



No. 5 of 2009

I assent,

(SIR COLVILLEN. YOUNG)

Governor -General

20th April, 2009.

AN ACT to amend the Environmental Protection Act, Chapter 328 of the Laws of Belize, Revised Edition 2000-2003, to provide for greater environmental control and management of the petroleum industry; to make improved provisions for the protection of the Belize Barrier Reef System; to establish an environmental management fund; to provide for out-of-court settlement in appropriate cases; to provide for the issue of violation tickets for pollution offences; and to provide for matters connected therewith or incidental thereto.

(Gazetted 25th April, 2009.)

BE IT ENACTED, by and with the advice and consent of the House of Representatives and the Senate of Belize and by the authority of the same, as follows: -

1. This Act may be cited as the

Short title.

ENVIRONMENTAL PROTECTION
(AMENDMENT) ACT, 2009.

CAP. 328

and shall be read and construed as one with the Environmental Protection Act, which is hereinafter referred to as the principal Act.

Amendment
of section 2.

2. Section 2 of the principal Act is hereby amended by adding the following definitions in their proper alphabetical order:-

“Petroleum” means the crude oil removed from the earth and the oils derived from tar, sands, shale and coal;

“petroleum oils” includes the following:

- (a) crude oil,
- (b) liquefied petroleum gas,
- (c) aviation gasoline,
- (d) gasoline-type jet fuel,
- (e) kerosene-type jet fuel,
- (f) motor spirit,
- (g) kerosenes,
- (h) light virgin naphtha,
- (i) gas diesel oil,
- (j) light fuel oil,
- (k) medium fuel oil,
- (l) heavy fuel oil;

“petroleum refinery” means any facility engaged in producing gasoline, kerosene, diesel and other distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum or reforming of unfinished petroleum derivatives;

“petroleum refinery complex” means a facility engaged in producing gasoline, kerosene, diesel and other distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum or through re-distillation, cracking, rearrangement or reforming of unfinished petroleum derivatives;

“petroleum water” means produced water and/or water contaminated with petroleum oils or hydrocarbons;

“produced water” means water originating from the natural oil reservoir that is separated from the oil and gas in the production facility;

“refinery process unit” means any segment of the petroleum refinery in which a specific processing operation is conducted;

“process gas” means any gas generated by a petroleum refinery process unit, except fuel gas and process upset gas as defined in this section;

“process upset gas” means any gas generated by a petroleum refinery process unit as a result of start-up, shutdown, upset or malfunction;

“Belize Barrier Reef System” means all that area between geographical coordinates UTM 412 384 E, 2009 873 N and 361 402 E, 1777 501 N, in NAD 27 Zone 16, comprising of corals, coral reefs, atolls, islands, sea-grass beds, mangroves and other associated critical habitats and their inhabitants;

“BTEX” means Benzene, toluene, ethylbenzene, xylene;

“combustion plant” means any technical apparatus in which fuels are oxidized in order to use the heat generated;

“critical habitat” means a physical space with characteristics and/or features known to be necessary for the natural existence of a given species or species and may exist independently or as part of a larger ecosystem;

“critical load” means a quantitative estimate of exposure to one or more pollutants, below which significant harmful effects on sensitive elements of the environment do not occur according to current knowledge;

“CN codes” means Combined Nomenclature referring to customs tariff numbers;

“diesel fuels”, i.e. gas oils falling within CN codes 2710 00 66 and used for self-propelling vehicles are excluded from this definition. Fuels in non-road mobile machinery and agricultural tractors are also excluded from this definition;

“environmental damage” means any injury, harm, break, scratch, atteration, spoil, impairment, mutilation or destruction to the natural environment that reduces or threatens its ability to maintain the processes essential to life and/or which reduces its aesthetic appeal;

“fuel gas” means any gas which is generated by a petroleum refinery process unit and which is combusted, including any gaseous mixture of natural gas and fuel gas which is combusted;

“gas oil” means:

- any petroleum derived liquid fuel falling within CN code 2710 00 67 to 2710 00 68, or
- any petroleum derived liquid fuel which, by reason of its distillation limits, falls within the category of middle distillates intended for use as fuel and of which at least 85% by volume (including losses) distils at 350°C by the ASTM D86 method;

“heavy fuel oil” means:

- any petroleum derived liquid fuel falling within CN code 2710 00 71 to 2710 00 78, or
- any petroleum derived liquid fuel, other than gas oil as defined under this act, which, by reason of its distillation limits, falls within the category of

heavy oils intended for use as fuel and of which less than 65% by volume (including losses) distils at 250°C by the ASTM D86 method. If the distillation cannot be determined by the ASTM D86 method, the petroleum products is likewise categorized as heavy fuel oils;

“ASTM method” means the methods laid down by the American Society for Testing and Materials in the 1976 edition of standard definitions and specifications for petroleum and lubricating products;

“significant coral formations” means any aggregate or group of corals that form part of the Belize Barrier Reef System.

3. Section 5 of the principal Act is hereby amended by adding immediately after subsection(6) the following new subsections:-

Amendment
of section 5.

- “(7) A designated officer may carry out periodic inspections of all establishments which manufacture, produce as by-products, import, export, store, sell, distribute or use any substances that are likely to have a significant impact on the environment, to ensure that the provisions of this Act or any regulations made thereunder are complied with.
- (8) A designated officer shall carry out such other inspections or investigations as may be necessary to ensure that the provisions of this Act, or any regulation made thereunder, are complied with.
- (9) A designated officer may temporarily seize any plant, equipment, substances, boat, vehicle, or any other thing or item which he believes has been used in the commission of an offence against this Act or any regulations made thereunder.

- (10) Neither the Chief Environmental Officer, designated officer, nor any person acting under a direction given by the Chief Environmental Officer or assisting the Chief Environmental Officer, shall be personally liable for any loss or damage suffered by any person, directly or indirectly, in consequence of anything done in good faith under this Act.”

Amendment
of section 8.

4. Section 8 of the principal Act is hereby amended by adding the following new subsection (4) immediately after subsection (3):

“(4) Any person, installation, factory or plant that contravenes this section commits an offence and shall be liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.”

Repeal and
replacement
of section 9.

5. Section 9 of the principal Act is hereby repealed and replaced by the following:

“Restriction on
the use of quality
of petroleum
oils.

- 9.(1) No person, installation, factory or combustion plant shall, unless specifically permitted by the Department, combust any petroleum or petroleum oils with a sulfur content of more than 2.00% by mass:

Provided that if the air quality standards for sulfur dioxide laid down in any relevant legislative provision are respected and the emissions do not contribute to critical loads being exceeded, the Department may authorise heavy fuel oils with a sulfur content of between 1.00% and 3.00% by mass to be used.

- (2) Any person, installation, factory or combustion plant that contravenes this section commits an

offence and shall be liable on summary conviction to a fine of not less than twenty thousand dollars and not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment."

6. Section 10 of the principal Act is amended by adding immediately after subsection (2) the following new subsections:-

Amendment
of section 10.

"(3) Any person, installation, factory or plant involved in the processing of petroleum, be it a petroleum refinery complex or a refinery process unit, shall be considered as handling a hazardous substance and shall be required to maintain the highest level of environmental health and safety standards.

(4) All waste containing petroleum, petroleum oils or distillates shall be considered as hazardous wastes.

(5) The operators of any petroleum refinery, petroleum refinery complex, or refinery process unit shall only be permitted to establish or operate if their refined products destined for local consumption has a sulfur content of 2.00 % by mass or less.

(6) The operators of any petroleum refinery, petroleum refinery complex, or refinery process unit shall only be permitted to establish or operate if their refined products destined for local consumption has a BTEX content of 0.5 mg/l or less.

(7) Any person, installation, factory or plant involved in the exploration, production, or processing of petroleum, be it a petroleum refinery complex or a refinery process unit, shall dispose of petroleum water by deep well injection subsequent to pretreatment to prescribed national levels."

Addition of
new section
11A.

7. The principal Act is amended by adding immediately after section 11, the following:

“Reporting
Requirements.

11A. (1) A person who inadvertently or accidentally causes an act of pollution of any aspect of the environment shall without delay report such pollution to the Department and the police.

(2) The police shall submit a report to the Department on any report received under subsection (1) and take reasonable steps to protect the public.

(3) Any person who fails to make a report required under this section shall be guilty of an offence and liable on summary conviction to a fine of not less than five thousand dollars and not exceeding twenty-five thousand dollars or imprisonment for a period not exceeding six months or both.

(4) Any person who is required to give a report under this section, in giving such a report, makes a statement which is false or misleading in any material particular is guilty of an offence and is liable on summary conviction to a fine not less than five thousand dollars and not exceeding twenty-five thousand dollars or to imprisonment for a period not exceeding six months or both.”

Amendment
of section
20.

8. Section 20 of the principal Act is hereby amended by repealing subsection (7) thereof and replacing the same by the following:

“(7) A decision by the Department to approve an environmental impact assessment may be subject to the signing of an Environmental Compliance Plan, the payment of an environmental monitoring fee, the posting of guarantees or performance bonds, and such other conditions as may be reasonably required for environmental purposes.”

Repeal and
replacement
of section 22.

9. Section 22 of the principal Act is repealed and replaced with the following:

22. Every person who fails to carry out an environmental impact assessment or any conditions imposed by the Department or fails to execute its Environmental Compliance Plan as required under this Act or any regulation made thereunder, commits an offence and shall be liable on summary conviction to a fine of not less than fifty thousand dollars and not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.”

“Penalty for non-compliance with the EIA process.

10. The principal Act is amended by the addition immediately after section 23 of the new section 23A as follows:

Addition of new section 23A.

“Requirement for limited level environmental study.

23A. (1) Where the Department has determined that a project, programme or activity may not have a significant impact on the environment but may have some negative impact that need to be properly studied and assessed, the Department may require that a limited level environmental study be carried out by a suitably qualified person who shall submit such study to the Department for its approval.

(2) Every person who fails to carry out a limited level environmental study or any conditions imposed by the Department or fails to execute its Environmental Compliance Plan as required under this Act or any regulations made thereunder, commits an offence and shall be liable on summary conviction to a fine of not less than twenty thousand dollars and not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.”

11. Section 27 of the principal Act is amended by the addition immediately after subsection (2) of a new subsection (3) as follows:-

Amendment of section 27.

“(3) In the event of a conviction, the court may award any amount not exceeding one-quarter of the

fine imposed for an environmental offence to the person who supplied such information that led to the conviction of the offender.”

12. Section 29 of the principal Act is hereby amended as follows:-

Amendment
of section 29.

- (i) in subsection (1) (a), by substituting the words "negligently or carelessly" for the words "intentionally or recklessly" occurring therein;
- (ii) by repealing subsection (2) thereof;
- (iii) by adding the following new subsections (2) to (6) immediately after subsection (1):-

"(2) Subject to subsection (3), every person who causes or permits any damage to critical habitats declared by the Department, or to any other part of the environment, commits an offence and is liable on summary conviction to a fine of not less than fifty thousand dollars and not exceeding two hundred thousand dollars, or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(3) Every person who causes or permits any damage to the Belize Barrier Reef System or any significant coral formation commits an offence and shall be liable on summary conviction to a fine of not less than five thousand dollars and not exceeding twenty five thousand dollars per square meter of damage.

(4) Any person who causes or permits any damage in the manner specified under this section shall promptly report such damage to the Department.

(5) Any person who fails to make a

report required under this section shall be guilty of an offence and shall be liable on summary conviction to a fine of not less than five thousand dollars and not exceeding ten thousand dollars or to imprisonment for a period not exceeding one year or to both such fine and imprisonment.

(6) Any person who is required to give a report under this section, makes, in giving such a report, a statement which is false or misleading in any material particular is guilty of an offence and is liable on summary conviction to a fine of not less than five thousand dollars and not exceeding twenty five thousand dollars or to imprisonment for a period not exceeding two years or to both such fine and imprisonment."

13. Section 33 of the principal Act is hereby amended by repealing subsection (3) thereof.

Amendment
of section
33.

14. Section 45(2) of the principal Act is amended by adding immediately after paragraph (q) the following, and by renumbering the existing paragraph (r) as paragraph (aa):

Amendment
of section
45.

- “(r) the issuance of permits to construct and operate landfills;
- (s) the licensing of storage depots where containers can be deposited;
- (t) the licensing of the processing of recyclables;
- (u) the licensing of other solid waste processing facilities;
- (v) such measures as are necessary to ensure that activities in the maritime zone are so conducted as not to cause damage by pollution to the

natural environment;

- (w) the control and prevention of pollution from vessels, crafts, and other engines used in the maritime zone;
- (x) the control and prevention of pollution from installation devices used in the exploration or exploitation of the natural resources of the sea-bed and subsoil of the maritime zone;
- (y) the control and prevention of pollution of the maritime environment from land-based sources, including rivers, estuaries, pipelines, and outfall structures;
- (z) the control and prevention of pollution of the marine environment arising from or in connection with seabed activities and from artificial islands, installations and structures in the maritime zone.”

Addition of
new section

15. The principal Act is amended by inserting immediately after section 45, the following:

“Consultation
with the
Department.

45A. Any person, body or agency having authority over any matter in respect of which the Department has functions to perform pursuant to this Act shall not, whether provisionally or finally, approve or determine such matter until the Department has been consulted and approval received thereon.

45B. This Act shall bind the State.”

Act to bind the
State.

Addition of
new section
60.

16. The principal Act is amended by inserting immediately after section 59 the following:

60. Whenever the provisions of this Act or any Regulations made are in conflict with or inconsistent

“Act to prevail in case of conflict. with the provisions of any other Act, regulations, rules relating to pollution, environmental impact assessment or the treatment of waste, the provisions of this Act and the Regulations made hereunder shall prevail.”

17. The principal Act is hereby amended by the addition immediately after Part X, of Parts XI, XII, XIII and XIV as follows:

Addition of
Parts XI, XII,
XIII and XIV.

“Part XI

Environmental Management Fund

61. There shall be established an Environmental Management Fund (in this Act hereinafter referred to as “the Fund”).

Environmental
Management
Fund.

62. The objects of the Fund shall be to assist the Department:

Object of the
Fund.

- (a) to cover all costs associated with the response and clean-up of oil spills and other chemicals spills;
- (b) to carry out programmes to prevent and reduce pollution;
- (c) to provide support for laboratory analysis of samples collected for environmental monitoring;
- (d) to support its environmental monitoring and enforcement programs;
- (e) to promote environmental public awareness and research;
- (f) to encourage local environmental initiatives;
- (g) to publish reports and publications on the environment;

- (h) to promote, support and encourage activities relating to protection and management of the environment; and
- (i) to plan and implement other initiatives important for the effective and efficient management of our natural and environmental resources.

63.(1) The Fund shall be administered by a Board which shall consist of:-

Management
of Fund.

- (a) the Chief Executive Officer responsible for the Ministry of Environment who shall be the Chairman of the Board;
- (b) the Financial Secretary, or his nominee;
- (c) the Chief Environmental Officer;
- (d) the Chief Executive Officer responsible for the Ministry of Economic Development; and
- (e) a non-governmental organization nominated by the Department.

(2) The Board shall:-

- (a) furnish to the Minister such information with respect to the discharge of its functions as the Minister may require;
- (b) regulate its meetings and proceedings in such manner as it thinks fit.

(3) Meetings of the Board may be convened by the Chairman or by any two Board members.

(4) The Chief Environmental Officer shall be the Secretary of the Board.

(5) The Chief Environmental Officer shall submit an annual budget for the approval of the Board.

(6) The moneys of the Fund shall not be offset against the Department's allocation approved by the Government.

(7) The Board shall prepare a statement of accounts of the Fund in respect of each financial year.

64.(1) The Board shall keep proper accounts and other records in relation to its business and shall prepare annually a statement of accounts being in a form which shall conform to the best commercial and accounting standards.

Accounts and
audit.

(2) The accounts of the Board shall be audited annually by an independent auditor appointed each year by the Board with the approval of the Minister.

65. Within six months after the end of the each financial year, the Board shall cause to be made and shall submit to the Minister:

Annual
report.

(a) a statement of its accounts audited in accordance with section 64(2); and

(b) a report dealing generally with the proceedings and policies of the Board during that financial year.

66.(1) The Board shall open and maintain at such bank, as may be approved by the Minister, an account for the Fund.

Fund
account.

(2) All money forming part of the Fund shall, as soon as practicable after it is received, be paid into the Fund.

(3) No money shall be paid out of the account of the Fund except with any general or special directions of the Board.

(4) The account of the Fund may only be operated on by cheque or other negotiable instrument signed by a member of the Board who is authorized by the Board to sign cheques drawn on the account, and countersigned by any other member of the Board who is authorized to sign such cheques.

(5) Moneys of the Fund shall be expended only to meet the objectives and purposes authorized under this Act.

67. The Board may with the approval of the Minister make such rules as it thinks fit for the purposes of the Fund.

Rules in
respect of the
Fund.

68. The Fund shall consist of:

Income of the
Fund.

(a) such sums received from the required one tenth of one percent (1/10 of 1%) of gross revenue from all petroleum production in Belize, contained in all production sharing agreements (PSAs) and as required by Regulation 15 of the Petroleum Regulations;

S.I. 112/92.

(b) such sums as may be received for the purposes of the Fund by way of voluntary contributions or donations;

(c) such sums as are paid for fees, licenses, penalties or approvals under this Act or any Regulations made thereunder;

(d) twenty per centum of all revenues derived from the implementation of sections 3 and 7 (f) of the Environmental Tax Act;

CAP. 64:01.

(e) such sums as may be received for the sale of Department's publications, or library fees etc;

- (f) such sums as may be received from littering violation tickets issued outside city or town limits, and from any similar ticketing system;
- (g) twenty per centum of all revenues derived from the implementation of section 21 (a) and (b) and section 33 of the Protected Areas Conservation Trust Act;
- (h) such sums as may be appropriated by Parliament for the purposes of the Fund; and
- (i) any other money lawfully contributed, donated or paid into the Fund from any other source.

CAP. 218.

Part XII

Out-of-Court Settlements

69.(1) Where an offence under this Act or any regulations made thereunder has been committed and it appears to the Chief Environmental Officer that having regard to the nature of the evidence and all other circumstances, it would be reasonable and expedient to make an out-of-court settlement, he may, after seeking legal advice and with the prior approval of the Minister, make a settlement in lieu of commencing or continuing court proceedings, and in every such case the amount to be paid under the settlement shall also include all reasonable expenses the Government may have incurred in the seizure, storage, maintenance or removal of any article seized in connection with the offence.

Out-of-court settlements.

(2) In any proceedings brought against a person in respect of an alleged offence under this Act or any regulations made thereunder, it shall be a defence for such person to prove that he has already paid the agreed amount under an out-of-court settlement in respect of such offence.

(3) The Chief Environmental Officer shall submit to the Chief Executive Officer of the Ministry quarterly reports of all offences in respect of which out-of-court settlements were made under subsection (1).

Part XIII

Tickets

Tickets.

70. (1) The Minister may make regulations for the issuance of Violation Tickets for pollution offences and all matters connected therewith or incidental thereto, and without prejudice to the generality of the foregoing, such regulations may provide for all or any of the following matters:-

- (a) the form of the Violation Ticket;
 - (b) persons by whom a Violation Ticket may be issued;
 - (c) the place or places where the fine stated on the Violation Ticket may be paid;
 - (d) the time for paying such fines;
 - (e) the penalty for failure to pay such fine within the time specified;
 - (f) the procedure for requesting a court hearing by a person who has been issued with a Violation Ticket.
- (2) Where an act constitutes an offence both for the purpose of the regulations made under subsection (1) above and the Summary Jurisdiction (Littering Offences) (Violation Tickets) Regulations, the offender shall be liable

Sub. Legs.
2003 edn
CAP. 98

to be charged and prosecuted only under one of the said regulations.

PART XIV

Financial Assurance, etc.

Financial
assurance.

71. The Department may impose financial assurances, performance bonds or guarantees as a condition for the grant of environmental clearance, licenses, permits or otherwise under the provisions of this Act or any regulations made thereunder.

PART XV

Landfills and Waste Disposal Facilities

Permit to
operate
landfills.

72.(1) No person shall construct, operate or manage a landfill or hazardous waste disposal facility without a permit from the Department.

(2) A deep well injection site / facility for the purpose of disposal of hazardous wastes shall be considered as a hazardous waste disposal facility.

(3) No person shall construct, operate or manage an incinerator or co-generation facility that utilizes refuse derived fuel as its source of fuel without a permit from the Department.

(4) The Department may issue a permit subject to conditions including a requirement for a performance bond or guarantee.”