be exercised with respect to—

(a) any matter, by the Chairman or Deputy Chairman sitting alone or with one other member if the parties consent thereto;

(b) any matter of practice or procedure that is contested by the parties, by the Chairman or Deputy Chairman or any member of the Commission who is an attorney-at-law and is assigned for that purpose by the Chairman of the Commission; and

(c) any matter of practice or procedure which is uncontested by the parties by any member of the Commission assigned generally or specifically for that purpose by the Chairman of the Commission.

(3) The Commission shall encourage and promote alternative dispute resolution, being any mechanism for resolving disputes other than by way of litigation.

(4) The jurisdiction of the Commission to punish a contempt committed in the face or hearing of the Commission when constituted by a single member may be exercised by that member; in any other case, the

jurisdiction of the Commission to punish a contempt shall be exercised by a division of the Commission consisting of at least two members, one of whom shall be the Chairman or Deputy Chairman of the Commission.

(5) Subject to any rules which may be made under this section, the Commission may sit in more than one division at such times and in such places in any part of Trinidad and Tobago as may be most convenient for the determination of proceedings before it.

(6) Unless rules made under this section otherwise provided fourteen clear days' notice shall be given to the appellant and to the respondent of the date fixed for the hearing of a matter by the Commission.

(7) In the case of a direct private party action brought under section 69, fourteen clear days' notice shall be given to the complainant and to the respondent, of the date fixed for the hearing of a matter by the Commission.

(8) The Chairman of the Commission, when present, shall preside, and, in the absence of the Chairman, the Deputy Chairman shall preside.

(9) Any appellant, complainant or respondent may appear before the Commission in person or may be represented by an attorney-at-law.

(10) The Commission, as respects the attendance and examination of witnesses, the production and inspection of documents, the enforcement of its orders, the entry on and inspection of property, and other matters necessary or proper for the due exercise of its jurisdiction, shall have all such powers, rights and privileges as are vested in the High Court of Justice on the occasion of an action.

(11) A summons signed by the Registrar of the Commission shall have the same force and effect as any formal process capable of being issued in any action taken in the High Court for enforcing the attendance of witnesses and compelling the production of documents.

(12) In any matter before the Commission, the Commission may order that written arguments and a citation of authorities be submitted to the Commission in addition to or with the consent of the parties, in place of an oral hearing.

(13) The decision of the Commission shall be that of the majority of the members present, but the opinion of the presiding member shall prevail on any matter arising in the course of any proceedings which, in his opinion, is a question of law.

(14) The decision of the Commission in any proceedings shall be delivered by the presiding member and any member may provide a concurring or dissenting opinion to the decision of the Commission.

(15) The Commission may, subject to the approval of the President, make rules not inconsistent with this Act governing the carrying on of its business and the practice and procedure in connection with appeals to the Commission and other proceedings, and the regulating of any matters relating to the cost of proceedings before the Commission.

(16) The presiding member may, subject to the rules of the Commission and to this Act, determine the procedure to be followed in any appeal or other proceedings.

(17) Where by any written law there is conferred on the Commission jurisdiction which was previously exercised by another court, tribunal, authority or

person (hereinafter called the "former tribunal"), then subject to section 85 and to any rules made under this section—

(a) the procedure which governed the exercise of the jurisdiction by the former tribunal shall continue, *mutatis mutandis*, to govern such exercise by the Commission;

(b) the decisions of the Commission in relation to such exercise are enforceable in the same way as those of the former tribunal; and

(c) the effect of things done in or for the purpose of that jurisdiction by the former tribunal shall be preserved.

(18) The Commission may hear any case or proceeding in camera where such procedure is reasonably required to protect the interests of a party to the case or proceeding.

Notices of appeal

85. (1) This section applies to every appeal to the Commission under this Act or any other written law.

(2) The appeal shall be instituted by filing with the Registrar of the Commission a notice of appeal and serving a copy thereof on the secretary of the Authority or other respondent.

(3) Any appeal instituted under this section shall be filed within twenty-eight days of the service on the person seeking to appeal the decision of the Authority or other respondent, or within such other time as may be prescribed by rules made under section 84(15).

(4) Notwithstanding subsection (3), an appeal may be instituted out of time if the Commission is satisfied that there was a reasonable cause for not appealing within the time limit and that the appeal was filed thereafter without unreasonable delay.

(5) The notice of appeal shall describe the specific dispute and specify the grounds of appeal, and shall be in such form as may be prescribed by rules of the Commission.

(6) If on the hearing of the appeal the appellant desires to go into any ground of appeal which was not specified in the notice of appeal, and the omission of that ground from the notice was in the opinion of the Commission not wilful or unreasonable, the Commission shall not by reason of anything in subsection (5), be precluded from allowing the appellant to go into that ground or taking it into consideration.

(7) Immediately after receiving the notice of appeal, or within such other time as may be prescribed by Regulations made under this Act. The Authority or other respondent shall forward to the Commission copies of all documents relevant to the decision which is the subject of the appeal.

Hearing and determination of appeals

86. (1) The onus of proving that the decision complained of is excessive or wrong is on the appellant.

(2) In appeals involving the Authority, there shall be a presumption of regularity with regard to findings of fact by the Authority, and such findings shall not be reversed unless the appellant affirmatively demonstrates that there is no substantial evidence supporting such findings of fact.

(3) Subject to subsection (4), the Commission may dispose of an appeal by—

(a) dismissing it;

(b) allowing it;

(c) allowing it and modifying the decision or action of the Authority; or

(d) allowing it and referring the decision or action back to the Authority for reconsideration.

(4) Subject to rules made under section 84(15), the Commission may make an Order for the payment of costs to the successful party in relation to the whole of the proceedings before it, or any part thereof, including costs incurred in the summoning and attendance of necessary witness.

(5) The decision of the Commission is final on a question of fact and the amount of any administrative civil assessment under section 66 however, an appeal shall lie on any question of law to the Court of Appeal upon entry of a final judgement by the Commission.

Statement of case for opinion of Court of Appeal

87. (1) The appellant or the Authority or other complainant or respondent, if dissatisfied with the decision of the Commission as being erroneous in point of law, may, within twenty-one days after the delivery of the decision or within such other time as may be prescribed, appeal against such decision by—

(a) filing with the Registrar a notice in writing, in the prescribed form, identifying the specific point or points of law alleged to be in error and requesting the Commission to state and sign a case for the opinion of the Court of Appeal; and

(b) serving a copy of the said notice on the Secretary of the Authority or other respondent or appellant in the underlying action, as the case may be.

(2) The case shall set forth the facts and the determination of the Commission relevant to the specific point or points of law alleged to be in error, and the party requiring it shall transmit the case, when stated and signed, to the Court of Appeal within twenty-one days after receiving the same.

(3) At or before the time when the party transmits the case to the Court of Appeal, the party requiring it shall send notice in writing of the fact that the case has been stated on his application, together with a copy of the case, to the other party or parties.

(4) The Court of Appeal shall hear and determine any question or questions of law arising on the case, and shall reverse, affirm or amend the determination in respect of which the case has been stated, or shall remit the matter to the Commission with the opinion of the Court of Appeal thereon.

(5) The Court of Appeal may cause the case to be sent back to the Commission for amendment on a point of law and thereupon, the case shall be amended accordingly, and judgment shall be delivered after it has been amended.

Order for deferment

88. (1) Where the Authority has made a decision under section 25, or a designation under section 41, an aggrieved person may apply to the Commission for a deferment of the decision or designation on the grounds that it is unreasonable having regard to all the circumstances of the case, and the Commission may make an Order for such deferment.

(2) An application for deferment under subsection (1), may be made whether or not an appeal against the decision or designation was filed at the time of the making of the application, save however, that the appeal shall be filed in accordance with the provisions of section 85.

(3) Where an appeal is not filed in accordance with section 85, an Order for deferment made under this section shall lapse at the expiry of the time for the filing of the appeal.

(4) On the determination of an appeal against the decision of, or designation by the Authority, the Commission may discharge the Order for deferment.

Direct private party action

89. (1) This section shall apply to every direct private party action brought pursuant to section 69.

(2) The Commission shall not have jurisdiction over any private party action unless the complainant has given proper notice to the Authority of not less than sixty days before bringing such action as required under section 69.

(3) A direct private party action shall be instituted by filing a complaint with the Registrar of the Commission and serving a copy thereof on the respondent and the Secretary of the Authority, within twenty-eight days of the date on which the complainant is first authorised to bring such an action.

(4) Notwithstanding subsection (3), a complaint may be instituted out of time if the Commission is satisfied that there was a reasonable cause for not bringing the complaint within the time limit and that the complaint was filed thereafter, without unreasonable delay.

(5) The complaint shall specify those provisions of this Act allegedly violated by the respondent, and subject thereto, the complaint shall be in such form as may be prescribed.

(6) The complainant may amend his complaint only by leave given by the Commission or by written consent of the respondent, but leave shall be given freely when justice so requires.

(7) At any time within sixty days after the filing of a direct private party action, the Authority may assume responsibility for taking enforcement action against the respondent by—

(a) pursuing the action before the Commission;

(b) issuing an Administrative Order or entering a Consent Agreement and Final Order addressing the violation pursuant to sections 64 to 66 inclusive; or

(c) pursuing other appropriate means of addressing the violation available to the Authority under this Act.

(8) In any instance where the Authority assumes responsibility for an enforcement action under subsection (7)*(b)* or *(c)*, the Authority may seek dismissal without prejudice to the case before the Commission, in which case the Commission shall upon dismissal award costs to the complainant, and the Authority shall bear responsibility for payment of complainant's costs.

(9) The onus of proving that the allegations of the complaint are well-founded is on the complainant.

(10) The Commission may dispose of a complaint by—

(a) dismissing it;

(b) allowing it and issuing such an order as would have been appropriate had the Authority taken action pursuant to sections 64 to 67 inclusive; or

(c) allowing it and referring the decision back to the Authority for reconsideration.

(11) The decision of the Commission is final on a question of fact; however, an appeal under section 87 shall lie on any question of law to the Court of Appeal.

Regulations for the Commission

90. The President may make regulations generally for carrying out the provisions of this Part.

PART IX

MISCELLANEOUS

Service of documents on the Authority

91. Service upon the Authority of any notice, order or other document shall be effected by delivering the same, or by sending it by registered post addressed to the Secretary, at the office of the Authority.

Legal proceedings

92. The Authority may institute proceedings or otherwise be a party in any legal proceedings arising out of or in the course of the operation of this Act before the Commission or any other Court.

Intervention by the Attorney General

93. (1) The Attorney General shall have the power to intervene in any proceeding before the Commission as the official representative of the Government of Trinidad and Tobago.

(2) Where the Authority is a party in a case in which the Attorney General intervenes as authorised in subsection (1), the Authority may continue to be represented by its own counsel.

Ethical standards and prohibitions

94. (1) If any representative of the Authority, including any member of the Board, Trustee for the Fund, employee of the Authority or Environmental Officer, directly or indirectly demands or accepts any fee, perquisite, bribe, gratuity, recompense or reward, whether pecuniary or otherwise, from any person on account of anything done or to be done (or omitted or to be omitted) by such representative in any way relating to his office or employment, or if any representative attempts to make any collusive agreement to neglect his duty or to conceal or connive at any act whereby any provision of this Act or any other law may be evaded or violated, such representative commits an offence and is liable, on summary conviction, to a fine of ten thousand dollars and imprisonment for six months.

(2) Every person who offers or provides to any representative of the Authority, including any member of the Board, Trustee for the Fund, employee of the Authority or Environmental Officer, any fee, perquisite, bribe, gratuity, recompense or reward, whether pecuniary or otherwise, on account of anything done or to be done (or omitted or to be omitted) by such representative in any way relating to his office or employment, or attempts to make any collusive agreement for any such representative to neglect his duty or to conceal or connive at any act whereby any provision of this Act or any other law may be evaded or violated, commits an offence and is liable, on summary conviction, to a fine of ten thousand dollars and imprisonment for six months.

Conflict of interest

95. (1) Where any member of the Board, as well as any Trustee for the Fund, employee of the Authority or Environmental Officer, has any actual or reasonably perceived interest in a matter which would otherwise come before such individual as part of the consideration or other action to be taken by the Authority, whether such interest is direct or indirect or arises because of a potential financial interest or an immediate family relationship, such member of the Board, employee or Environmental Officer shall declare the nature of such interest at the first practicable opportunity.

(2) In any instance which arises under subsection (1), such member of the Board, employee or Environmental Officer shall not vote or otherwise participate in the decision-making process, or attempt to influence in any way the decision or action taken or to be taken by the Authority, with respect to such matter.

(3) If any action has already been taken by the Board or the Authority before such interest has been

identified or disclosed, the action taken shall be subject to reconsideration by the Board or the Authority.

(4) Any member of the Board, employee of the Authority or Environmental Officer who knowingly violates the requirements of this section, commits an offence and is liable, on summary conviction, to a fine of five thousand dollars.

Regulations

96. (1) The Minister may make regulations prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the Minister shall have power to prescribe—

(a) the amount of charges and fees payable to the Authority for or in relation to applications, licences, permits or for the provisions of services or materials provided by the Authority to any person;

(b) the amount of any other charges or fees which may be specified in any programme developed by the Authority to encourage protection and conservation of the environment;

(c) the manner of implementing policies and programmes referred to in section 16(1)*(b)*.

(3) Regulations under this section may prescribe specific offences under this Act and provide that any person committing such an offence is liable, on summary conviction, to a fine of not more than twenty thousand dollars and imprisonment of not more than one year.

Validation of acts or omissions

97. All acts and things done or omitted to be done under the Environmental Management Act, 1995 (the former Act) shall, notwithstanding any law to the

contrary, be deemed to have been lawfully done under this Act, as if this Act had been in force at the commencement of the former Act and all legal proceedings pending and all decisions issued or taken or in force at the commencement of this Act, shall continue to have full force and effect as if commenced, made or issued under this Act.

Repeal of Act No. 3 of 1995

98. The Environmental Management Act, 1995 is hereby repealed.

Passed in the Senate this 14th day of December, 1999.

N. COX
Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than two-thirds of all the members of the Senate, that is to say, by the votes of 28 members of the Senate.

N. COX
Clerk of the Senate

Passed in the House of Representatives this 21st day of January, 2000.

J. SAMPSON-JACENT
Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than two-thirds of all the members of the House, that is to say, by the votes of 27 members of the House.

J. SAMPSON-JACENT
Clerk of the House

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