

**REPUBLIC OF VANUATU
POLLUTION (CONTROL) ACT
NO. 10 OF 2013**

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REPUBLIC OF VANUATU
Assent: 14/10/2013
Commencement: 27/06/2014
POLLUTION (CONTROL) ACT
NO. 10 OF 2013

An Act to control the discharge and emission of pollution in Vanuatu.
Be it enacted by the President and Parliament as follows-

PART 1 PRELIMINARY

1 Interpretation

In this Act, unless the contrary intention appears:

authorised officer means any of the following persons:

- (a) a person who the Director has delegated powers or functions under subsection 5(1);
- (b) a person appointed under subsection 6(1);

body corporate includes any licensed business;

Department means the Department of Environmental Protection and Conservation;

Director means the Director of the Department;

environment means the components of the earth and includes all or any of the following:

- (a) land and water;
- (b) layers of the atmosphere;
- (c) all organic and inorganic matter and living organisms including ecosystem services and processes;
- (d) weather and climatic systems;
- (e) the interacting natural, cultural and human systems that include components referred to in paragraphs (a) to (d);

hazardous substance means:

- (a) any substance which is, or which has the potential to be, toxic

or poisonous, or which may cause injury or damage to human health or to the environment, including all persistent organic pollutants; and

(b) any specific substance, object or thing determined under any law to be a hazardous substance; and

(c) any other matter or thing deemed under international conventions applicable to Vanuatu to be a hazardous substance, or to have the characteristics of a hazardous substance;

Minister means the Minister responsible for Environment;

occupier, in relation to any premises, means a person who occupies or controls those premises or a part of the premises (whether or not that person owns the premises or that part of them);

owner means:

(a) owner of land; or

(b) proprietor of a land lease; or

(c) in relation to a building, the owner of the building or the owner or proprietor of a lease of the land on which the building is erected;

pollutant includes any of the following that may result in environmental harm:

(a) a gas, liquid or solid; or

(b) an odour; or

(c) an organism (whether alive or dead), including a virus; or

(d) energy, including noise, radioactivity and electromagnetic radiation ; or

(e) a hazardous substance; or

(f) a combination of pollutants;

pollution means the introduction by persons, directly or indirectly, of substances or things into the environment which may result in harm to the environment, and hazardous to human health.

premises means a residential, commercial, industrial or other premises of any kind;

prescribed form means a form prescribed by regulations under this Act, or in the absence of any relevant regulations, a form approved for any purpose under this Act by the Director;

prescribed standard includes all:

(a) standards and guidelines prepared by the Director in accordance with this Act;

(b) standards and guidelines prepared by the Director in accordance with the Environmental Protection and Conservation Act [CAP 283]; and

(c) conditions applying under any development consent or approval and any other permit applying to any premises.

2 Application of the precautionary principle

(1) Despite the provisions of any other Act, all persons and agencies having responsibilities under this Act, or whose functions and powers may relate to any matter or thing involving the environment, are to apply the precautionary principle when discharging their responsibilities and functions, or exercising their powers.

(2) For the purposes of this section, the precautionary principle is applied if, in the event of a threat or damage to the environment or human health exists in Vanuatu, a lack of full scientific certainty regarding the extent of adverse effects of the threat or damage is not to be used to prevent or avoid a decision being made to minimise the potential adverse effects or risks of environmental damage or degradation.

(3) Any decision making made under the terms of this Act must be guided by consideration of climate change adaptation and mitigation issues.

3 Functions of the Director

(1) The Director is responsible for the development, coordination and, where appropriate, implementation of the State's pollution control policies and programs.

(2) In carrying out the functions outlined in subsection (1), the Director is to carry out the following:

(a) administer the permit system under Part 2 of this Act;

(b) in the absence of relevant regulations, prepare guidelines and standards

for the purpose of giving effect to this Act;

(c) undertake environmental assessment, monitoring, and inspection generally; and

(d) undertake such other duties and responsibilities as may lawfully be required by the Minister.

4 Powers of the Director

The Director has the powers conferred by this Act and such other powers as may be necessary or convenient for the performance of his or her functions under this Act.

5 Delegation of the functions or powers of the Director

(1) The Director may, in writing, delegate to any officer of the Department or to any other person appointed under subsection 6(1), his or her powers or functions under this Act, other than the power of delegation.

(2) The delegation may be made generally, or in respect of a particular matter or class of matters.

(3) A person who has been delegated with the powers and functions under subsection (1) is an authorised officer.

(4) The Director may at any time revoke or vary a delegation.

(5) A delegation does not prevent the Director from exercising the power or function that he or she has delegated.

6 Appointment of other persons

(1) The Director may in writing, appoint a person not employed at the Department as an authorised officer for the purpose of administering and enforcing this Act.

(2) The powers and functions of an authorised officer must be stated in his or her instrument of appointment.

(3) The Director is to consult with the Public Service Commission, the Police Service Commission, the relevant Municipal Council or Local Government Council before appointing the person as an authorised officer.

7 Enforcement powers of authorised officers

(1) For the purposes of implementing, enforcing and ensuring compliance with the provisions of this Act and its regulations, an authorised officer may:

(a) enter any land; and

- (b) enter private premises after notifying the owner of his or her intention to do so; and
- (c) examine any plant, facility, substance or thing located in a premises; and
- (d) take or remove samples of any matter, substance or thing required for testing and analysis; and
- (e) take possession of any machinery, equipment, plant or other thing for further examination or testing or for use as evidence; and
- (f) take pictures, photographs or measurements or make sketches or recordings in any form; and
- (g) require the production of records and information relevant to the requirements of this Act and its regulations, and to make and take copies of such records and information; and
- (h) order that the operation of whole or part of a Ministry, department, statutory authority, local authority, plant or facility be stopped for the purposes of inspection; and
- (i) interview any person for the purposes of inspection; and
- (j) exercise any other powers conferred to him or her under this Act or any other Act.

(2) If an authorised officer takes possession of a matter, substance, plant machinery or other item or thing from a Ministry, department, statutory authority, local authority or facility, the Ministry, department, statutory authority, local authority or facility may request the Director to make a decision for the return of the matter, substance, plant machinery or other item or thing.

(3) Any document or information collected under paragraph (1)(g) must not be disclosed unless the document or information is disclosed:

- (a) for official purposes; or
- (b) with the consent of the person who provided the document or information or to whom the information relates; or
- (c) in a Court or tribunal; or
- (d) in the public interest.

(4) A civil or criminal liability action is not to be taken against an authorised officer or observer in respect of anything done or omitted to be done by the officer in good faith in the execution or purported execution of his or her powers and duties under this section.

(5) An employee of a Ministry, department, statutory authority or local authority or the owner, occupier or employer of a facility in respect of which an authorised officer is exercising powers under this Act, must:

(a) give the authorised officer any assistance to enable the officer to exercise powers and functions under this Act; and

(b) provide any document or information required by the authorised officer for the purpose of this Act.

(6) A person who knowingly or deliberately, conceals the location or existence of any matter, substance, plant machinery, document or information from an authorised officer, is guilty of an offence punishable on conviction by imprisonment of not more than 12 months, or a fine not exceeding VT2,000,000, or both.

(7) A person who fails to comply with a request or direction of an authorised officer under this section, is guilty of an offence punishable on conviction by imprisonment of not more than 12 months, or a fine not exceeding VT2,000,000, or both.

(8) For the purposes of this section, unless the context otherwise provides:

facility includes a building or place that provides a particular service or is used for a particular industry;

plant includes any machinery, equipment, tool or any of its components.

PART 2 OBLIGATIONS TO TAKE POLLUTION CONTROL MEASURES

8 Measures applying to premises

The owner or occupier of any premises must comply with any prescribed standard for the discharge of pollution, waste water and the emission of noise, odour or electromagnetic radiation from the premises.

9 Permit for the discharge of pollutants

(1) A person who occupies or owns any premises must not:

(a) cause or increase the discharge of pollution, or the emission of odour, electromagnetic radiation or unreasonable noise from the premises; or

(b) alter the nature of pollution discharged, or to increase the emission of noise, odour or electromagnetic radiation emitted from the premises,

unless that person is permitted to do so under a permit issued under this Act.

(2) A person who contravenes subsection (1) is guilty of an offence punishable on conviction:

(a) if the person is an individual – by imprisonment for not more than 6 months, or a fine not exceeding VT1,000,000, or both; or

(b) if the person is a body corporate – by a fine not exceeding VT1,000,000.

(3) For the purposes of this section, noise is taken to be unreasonable having regard to:

(a) its volume, intensity or duration; and

(b) the time, place and other circumstances in which it is emitted.

10 Application for permit to discharge pollutants

(1) Subject to subsection (4), an application for a permit to discharge or emit pollutants from any premises, building, structure or works is to be made to the Director in the prescribed form and must:

(a) be accompanied by the prescribed application fee; and

(b) include any information, plans, specifications and other document and information that the Director may require.

(2) If an application complies with subsection (1), the Director must seek comments on it from the Department of Health and any other public authority or person who in the opinion of the Director has a direct interest in the subject matter of the application.

(3) The Director must consider any comments received under subsection (2) and may either:

(a) grant a permit subject to such conditions as the Director may specify;
or

(b) refuse to grant the permit.

(4) For the purposes of paragraph (3)(a), the Director may impose 1 or more of the

conditions listed in section 13.

(5) A permit granted under this section is valid for a period of up to 12 months from the date on which it is issued and may be renewed.

11 Revocation, suspension or variation of a permit

(1) The Director may, by notice in writing served on the holder of a permit, revoke or suspend the permit, if the Director is satisfied that:

- (a) there has been a breach of any of the conditions of the permit; or
- (b) the discharge or emission of pollutants has or is likely to endanger human health or cause excessive harm to the environment.

(2) The Director may at any time vary a permit by serving a notice in writing to that effect on the holder of the permit.

12 Transfer of permit

(1) A person who becomes the owner or occupier of any premises, in respect of which a permit issued is still valid, is to comply with the conditions of the permit and must within 30 days of coming into occupation or ownership of the premises, apply to the Director for the transfer of the permit.

(2) An application for transfer of a permit is to be made in the prescribed form and accompanied by the prescribed fee.

(3) If the Director is satisfied that the new owner or occupier of the premises will comply with the permit, the Director may transfer the permit to the new owner or occupier with or without further conditions.

(4) The Director may refuse any application for the transfer of a permit on the grounds that such refusal is in the interests of protecting human health or the environment.

13 Conditions applying to permits

(1) The Director may impose conditions to a permit at the time of issuance, or at any time during the period for which the permit is valid.

(2) Without limiting subsection (1), the Director may impose the following conditions:

- (a) requiring pollution control equipment to be installed and operated in any required manner to prevent, control or abate pollution; or
- (b) specifying measures that are to be taken to minimise the likelihood of pollution due to any activity conducted or proposed to be conducted in the

premises; or

(c) requiring the provision of monitoring equipment of a specified type or capacity; or

(d) requiring the implementation of a monitoring program and supply information concerning the characteristics, volume and effects of pollutants that are being or are to be discharged or emitted from the premises into the environment; or

(e) require measures to be taken to re-use or make available for re-use all or any part of the pollutant; or

(f) any other condition that the Director determines.

(3) The holder of a permit must carry out any monitoring program required as a condition of the permit and must supply all information recorded as a result of that program to the Director in the manner required by the Director from time to time.

PART 3 ENFORCEMENT OF POLLUTION CONTROL MEASURES

14 Pollution abatement notice

(1) If it appears to the Director that:

(a) a pollutant is being or is likely to be discharged or emitted from the premises into the environment; or

(b) a pollutant or matter is being discharged or emitted which does not comply with a prescribed standard; or

(c) as pollutant, is causing or likely to cause pollution,

he or she may serve a pollution abatement notice to the owner or occupier of the premises.

(2) The notice is to be issued in writing and is to:

(a) state the grounds upon which the notice is issued; and

(b) require the person identified in the notice to take any measure that the Director considers necessary to prevent, control or reduce the discharge or emission of pollutants, in the manner specified in the notice.

(3) The Director may in writing, vary or revoke a notice.

(4) In varying a notice, the Director may do any of the following:

(a) extend the time to comply with any requirement in the notice if the Director is satisfied that the circumstances of the case justify such an extension; or

(b) vary any requirement in the notice.

(5) Before varying a notice, the Director is to give the person an opportunity to state his or her objections, if any.

(6) If the owner or occupier of a premises issued with a notice fails to comply with the requirements of the notice, the Director may:

(a) order the closure of the premises under section 16; or

(b) issue a penalty notice under section 25.

15 Duties to notify the existence of a notice

If an owner or occupier of a premises to which a pollution abatement notice applies ceases to occupy or own the affected premises, he or she must give written notice within 14 days of ceasing to occupy or owning the premises:

(a) to the Director, stating the name and address of the person who is to become the owner or occupier of the premises; and

(b) to the new occupier or owner of the premises informing that person of the existence of a pollution abatement notice relating to that premises.

16 Order for closure

(1) The Director may order the closure on a premises bound by a pollution abatement notice if the Director is satisfied that:

(a) the person has not complied with any of the conditions contained in a pollution abatement notice served under this Part; and

(b) the non-compliance is causing or is likely to cause conditions detrimental to the environment or dangerous to human health.

(2) After issuing an order for closure, the owner or occupier must take steps or measures necessary to:

(a) stop the carrying on of the trade, process or activity; and

(b) close down the particular premises or part of the premises to which the pollution abatement notice relates; and

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PART 4 POLLUTION OFFENCES

(c) prevent or minimise the effects of the breach of the pollution abatement notice on the environment and on human health.

(3) The order for closure remains until the situation is improved to the satisfaction of the Director.

(4) The order for closure is to be in a form approved by the Director.

(5) A person who fails to comply with an order for closure is guilty of an offence punishable on conviction:

(a) if the person is an individual – by imprisonment for not more than 6 months, or a fine not exceeding VT1,000,000, or both; or

(b) if the person is a body corporate – by a fine not exceeding VT2,000,000.

17 Powers over discharges of pollutants

(1) The Director may make arrangements to remove, disperse, destroy, dispose of or otherwise deal with a pollutant if the pollutant has been or is being discharged or emitted, or is likely to be discharged or emitted from a premises in breach of:

(a) a permit; or

(b) a pollution abatement notice; or

(c) an order for closure.

(2) Any expenses incurred by the State in relation to the removal, disposal, destruction or other dealing with any matter under this section, is a debt owed to the State and may be recovered by the State and may be recovered by the State from the owner or occupier of the premises.

PART 4 POLLUTION OFFENCES

18 Discharge and emissions from vehicles, vessels or aircrafts

(1) A person must not drive a vehicle, sail or conduct a vessel, or operate or fly an aircraft capable of discharging or emitting pollution into the environment unless the vehicle, vessel or aircraft complies with the prescribed standards and the pollution discharged or emitted is within the prescribed limit.

(2) A person who contravenes subsection (1) is guilty of an offence punishable on conviction:

(a) if the person is an individual – by imprisonment for not more than 12 months, or a fine not exceeding VT4,000,000, or both; or

(b) if the person is a body corporate – by a fine not exceeding VT8,000,000.

(3) To avoid doubt, subsection (2) applies only to the owners of the vehicle, vessel or aircraft.

19 Discharge or emission of pollutants from premises

(1) A person must not discharge or emit pollutants from any premises on or onto any land, body of water, foreshore or air so as to result in:

(a) unreasonable interference with the health, welfare, or amenity of any other person; or

(b) any adverse effect on the environment.

(2) A person who contravenes subsection (1) is guilty of an offence punishable on conviction:

(a) if the person is an individual – by imprisonment for not more than 12 months, or a fine not exceeding VT4,000,000, or both; or

(b) if the person is a body corporate – by a fine not exceeding VT8,000,000.

20 General penalty for conviction

(1) A person who commits an offence under this Act for which no penalty is prescribed is guilty of an offence punishable on conviction:

(a) if the person is an individual – by imprisonment for not more than 12 months, or a fine not exceeding VT2,000,000, or both; or

(b) if the person is a body corporate – by a fine not exceeding VT4,000,000.

(2) In addition to imposing a penalty under subsection (1), the Court convicting a person of an offence against this Act may order that person, within a time specified in the order, to do any or all of the following:

(a) carry out any act that he or she failed, refused or neglected to do; or

(b) remove any pollution from the environment caused by that person; or

(c) to pay costs relating to the cleaning up of pollution and the rehabilitation of any area affected by the pollution.

(3) A person who fails, refuses or neglects to comply with an order made under subsection (2) is guilty of an offence punishable on conviction by imprisonment for not more than 5 years, or a fine not exceeding VT20,000,000, or both.

21 Defences to certain proceedings

It is a defence to the prosecution for an offence against this Act if the person charged with the offence proves that:

- (a) the discharge or emission occurred:
 - (i) as a result of preventing danger to human life, health or irreversible damage to a significant portion of the environment; or
 - (ii) as a result of an accident which was beyond such person's control and not caused by the negligence of such person; or
- (b) the person who occupies or owns the premises took all reasonable precautions to prevent that discharge or emission; or
- (c) the discharge or emission complies with any prescribed standard, permit or requirement in a pollution abatement notice, or a condition under a relevant development consent applying to the premises.

PART 5 MISCELLANEOUS PROVISIONS

22 Employers to be liable

If a person commits an offence under this Act while acting on the instruction of his or her employer, the employer of that person is to be liable to be prosecuted for the offence as if the employer had committed it.

23 Appeal to the Supreme Court

- (1) A person may appeal to the Supreme Court against any decision made by the Director under Part 2 of this Act.
- (2) An appeal must be brought, by originating application, not more than 28 days after the date on which the appellant is notified of the decision appealed against, or within such further period as the Supreme Court may allow.
- (3) The Supreme Court may:
 - (a) confirm, reverse or modify the decision appealed against, and make such orders and give such directions to the Director as may be necessary to give effect to the Court's decision; or
 - (b) refer the matter back to the Director with directions to reconsider the whole or any specified part of the matter.

24 Proving matters relating to pollution

(1) If in any prosecution under this Act:

(a) evidence is given by a medical practitioner, or any health inspector, that a chemical, substance or item is hazardous or is dangerous to human health, or that any matter constitutes a health risk; or

(b) evidence is given by the Director or by an authorised officer that there has been, or may be an adverse effect on the environment,

the Court is to accept that evidence as *prima facie* evidence of the matters alleged.

(2) If a prosecution relates to a chemical or other similar substance, the Court may have regard to any information disclosed on the packaging of the chemical or substance to determine whether there is a danger to health or to the public.

(3) This section does not limit or affect the manner in which any matter may be proved to the satisfaction of a Court.

25 Penalty notice

(1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under any provision of this Act or the regulations.

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a Court, the person may pay within a time and to a person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.

(3) Payments made under this section are to be made at the Ministry of Finance and Economic Management which is then to be transferred into the Environmental Trust Fund established under the Environmental Protection and Conservation Act [CAP 283].

(4) A penalty notice may be served personally or by post.

(5) If the amount of penalty prescribed for the purposes of this section for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

(6) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil proceeding arising out of the same occurrence.

(7) The regulations may:

- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and
- (b) prescribe the amount of penalty payable for the offence if dealt with under this section; and
- (c) prescribe different amounts of penalties for different offences or classes of offences.

(8) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a Court.

(9) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

26 Protection of persons performing duties under this Act

A person who lawfully exercises any power or performs any function under the authority of this Act is not liable for any loss or damage, or be subject to any prosecution, in relation to the reasonable exercise of that power or the performance of that function.

27 Regulations

(1) Regulations may be made under this Act for the proper management and regulation of pollutant discharges and emissions and for the effective implementation of this Act.

(2) Without limiting the generality of subsection (1), regulations may be made to:

- (a) prescribe pollution control measures and standards;
- (b) prescribe the forms and fees in respect of applications for a permit including application for the transfer of a permit;
- (c) provide for any other power or procedure for the enforcement of this Act;
- (d) prescribe measures and standards for the quality of fuel;
- (e) prescribe standards, guidelines or codes of practice to give effect to any requirement under this Act.

(3) Regulations made under this section may prescribe offences and impose

penalties being imprisonment for a period not exceeding 12 months or fines not exceeding VT4,000,000, or both.

28 Commencement

This Act commences on the day on which it is published in the Gazette.