

# **THE ENVIRONMENT MANAGEMENT BILL, 1999**

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(Bill No. # of 1999)

(To be presented by the Minister for Tourism, Environment and Communications)

## **MEMORANDUM OF OBJECTIVES AND REASONS**

The objectives of this Bill are:

- (a) to establish a framework for environmental protection and the integrated management of natural resources on a sustainable basis;
- (b) to transform the Swaziland Environment Authority into a body corporate;
- (c) to establish the Swaziland Environment Fund; and
- (d) to provide for matters incidental to the above objectives.

*Attorney-General*

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A BILL

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## **THE ENVIRONMENT MANAGEMENT ACT**

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Swaziland Environment Authority

## PART I - INTRODUCTORY PROVISIONS

### *Short title and commencement*

1. This Act may be cited as the Environment Management Act, 1999, and shall come into force on the date or dates appointed by the Minister by notice in the Gazette.

### *Interpretation*

2. (1) In this Act, unless the context otherwise requires, -

“Act” means this Act and any regulations made under it, and includes regulations made under the Swaziland Environment Authority Act, 1992 that continue to be in force under this Act;

"adverse effect" means any harmful or detrimental effect on the environment, whether actual or potential:

- (a) that is, or may in future be, more than trivial or insignificant; and/or
- (b) that impairs, or may in future impair, human health; and/or
- (c) that results in, or may in future result in, an impairment of the ability of people and communities to provide for their health, safety, and cultural and economic well-being, that is more than trivial or insignificant;

and the risk of a potential adverse effect occurring shall be deemed to be significant if either it is reasonably likely that the adverse effect may occur, or if it is unlikely that the adverse effect will occur but if it did occur it would be serious and/or irreversible;

“air” means air not enclosed by a building, machine, chimney or other such structure;

“Authority” means the Swaziland Environment Authority established under section 11;

“Board” means the Management Board of the Authority referred to in section 13;

“body corporate” includes a company, firm, partnership, municipal corporation, or other legal person;

“contaminant” includes any substance, solid, liquid, gas, micro-organism, noise, vibration, heat, radiation or other energy, or thing, or combination of them that has or has the potential to have an adverse effect, or any thing deemed to be a contaminant under the regulations;

“clinical waste” means any waste defined as clinical waste under section 47;

“Director” means the Director of the Swaziland Environment Authority appointed under section 17;

“discharge” includes the emission, deposition, disposal, addition or introduction into the environment of a contaminant directly or indirectly from any point source or diffuse source, whether stationary or mobile, and whether caused or permitted intentionally or unintentionally;

“effect” in relation to the environment, includes any actual, potential, temporary, permanent, and/or cumulative effect that is more than trivial or insignificant;

“environment” means the whole or any component of:

- (a) nature, including air, land, water, soils, minerals, energy other than noise, and living organisms other than humans;
- (b) the interactions between the components of nature and between those components and humans;
- (c) physical, aesthetic and cultural qualities or conditions that affect the health and well-being of people;

and unless the context otherwise requires, refers only to the environment within the territory of Swaziland or over which Swaziland exercises rights of sovereignty, and “environmental” has a corresponding meaning;

“Fund” means the Swaziland Environment Fund established under section 20;

“hazardous substance” includes any pesticide, herbicide or other biocide, radioactive substance, chemical, or other substance and any micro-organism or energy form that has properties that, either by themselves or in combination with any other thing, make it hazardous to human health or safety, or to the environment, and includes any substance, micro-organism or energy form defined by regulation as a hazardous substance, and excludes any substance, micro-organism or energy form deemed by regulation not to be a hazardous substance;

“hazardous waste” means any waste defined as hazardous waste under section 47;

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

“litter” means any waste that is discarded in any public place or vacant land, other than in a designated waste receptacle;

“local authority” means a municipal council or a town council established under Part II of the Urban Government Act 1969, or a town board established under Part XIII of that Act, and in relation to a company town, means the company that controls the town;

“Minister” means the Minister responsible for the Environment;

“Ministry for the Environment” means the Ministry responsible for the Environment;

“natural resources” means any component of nature, capable of being utilised by humans and includes air, land, water, soils, minerals, energy, living organisms other than humans, and genetic resources, and for the purposes of this definition, “genetic resources” means any material of plant, animal, microbial or other origin containing functional units of heredity, of any actual or potential value;

“occupier” means, in relation to any land or premises, any person in actual occupation, in charge of, or responsible for managing, the land or premises, and includes a person occupying a portion of Swazi Nation land with the permission of a Chief, and in respect of Swazi Nation land that has not been allocated to a particular person, means the Chief of that area;

“organ of Government” means any part of the Government or of local government including a Ministry, a Government department, a municipal council, a town council, and a town board;

“person” includes any natural or legal person, an organ of Government, and a Public Body;

“premises” means any building or part of a building, and any other structure used to accommodate people, and the land used or occupied in connection with it;

“project” means an enterprise, undertaking or activity, or a proposal or plan for a new enterprise, undertaking or activity or to significantly change an enterprise, undertaking or activity, and includes a plan, operation, undertaking, construction, development, change in land use, or alteration that may not be implemented without a permit, licence, consent or approval issued by or on behalf of a Minister, Public Officer, an organ of Government or a Public Body;

“Public Body” means an organisation that exercises public functions but is not an organ of Government and to the extent that it exercises public functions, includes a body answerable to the Ngwenyama and a public enterprise as defined in section 2 of the Public Enterprises (Control and Monitoring) Act, 1989, and a subsidiary of a public enterprise;

“Public Officer” means a Public Officer as defined in the Civil Service Order, No. 16 of 1973;

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

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

“special waste” means hazardous waste and clinical waste;

“sustainable management” means protecting and managing the use of natural resources, in a manner that, while enabling people and communities to provide for their health, safety, and social, cultural and economic well-being:

- (a) safeguards the life-supporting capacity of air, water, soil and ecosystems;
- (b) maintains the life-supporting capacity and quality of air, water, soil, and ecosystems, including living organisms, to enable future generations to meet their reasonably foreseeable needs; and
- (c) avoids the creation of adverse effects wherever practicable, and where adverse effects cannot be avoided, mitigates and remedies adverse effects as far as practicable.

“urban area” means an area within the jurisdiction of a local authority;

“waste” means any substance or thing that the holder discards or disposes of, or intends or is required to discard or dispose of, irrespective of its value to any person, and any substance or thing deemed by a regulation to be waste; and for the purposes of this definition: “holder” means a person in possession of the waste, or a person whose activities produced the waste, or a person who carried out pre-processing, mixing or other operations that changed the nature or composition of the waste;

“water” means water in all its physical forms wherever it occurs;

(3) In this Act, if a penalty is specified:

- (a) without qualification at the foot of a section; or
- (b) at the foot of a subsection but not at the foot of the section; or
- (c) at the foot of a section and expressed to apply to a specified subsection,

then, unless the contrary is expressly provided, that specification indicates that a contravention of the section or subsection, or of the specified subsections, is an offence and that offence is punishable on conviction by a penalty not exceeding that specified.

### *Application*

3. This Act binds the State and all persons over which or over whom the State has jurisdiction.

## PART II - FUNDAMENTAL PURPOSE AND PRINCIPLES

### *Purpose*

4. The purpose of this Act is to provide for and promote the enhancement, protection and conservation of the environment and where appropriate, the sustainable management of natural resources.

### *Environmental Principles*

5. In achieving the purpose of this Act, the following principles shall be applied:

- (a) the environment is the common heritage of present and future generations;
- (b) adverse effects should be prevented and minimised through long term integrated planning and the co-ordination, integration and co-operation of efforts, which consider the entire environment as a whole entity;
- (c) the precautionary principle, which requires that where there is a risk of serious or irreversible adverse effects occurring, a lack of scientific certainty should not prevent or impair the taking of precautionary measures to protect the environment;
- (d) the polluter pays principle, which requires that those causing adverse effects shall be required to pay the full social and environmental costs of avoiding, mitigating, and/or remedying those adverse effects;
- (e) the generation of waste should be minimised wherever practicable;
- (f) waste should, in order of priority, be re-used, recycled, recovered and disposed of safely in a manner that avoids creating adverse effects or if this is not practicable, is least likely to cause adverse effects;
- (g) non-renewable natural resources should only be used prudently, taking into account the consequences for the present and future generations; and
- (h) renewable resources and ecosystems should only be used in a manner that is sustainable and does not prejudice their viability and integrity.

### *Duty to give effect to purpose and principles*

6. (1) Any person or body exercising powers or functions or making decisions under this Act shall give effect to the purpose of this Act and the principles listed in section 5.

(2) Any Minister, Government Officer or other person exercising a public function who, in the course of exercising that public function, is required to take any action, make a

decision, or create, revise, or implement any policy, plan, strategy, legislation, guideline, or procedure, that is likely to affect the protection, conservation or enhancement of the environment or the sustainable management of natural resources in Swaziland shall have regard to, apply and provide for the principles mentioned in section 5 in exercising that public function.

(3) At the written request of any person, any person or body referred to in subsections (1) or (2) shall confirm in writing within 60 days of receipt of the request, whether or not the purpose referred to in section 4 and the principles referred to in section 5 have been given effect to or applied in respect of a particular matter, and if so, how; and if not, the reasons why not.

(4) Any person who is dissatisfied with a written response given under subsection (3) may, within 30 days, lodge an application for review with the Minister in accordance with section 82.

### *Environmental Management Strategy*

7. (1) Within twelve months of the entry into force of this Act, each Minister shall ensure that an Environmental Management Strategy for each Ministry for which the Minister is responsible, is prepared and submitted to the Authority for approval.

(2) The Board shall consider each Environmental Strategy submitted to it and as soon as reasonably possible shall either notify the Ministry concerned that it has approved the Strategy or of the ways in which the Board requires the Strategy to be amended in order to approve it.

(3) After the Board has approved a Strategy, the Ministry concerned shall, within six months of the date of approval, publish the Strategy in the Gazette and start implementing it.

(4) Each Strategy shall include the following:

- (a) a description of the principal effects that the activities regulated by the Ministry have or may have on the environment and the sustainable management of natural resources;
- (b) a description of the principal effects that the activities of the Ministry have or may have on the environment and the sustainable management of natural resources;
- (c) a statement of the objectives of the Strategy, which shall be designed to further the achievement of the purpose of this Act and the National Environmental Action Plan referred to in section 30; and
- (d) a description of the practical measures that the Ministry will take to give effect to the purpose referred to in section 4 and the principles referred to in section 5, and to ensure that it exercises its functions in a way that helps to achieve the objectives of the Strategy.

(5) Each Ministry shall review its Environmental Management Strategy at least once every three years and shall publish a report on that review in the Gazette.

(6) Each review report shall include:

- (a) an assessment of the effects that activities in the sector regulated by the Ministry have had on the environment and the sustainable management of natural resources over the previous five years, and an assessment of future trends in this regard;
- (b) an assessment of the effects that the activities of the Ministry have had on the environment and on the sustainable management of natural resources, over the previous five years;
- (c) an assessment of the extent to which the objectives of the Strategy have been achieved and the effectiveness of the Strategy in assisting the Ministry to apply the principles set out in section 5; and
- (d) recommendations for improving the Strategy; and
- (e) proposed amendments to the Strategy or a draft of a new Strategy that takes into account the assessments noted in the review.

### **PART III – ADMINISTRATION**

#### *Powers of the Minister*

8. The Minister may, in order to give effect to the purpose of this Act:

- (a) subject to the prior approval of the Ngwenyama acting in Libandla and the Cabinet, enter into any agreement on behalf of Swaziland relating to the protection, conservation or enhancement of the environment and the sustainable management of natural resources, whether within Swaziland, within a particular region, or globally;
- (b) provide grants and loans to organisations established to provide for and promote the protection, conservation and enhancement of the environment, for the purpose of carrying out any function that advances the purpose of this Act, provided that the provision of any funds is made subject to appropriate conditions to ensure that the funds are properly applied for the purpose for which they were granted;
- (c) convene conferences on the protection, conservation and enhancement of the environment and the sustainable management of natural resources;

- (d) appoint the Director in accordance with subsection 13(4) and members of the Board;
- (e) dismiss a member of the Board on the grounds set out in subsection 16(2);
- (f) on the advice of the Board, establish and publish standards, codes of practice, guidelines and procedures; and
- (g) on the advice of the Board, set and publish ambient environmental quality objectives; and
- (h) by order in writing served on any organ of Government or Public Body, require that organ of Government or Public Body to use its statutory powers to improve ambient environmental quality and to give effect to the purpose of this Act.

#### *Swaziland Environment Authority*

9. The Swaziland Environment Authority is established as a body corporate with perpetual succession to be the successor to the Swaziland Environment Authority established under the Swaziland Environment Authority Act, 1992.

#### *Powers of the Authority*

10. The Authority may:

- (a) acquire, hold and dispose of real and personal property;
- (b) sue and be sued; and
- (c) as far as possible for a body corporate, exercise the rights, powers and privileges and incur the liabilities and obligations of a natural person of full age and capacity.

#### *Constitution and Proceedings of the Authority*

11. (1) The proceedings and constitution of the Authority is governed by Schedule 1.

(2) Subject to the provisions of this Act the Authority may regulate its own proceedings.

#### *Functions of the Authority*

12. (1) The Authority shall exercise the functions conferred on it under this Act in order to provide for and promote the protection, conservation and enhancement of the environment and the sustainable management of natural resources.

(2) The functions of the Authority are:

- (a) to institute measures for the implementation of this Act both alone and in co-operation with other public bodies, organs of government, non-governmental organisations, private sector organisations, and members of the public;
- (b) to monitor the implementation of the Act and assess its effectiveness in improving the level of protection, conservation and enhancement of the environment and the sustainable management of natural resources, and to advise the Minister on ways of giving effect to the purpose of the Act more effectively;
- (c) to assist the Minister in formulating policies relating to the environment and the sustainable management of natural resources;
- (d) to advise and to make recommendations to the Minister and the Government either upon request or on its own initiative, on matters relating to the protection, conservation and enhancement of the environment and the sustainable management of natural resources;
- (e) to develop in cooperation with other organs of Government, as appropriate, economic measures that encourage the sustainable management and use of natural resources and the enhancement, protection and conservation of the environment;
- (f) to administer the Swaziland Environment Fund in accordance with the policies and directions of the Board of the Fund;
- (g) to administer licences issued under the Act in accordance with the provisions of this Act;
- (h) to prepare a national waste strategy;
- (i) to give directions to local authorities regarding their functions relating to the collection and disposal of waste in urban areas, and to perform the waste management functions listed in section 44;
- (j) give general and/or specific directions to local authorities, in order to promote the protection, conservation and enhancement of the environment and the sustainable management of natural resources;
- (k) to liaise with bodies concerned with matters relating to the protection, conservation and enhancement of the environment and the sustainable management of natural resources;
- (l) to monitor trends in the state of the environment and to prepare reports on the state of the environment for consideration and approval by the Minister;

- (m) to prepare National Environmental Action Plans for consideration and approval by the Minister and to promote their implementation;
- (n) to review environmental impact assessment reports and strategic environmental assessments reports;
- (o) to undertake and promote research into matters relevant to the protection, conservation and enhancement of the environment and the sustainable management of natural resources;
- (p) to promote, in collaboration with other appropriate bodies and organisations, training, education and public awareness programmes relating to the protection, conservation and enhancement of the environment and the sustainable management of natural resources;
- (q) to disseminate and facilitate public access to information on the environment including creating and maintaining an environmental information registry in accordance with section 50;
- (r) to facilitate public involvement in decision making concerning the environment including establishing procedures to facilitate the submission of comments on licence applications under this Act;
- (s) to recommend environmental standards, codes of practice, guidelines and legislation to the Minister and the Government;
- (t) to publish guidelines, codes of practice and other information relating to the protection and conservation of the environment and the sustainable management of natural resources;
- (u) to conduct inspections and take other measures to monitor compliance with this Act and to conduct investigations into alleged contraventions of this Act;
- (v) to take all reasonably practical measures, to enforce this Act and other environmental protection legislation either alone or in co-operation with relevant bodies and police forces, including issuing and enforcing orders and prosecuting offences; and
- (w) to perform other functions incidental or conducive to the exercise by the Authority of any of the above functions or which are assigned to it by the Minister in order to further the purpose of this Act.

### *Management Board*

13. (1) The Authority has a Management Board which is the governing body of the Authority with the authority and responsibility to exercise and perform the functions conferred or imposed on the Authority under this Act.

(2) The Board shall comprise:

- (a) the Principal Secretary of the Ministry responsible for the environment;
- (b) the Principal Secretary of the Ministry responsible for agriculture
- (c) the Principal Secretary of the Ministry responsible for commerce and industry;
- (d) the Principal Secretary of the Ministry responsible for economic planning and development;
- (e) the Principal Secretary of the Ministry responsible for natural resources and energy;
- (f) the Principal Secretary of the Ministry responsible for health and social welfare;
- (g) a person from a non-governmental organization

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P è , ong persons nominated by the public; and

(j) the Director who shall serve as the Secretary of the Board but who may not vote.

(3) The members of the Board shall be appointed by the Minister and shall hold office upon terms and conditions determined by the Minister.

(4) Subject to section 16, a member of the Board referred to in paragraphs (g), (h) or (i) of subsection (2) shall hold office for a period of three years and shall be eligible for re-appointment.

(5) The Minister shall in writing request the bodies referred to in paragraphs (g) and (h) of subsection (2) to nominate, within 28 days of receiving the request, a person or persons for appointment to the Board, whenever the relevant position on the Board is vacant.

(6) The Minister shall publish a notice in the Gazette and in a national newspaper circulating in Swaziland at least once a week for two consecutive weeks requesting members of the public to nominate, within 60 days of the date the notice was first published, a person or persons for appointment to the Board whenever the position of member referred to in paragraph (i) of subsection (2) is vacant.

(7) If the Minister is not satisfied as to the suitability of a person nominated for appointment to the Board, the Minister may, by notice in writing to the nominating body, reject the nomination and request a further nomination, which request has the same effect as a request under subsection (5).

(8) If a nomination is not received by the Minister within the period requested, the Minister may appoint a person whom the Minister considers appropriate on the basis of their expertise in environmental matters and that person shall hold office as if nominated in accordance with subsection (5) or (6).

#### *Remuneration of Board members*

14. (1) Members of the Board and of any committee established by the Board shall be remunerated and paid fees and allowances as determined by the Minister by notice in the Gazette.

(2) Any remuneration, fees or allowances which may become payable under this section shall be paid out of the Consolidated Fund of the Government unless the Parliament has appropriated funds to the Authority for this purpose, in which case the Authority shall pay these amounts.

#### *Chairperson of the Board*

15. The Minister shall appoint a member of the Board to be the Chairperson and the Chairperson of the Board shall:

- (a) hold office for a period of 3 years upon terms and conditions determined by the Minister;
- (b) convene meetings of the Board at any reasonable time;
- (c) chair meetings of the Board; and
- (b) work closely with the Director to ensure the smooth operation of the Authority.

*Vacation of office by members of the Board*

16. (1) A member may resign by giving a signed notice of resignation to the Minister.

(2) The Minister shall remove a member from office upon being satisfied that the member:

- (a) is an unrehabilitated insolvent under any law relating to the insolvency of persons in Swaziland;
- (b) is, for whatever reason, permanently incapable of performing the duties of a member;
- (c) has been absent, without the leave of the Chairperson, from three consecutive meetings of the Board;
- (d) has been convicted of an offence against this Act or has been sentenced to a term of imprisonment of six months or more;
- (e) has engaged in misconduct which is likely to bring the Board into public disrepute.

(3) A member whose term of office has expired shall nevertheless remain in office until a successor comes into office, unless the member resigns or is removed from office.

*Director*

17. (1) The Minister, in consultation with the Board, shall appoint a Director of the Authority.

(2) The Director shall be appointed on terms and conditions specified by the Board.

(3) The Director is the chief executive of the Authority and is responsible for the management of the affairs of the Authority and the fulfillment of its functions, in accordance with policies and directions established by the Board.

(4) Without limiting the ambit of subsection (3), the Director shall:

- (a) report regularly to the Board on the performance of the functions of the Authority;
- (b) present an annual report, financial statements and a budget for the forthcoming year, to the Board for consideration and approval;
- (c) represent the Authority in its dealings with other organisations and organs of government;
- (d) supervise the employees and officers of the Authority; and
- (e) issue orders as provided for in this Act, and take other measures to give effect to the purpose of the Act and to implement and enforce its provisions.

*Employees of the Authority*

18. (1) The Minister, in consultation with the Civil Service Board, may at the request of the Director, order any Public Officer to be seconded to the Authority on terms and conditions specified in the order.

(2) The Authority may, with the approval of the Minister and of the Civil Service Board, offer any Public Officer seconded to the Authority, permanent employment on terms and conditions stipulated by the Board.

(3) The Director may, with the approval of the Board:

- (a) in writing appoint any person as an employee of the Authority;
- (b) in writing appoint any suitably qualified or experienced person as an Environment Officer and/or an Inspector;
- (c) in writing delegate to any Environment Officer or Inspector any power given to the Director by this Act or any other legislation; and
- (d) prescribe, limit or revoke an appointment or delegation.

*Exemption from tax and other charges*

19. Notwithstanding the provisions of any other law, the Authority is exempt from any liability to pay any tax, rates, or duty on documents in Swaziland.

*Swaziland Environment Fund*

20. The Swaziland Environment Fund is established as a body corporate with perpetual succession.

### *Powers of the Fund*

21. Subject to regulations made under this Act, the Fund may:

- (a) acquire, hold and dispose of real and personal property;
- (b) sue and be sued; and
- (c) so far as possible for a body corporate, exercise the rights, powers and privileges and incur the liabilities and obligations of a natural person of full age and capacity.

### *Constitution and Proceedings of the Fund*

22. The proceedings and constitution of the Fund shall be governed by regulations made under section 28.

### *Objects of the Fund*

23. (1) The general objects of the Fund are:

- (a) to aggregate funds from different sources to ensure sustainable funding for programmes, projects and activities that provide for and promote the protection, conservation and enhancement of the environment and the sustainable management of natural resources;
- (b) to provide financial support for activities aimed at the enhancement, protection and conservation of the environment and the sustainable management of natural resources and supporting community participation in these activities;
- (c) to enhance and restore the environment of Swaziland.

(2) Without limiting the generality of subsection (1), the Minister may by regulation detail more specific objects of the Fund.

(3) The Fund shall not be used to pay for the operating costs of the Authority, except that the Authority may charge the Fund for the costs of administering the Fund.

### *Management and Administration of the Fund*

24. (1) The Fund shall be managed by a Board of Trustees comprising five trustees appointed by the Minister, of whom:

- (a) one is to be the Director;
- (b) two are to be nominated for appointment by the Board; and

- (c) two are to be persons of known integrity with knowledge of and experience in matters relating to environmental protection and/or sustainable management appointed after consultation with non-governmental organisations that have as a main purpose of their organisation, the promotion of environmental protection and/or the sustainable management of natural resources.

(2) A trustee shall not be obliged to furnish security to any person or authority in connection with the exercise of powers or the performance of duties as a trustee of the Fund.

(3) The Fund is to be administered by the Authority in accordance with the directions and policy of the Board of Trustees.

#### *Monies, accounts and audits*

25. (1) The monies of the Fund shall consist of:

- (a) sums appropriated by Parliament for the purposes of the Fund;
- (b) donations, grants, gifts and subscriptions;
- (c) sums received from international, multilateral, bilateral, regional or local bodies or funds for the purpose of global, regional or local environmental protection or improvement measures;
- (d) income derived from investment made by the Fund and interest on loans made by the Fund; and
- (e) monies paid to the Fund as fines, penalties or costs imposed under this Act.

(2) The Fund shall keep proper books and other records of account and its financial records shall be audited by an auditor or auditors appointed by it with the approval of the Minister.

(3) The Fund shall within four months after the end of its financial year prepare an Annual Report on the activities of the Fund, which shall include an audited balance sheet, an audited statement of income and expenditure of the financial year, and any report by the auditors on its management and accounting practices, and shall submit it to the Minister and to the Minister responsible for Finance.

(4) The Minister shall cause the annual audited accounts of the Fund to be laid before Parliament within six months after the expiry of each financial year of the Fund.

#### *Exemption from tax and other charges*

26. Despite the provisions of any other law, the Fund, monies of the Fund and any income generated by the Fund shall be exempt from any tax, rates, or duty on documents in Swaziland.

### *Duration and dissolution of the Fund*

27. (1) The Fund shall continue for an indefinite period and may only be dissolved by a resolution of Parliament or if it is insolvent.

(2) If the Fund is dissolved or finally liquidated any remaining assets shall be transferred to the Government.

### *Regulations*

28. The Minister may make regulations regulating the Fund and, without prejudice to the generality of the foregoing, may make regulations providing for:

- (a) the specific objectives of the Fund;
- (b) the management and administration of the Fund;
- (c) the investment of the monies of the Fund;
- (d) the employees of the Fund;
- (e) the accounting and auditing of the Fund;
- (f) the monies of the Fund; and
- (g) the property of the Fund.

## **PART IV – INTEGRATED ENVIRONMENTAL MANAGEMENT**

### *State of the Environment Report*

29. (1) The Minister shall within two years of the entry into force of this Act, and every two years thereafter, publish a State of the Environment Report.

(2) The State of the Environment Report shall provide information on the environment in Swaziland and, in particular, on the quality of the environment, and without limiting its generality, shall:

- (a) describe the quality of the rural and urban environment and the results of environmental quality monitoring programmes;
- (b) describe any significant adverse effects that have been caused, are being caused and are likely to be caused in the foreseeable future, and where possible identify the causes and trends;
- (c) indicate the number and nature of the licences issued under the Act and describe how the licensing system is being implemented in order to

improve environmental protection, and where applicable, indicate the type and/or quantity or characteristics of pollutants which may lawfully be discharged under these licences in a particular area, and whether, and to what degree this has increased or decreased;

- (d) describe the monitoring, enforcement and other measures which have been, and are being taken to address the causes of the adverse effects and to improve environmental quality;
- (e) list all charges laid and convictions entered for contraventions of this Act;
- (f) with respect to international agreements and negotiations relating to the environment of Swaziland, the regional or the global environment:
  - (i) report on all agreements to which Swaziland is a party, and on their domestic implementation;
  - (ii) report on negotiations in which Swaziland has participated since the previous State of the Environment Report; and
  - (iii) list all relevant agreements to which Swaziland is not a party and all relevant negotiations in which Swaziland has not participated since the previous State of the Environment Report.

#### *National Environmental Action Plan*

30. (1) The Authority shall, within two years of this Act coming into force and every five years thereafter, prepare and publish a National Environmental Action Plan.

(2) The National Environmental Action Plan shall include:

- (a) an assessment of both the urgency and the importance of actions that should be taken in the short, medium and long-term in order to prevent, eliminate and reduce adverse effects as described in the most recent State of the Environment Report;
- (b) an assessment of the resources at the disposal of the Government as a whole, the Minister, and the Authority which may be used to take those actions; and
- (c) a strategy and schedule for the implementation of those actions.

(3) Each draft National Environmental Action Plan shall be subject to public review in accordance with section 52 before being finalised.

#### *Strategic Environmental Assessments*

31. (1) The proponent of a Bill, regulation, public policy, programme, or plan that could have an adverse effect on the protection, conservation or enhancement of the environment or on the sustainable management of natural resources:

- (a) shall conduct a strategic environmental assessment of the draft Bill, regulation, policy, programme, or plan; and
- (b) shall not present the Bill to Parliament, make the regulation, or adopt the public policy or programme, unless:
  - (i) the Authority has consented in writing; or
  - (ii) the period within which the Authority may lodge an objection with the proponent under subsection (8) has expired without the Authority lodging an objection; or
  - (iii) the Minister, after considering an objection lodged under subsection (9), has consented in writing.

(2) For the purposes of this section:

- (a) “strategic environmental assessment” and “assessment” means an assessment of the positive and adverse effects that implementation of legislation or of a public policy, programme, or plan is likely to have on the enhancement, protection, and conservation of the environment and on the sustainable management of natural resources;
- (b) “public policy, plan or programme” means a policy, programme or plan which relates to the whole country or a specific region of the country, and which has been formulated by, or will be implemented by, an organ of Government or a public body and without limitation includes policies, programmes and plans relating to national development, the spacial and structural development of urban and rural areas, land use, livestock, transport, the exploitation of minerals, industrial development, water utilisation, and agriculture, and revisions of any of these;
- (c) “proponent” means the Government or public body responsible for a Bill, regulation, policy, programme, or plan.

(3) Every strategic environmental assessment report shall include:

- (a) a full description of the Bill, regulation, public policy, programme, or plan and the objectives it intends to achieve;
- (b) an identification, description and assessment of the positive and adverse effects that implementation of the proposed policy, programme, plan or

legislation is likely to have on the environment and on the sustainable management of natural resources;

- (c) an identification, description and assessment of the likely effects of alternative means to achieve the objectives of the Bill, regulation, policy, programme, or plan;
- (d) an identification, description and assessment of a range of practicable measures that could be taken to avoid, mitigate or remedy any adverse effect that may occur as a result of the implementation of the Bill, regulation, policy, programme, or plan; and
- (e) any other information prescribed by the Minister by regulation.

(4) If any proponent considers that a Bill, regulation, or public policy, programme, or plan, does not require a strategic environmental assessment under this section it shall submit a draft of the relevant document to the Authority and the Authority shall as soon as practicable determine whether or not an assessment is required and shall publish its decision and the reasons for it.

(5) Where there is no single organ of Government or public body responsible for a Bill, regulation, or public policy, programme, or plan, the Minister shall as soon as practicable determine which organ of Government or public body is primarily responsible, and that organ shall be deemed to be the proponent.

(6) Where a determination under subsection (5) is required, no person shall take any step to further the presentation to Parliament, making, adoption, finalisation, amendment, repeal, revocation or implementation of the Bill, regulation, policy, programme, or plan for which a strategic environmental impact assessment is required under this section until the Minister's determination has been made.

(7) After receipt of the strategic environmental assessment report the proponent shall review the legislation, policy, programme or plan taking into consideration the strategic environmental assessment report and shall submit the following documents to the Minister and to the Authority:

- (a) the strategic environmental assessment report;
- (b) a report indicating:
  - (i) the revisions that have been made to the original document in order to promote environmental protection and the sustainable management of natural resources or to avoid, mitigate or remedy any adverse effects which implementation of the original legislation, policy, programme or plan, may have had; and

(ii) any other measures that have been, or will be taken to avoid, mitigate or remedy any adverse effects, and when these were or will be taken, and if any measures recommended by the assessment report have or will not be taken, the reasons for not doing so; and

(c) a revised version of the legislation, policy, programme or plan.

(8) If the Authority is of the opinion that the environmental concerns raised during the strategic environmental assessment process are not adequately addressed by the revised legislation, or public policy, programme or plan, and that additional cost-effective measures to avoid or mitigate these adverse effects should be taken, the Authority, shall within 30 days of receipt of the documents referred to in subsection (7), lodge an objection with the proponent and then consult with the proponent with a view to reaching agreement on the amendments to be made to the revised legislation, or public policy, programme or plan in order to give full effect to the purpose and principles of this Act.

(9) If the Authority and the proponent are unable to reach agreement on the amendments to be made to the revised legislation, or public policy, programme or plan or the measures to be taken, the Director or the proponent may lodge a notice of objection with the Minister and the decision of the Minister shall be final.

(10) The Minister may order the documents referred to in subsection (7) to be subjected to public review and/or to a public hearing before making a final determination under subsection (9).

### *Environmental Assessment*

32. (1) Subject to the provisions of regulations made under paragraphs (a), (b) or (c) of section 33, no person shall undertake any project that may have an effect on the environment without the written approval of the Authority, or in the case of a review, of the Minister, and except in accordance with any conditions imposed in that approval.

Penalty: [100,000] Emalangenzi or imprisonment for [2 years].

(2) No person, organ of Government or public body may grant a permit or licence for the execution of a project referred to in subsection (1) unless an approval for the project has first been granted by the Authority, or the grant of the permit or licence is made conditional upon such approval being granted.

(3) A person proposing to undertake a project referred to in subsection (1) shall submit a project brief to the Authority containing sufficient information to enable the Authority to determine the potential impacts of the project on the environment.

(4) If after reviewing the project brief the Authority is satisfied that:

(a) the potential effect of the project on the environment is likely to be minimal or insignificant, it may approve the project;

- (b) the potential effect on the environment is likely to be more than minimal or insignificant, it may require the applicant:
  - (i) to conduct an environmental impact assessment in relation to the project, with or without a public hearing;
  - (ii) to submit to the Authority an environmental impact statement in accordance with subsection (6); and
  - (iii) to submit to the Authority a comprehensive mitigation plan in accordance with subsection (7).

(5) Subject to this Act, the Authority may delegate to another body or person any of its functions under this section and may impose conditions with respect to the exercise of those delegated functions, provided that nothing in this subsection shall be construed so as to absolve the Authority from ultimate responsibility for any act done by such a body or person in the exercise of this delegated authority.

(6) An environmental impact statement shall include:

- (a) a full description of the project and the aim(s) it is intended to achieve; and
- (b) an identification, description and assessment of:
  - (i) the likely environmental effects of: the project; alternative means of carrying out the project, including the preferred means; alternatives to the project that would achieve the same aim as the project was intended to achieve; and
  - (ii) all relevant measures that could be undertaken to avoid, remedy or mitigate any adverse effects that could be caused by the project;
- (c) any other information prescribed by the Minister.

(7) A comprehensive mitigation plan shall include:

- (a) a description of the mitigation measures that will be implemented in order to prevent, reduce or otherwise manage the environmental effects of a project;
- (b) how these measures will be implemented; and
- (c) any other information prescribed by the Minister.

(8) If the Authority believes that a project is likely to have a significant adverse effect on the environment of another country the Authority shall advise the Minister who shall forward the environmental impact statement and comprehensive mitigation plan and other

relevant reports and documents to that country and shall invite comments within a specified period.

(9) If the Minister has invited comments under subsection (8) the Authority shall not decide whether or not to grant an approval until the period for comments has expired without any comments being received, or if comments are received, without considering those comments.

(10) Upon receipt of the documents required under subsection (4)(b), the Authority may:

- (a) if the application fails to contain the appropriate administration fee or fails to provide any information required under this section, refuse to consider the application and return the application to the applicant, together with written reasons for the refusal;
- (b) if the application does not provide adequate information required under this section, advise the applicant in writing of the reasons why it is inadequate and permit the applicant to revise the application, in which case the date of the revised application shall be considered as the date of application;
- (c) consider the application, and:
  - (i) if it is determined that the project will significantly affect the public interest, require the matter to be subjected to public review and/or request the Minister to convene a public hearing in accordance with section 53; and
  - (ii) if it is determined that the project will not significantly affect the public interest, determine whether to grant the approval and whether to impose any conditions in the approval.

(12) If the Minister, acting on the advice of the Authority, considers that all the environmental concerns or effects are adequately addressed by the environmental impact assessment report and the accompanying comprehensive mitigation plan, the Minister shall grant an approval for a project subject to whatever terms and conditions the Minister considers appropriate to ensure that the adverse effects of the project are effectively avoided, mitigated and/or remedied.

(13) The Minister shall refuse to grant an approval in respect of a project if the Authority considers that the implementation of the project would bring about unacceptable adverse effects or that the mitigation measures may be inadequate to satisfactorily mitigate the adverse effects of the proposed project.

(14) Any person may within 60 days of the granting or refusal of an approval under this section, lodge an appeal in accordance with section 82 if that person:

- (a) has applied for an approval and the application has been refused;
- (b) objects to approval conditions imposed by the Minister;
- (c) objects to the granting of an approval; or
- (d) objects to a regulation deeming a project or class of projects to be likely, or not to be likely, to have an effect on the environment, or to significantly affect or not significantly affect the public interest.

### *Regulations*

33. The Minister, on the advice of the Authority, may make regulations for the better administration of strategic environmental assessments and environmental impact assessments and, without limiting the generality of the foregoing, may by regulation prescribe:

- (a) categories of projects that are deemed to have an effect on the environment for the purposes of subsection 32(1);
- (b) categories of projects that are deemed not to have an effect on the environment for the purposes of subsection 32(1) and are consequently exempt from the application of that subsection;
- (c) categories of projects that are deemed to have a significant effect on the public interest for the purposes of subsection 32(10);
- (d) procedural requirements for public hearings;
- (e) the information to be included in a strategic environmental assessment report, an environmental impact assessment report and comprehensive mitigation plan; and
- (f) administration fees for the costs of dealing with approval applications;
- (g) categories of facilities and activities in respect of which the Authority may require environmental audits to be conducted and may require the submission of report on those audits to the Authority;
- (h) the contents of an environmental audit reports, which may include among other things:
  - (i) a detailed description of any facility or activity;
  - (ii) a detailed description of the environmental effects of a facility or activity; and

- (iii) plans to prevent and reduce the risk of adverse effects, and to remedy adverse effects, caused by a facility or activity; and
- (i) penalties if any person fails to comply with a plan under subparagraph (ii) of paragraph (h).

## **PART V – POLLUTION CONTROL**

### *Prohibition against discharges*

34. No person shall without lawful authority, discharge or cause or permit the discharge of a contaminant into the environment if that discharge causes, or is likely to cause, an adverse effect.

Penalty: [100 000] Emalangeni or imprisonment for [5 years].

### *Reporting of Discharges*

35. Every person who discharges or causes or permits the discharge of a contaminant into the environment in a manner or amount that is unlawful or that causes or is likely to cause an adverse effect shall:

- (a) immediately notify the Authority; and
- (b) take all practicable steps to contain the discharge and to avoid, mitigate and/or remedy the adverse effects resulting from the discharge, including removing any deposit.

Penalty: [50 000] Emalangeni or imprisonment for [three years].

### *Integrated pollution prevention and control*

36. (1) For the purposes of this section, “best practicable option”, in relation to the discharge of a contaminant or an emission of noise, means the best method for preventing or minimising adverse effects on the environment, having regard, among other things, to:

- (a) the nature of the discharge or emission and the sensitivity of the receiving environment to adverse effects;
- (b) the financial implications, and the effect on the environment, of that option when compared with other options; and
- (c) the current state of technical knowledge and the likelihood that the option can be successfully applied.

(2) Any person who discharges contaminants or emits noise shall take all reasonable measures to ensure that the best practicable option is adopted in relation to the discharge or emission.

(3) In determining whether or not to issue a licence, permit or other authorisation to discharge a contaminant, and the terms and conditions of the licence, permit or authorisation, the Director or any other person empowered to make the decision shall seek to ensure that the best practicable option is adopted.

### *Regulations*

37. (1) The Minister, on the advice of the Board, may make regulations:

- (a) preventing and controlling activities that result in adverse effects on the environment;
- (b) requiring any person or class of person to monitor discharges of contaminants and to keep records of the results of the monitoring;
- (c) creating systems of integrated pollution prevention and control;
- (d) imposing substantive and procedural requirements on persons issuing licences and permits under this Act or the regulations;
- (e) establishing requirements, standards and guidelines for preventing and controlling discharges into the environment and for activities and the operation of facilities which may cause discharges into the environment;
- (f) requiring persons applying for discharge licences to pay for the administrative costs of dealing with such applications, including the reasonable costs of obtaining expert assistance in dealing with the applications;
- (g) classifying discharges, activities and facilities;
- (h) classifying hazardous substances, toxic substances, potentially toxic substances, environmentally harmful substances and other types of controlled substances;
- (i) preventing, prohibiting and regulating (by way of licences, standards guidelines and other means) the import, export, manufacture, transportation, handling, sale, offering for sale, possession, use, storage, or disposal of any class of controlled substance or substance or product containing a controlled substance;
- (j) to require the Authority and competent authorities in other countries to be notified or consulted prior to any permission being given for the importation, manufacture or registration of controlled substances;
- (k) deeming any thing to be a contaminant;

- (l) prohibiting, regulating and establishing standards in relation to discharges of contaminants into the environment;
- (m) requiring, prohibiting, regulating and establishing standards in relation to the use of any technology, procedure, equipment, fuel, input or other method used in an operation, process or activity that may result in discharge of a contaminant into the environment;
- (n) regulating the composition, manufacture, importation, possession, transportation, sale, or offer for sale, storage, use and disposal of fuels;
- (o) requiring monitoring of discharges of contaminants into the environment and of ambient environmental quality in areas surrounding discharges;
- (p) requiring any information relating to discharges of contaminants into the environment or to ambient environmental quality to be reported to any person or organ of Government;
- (q) establishing a licensing system to control discharges of contaminants into the environment;
- (r) requiring payment of charges and administration fees in relation to discharges of contaminants into the environment;
- (s) prohibiting, regulating and establishing standards in relation to the manufacture, distribution, sale or offering for sale of products the manufacture, use or disposal of which may have resulted or may result in the discharge of a contaminant into the environment;
- (t) in respect of motor vehicles:
  - (i) requiring, regulating and prohibiting the installation, maintenance and use of equipment and devices;
  - (ii) establishing mandatory emission standards and testing programmes;
  - (iii) prohibiting the use of any motor vehicle that fails to comply with an emission standard; and
  - (iv) prohibiting or regulating the use of motor vehicles in designated lanes of designated roads, or roads and in certain parts of urban areas;
- (u) requiring, regulating and restricting the use of notices, marks and labels on products, packaging and containers; and

- (v) prohibiting or regulating in certain areas, on certain days of the year, or both, the carrying out and manner of carrying out of activities that may result in the discharge of a contaminant.

(2) The Minister may make regulations under this section in the absence of absolute or conclusive scientific proof of the degree of toxicity or the hazard posed by the substance, provided that the regulation refers to the precautionary principle as the rationale for so doing.

(3) Before making or amending regulations under this section in relation to a substance that is regulated under other legislation, the Minister shall consult with the Minister responsible for implementing the relevant legislation with a view to ensuring that the substance is regulated in a consistent manner.

#### *Disclosure of Information*

38. (1) For the purpose of making a regulation under this section, the Minister may in writing order any person to disclose specified relevant information.

(2) If any person providing information pursuant to an order under subsection (1) requests in writing that the Minister not divulge any portion of that information on the basis that it is confidential, and gives reasons for making this claim the Minister shall not divulge that portion of that information.

(3) General conclusions of a scientific nature and any regulations made by the Minister are deemed not to be confidential information under subsection (2).

#### *Requests for Regulations*

39. (1) Any person may in writing request the Minister to make a regulation under paragraphs (h) or (i) of subsection 37(1), or both, in respect of a substance or class of substances, and within four months of receiving the request the Minister shall either:

- (a) make a regulation under paragraphs (h) or (i) of subsection 37(1), or both, in respect of the substance or class of substances; or
- (b) decline to make the regulation and notify the person who submitted the request of the decision and the reasons for it.

(2) Any person may, within 30 days of the publication of a regulation under paragraphs (h) or (i) of subsection 37(1), or the date of receipt of a notification under subsection (1)(b), lodge an application for review under section 82 on the basis that the regulation or the decision of the Minister fails to provide adequate protection to the environment or to humans against the risk of adverse effects caused by the substance or otherwise fails to give effect to the purpose of this Act.

#### *Local, regional and global contaminants*

40. For the purpose of promoting, enhancing, protecting and conserving the global or regional environment and the sustainable management of natural resources in the region or globally, the Minister, on the advice of the Authority, may make regulations:

- (a) declaring any substance to be a contaminant that affects the global environment;
- (b) classifying contaminants that affect the global environment; and
- (c) prohibiting, regulating (including requiring licences and establishing standards and guidelines), monitoring, and gathering and disseminating information, in respect of:
  - (i) the import, export, manufacture, transportation, sale, offering for sale, possession, use, storage, discharge or disposal of any contaminant or class of contaminant that affects the global environment; and
  - (ii) the import, export, manufacture, transportation, sale, offering for sale, possession, or use of technology for the production and use of, or any product or device containing, a contaminant that affects the global environment.

## **PART VI – WASTE MANAGEMENT**

### *General Prohibition and Duty of Care*

41. (1) No person may collect, transport, sort, recover, treat, store, dispose of or otherwise manage waste in a manner that results in an adverse effect, or creates a significant risk of an adverse effect occurring.

Penalty: [100,000] Emalangeni or imprisonment for [2 years].

(2) Every person who imports, produces, collects, recovers, transports, keeps, treats or disposes of waste shall take all reasonable measures to prevent any other person contravening subsection (1) in relation to that waste.

Penalty: [100,000] Emalangeni or imprisonment for [2 years].

(3) No person shall dispose of waste in such a manner that it becomes litter or is likely to become litter.

Penalty: [5,000] Emalangeni.

## *Waste Licences*

42. (1) No person may construct, own or operate a landfill site, incinerator or other facility at which waste is permanently disposed of or is stored indefinitely, without possessing and being in compliance with all the necessary approvals under section 32.

Penalty: [100,000] Emalangeni or imprisonment for [2 years].

(2) No person shall keep, treat or dispose of special waste except under and in accordance with a special waste management licence issued by the Director.

Penalty: [100,000] Emalangeni or imprisonment for [2 years].

(3) No person shall transport special waste except under and in accordance with a special waste carrier licence.

Penalty: [50,000] Emalangeni or imprisonment for [one year].

(4) No person shall sort or separate any waste for the purpose of recovery at a waste disposal facility except under and in accordance with either a waste management licence for that waste disposal facility, or a licence issued by the Director.

Penalty: [50,000] Emalangeni or imprisonment for [one year].

(5) The Minister may on the recommendations of the Board and for the purposes of facilitating the effective implementation and enforcement of this Act:

- (a) exempt certain categories of waste and persons from the application of some or all of the provisions of this section; and
- (b) provide that some or all of the provisions of this section shall not apply in certain circumstances.

(6) The Director shall evaluate each application for a licence under this section, and shall either:

- (a) grant a licence if the Director is satisfied that the applicant has sufficient expertise to undertake the activity in question in accordance with any guidelines prescribed by the Authority and in a manner that will not have adverse effects; or
- (b) refuse to grant a licence giving reasons for the refusal in writing to the applicant.

(7) The Director shall not issue a licence under subsection (6) except subject to conditions designed to further the purpose of this Act and prevent the contravention of any Act, or other legal rule.

(8) The administration fee required for the issuance of a licence shall reflect the

administrative costs of processing a licence application, including verifying statements in an application, devising conditions, and issuing the licence.

(9) The Director may amend, revoke or impose new conditions in a waste management licence if, and to the extent necessary in order to avoid, mitigate or remedy an adverse effect.

(10) No person shall transfer a waste management licence without the prior written approval of the Director.

Penalty: [50,000] Emalangeni or imprisonment for [one year].

(11) The holder of a waste management licence shall remain bound by the terms and conditions of the licence until the Director either revokes the licence or accept the surrender of the licence by notice in writing to the former licence holder, but the Director may by notice in writing, suspend the operation of certain terms and conditions of a licence.

(12) Any applicant for, or holder of, a waste management licence may apply to the Board for a review of the decision of the Director to refuse to grant, transfer or accepts the surrender of a licence, to amend or revoke an existing licence, or against any condition in a licence, in accordance with section 82.

#### *Import, export and trade in waste*

43. (1) No person shall import, export or trade in waste without the written permission of the Authority and subject to the terms and conditions imposed by the Authority.

Penalty: [100,000] Emalangeni or imprisonment for [2 years].

(2) No person shall import hazardous waste into Swaziland.

Penalty: [200,000] Emalangeni or imprisonment for [5 years].

#### *Waste management functions of the Authority*

44. (1) The Authority shall:

- (a) prepare a national waste strategy;
- (b) where necessary in order to promote the enhancement, protection and/or conservation of the environment and/or the sustainable management of natural resources, give general or specific directions to:
  - (a) a local authority regarding the exercise of its functions relating to the collection and disposal of waste;
  - (ii) any organ of Government, public body, or other body responsible for waste management in a waste control area regarding their functions relating to the management and disposal of waste in a waste control area;

- (a) issue special waste management licences, special waste carrier licences, and waste management licences;
- (b) inspect waste disposal, handling and recovery facilities in respect of which a waste management licence is in force;
- (c) monitor compliance with licences issued under this Act;
- (d) take enforcement action where necessary, including variation, revocation and suspension of licences in the case of breach of licence conditions;
- (e) review and monitor the implementation of waste management plans by local authorities in urban areas and by any organ of Government, public body, or other body responsible for waste management in a waste control area in accordance with section 48;
- (f) collect and analyse statistical data on waste produced and waste composition in Swaziland and include the findings of this research and appropriate recommendations in the annual report of the Authority.

#### *Role of Local Authorities*

45. (1) Within its area of jurisdiction each local authority shall:

- (a) collect and dispose of, or arrange for the collection and disposal of, all household waste in accordance with this Act;
- (b) ensure that waste is collected, transported and disposed of in accordance with this Act;
- (c) take all practical measures to promote and support the minimisation of waste and the recovery of waste, particularly at the point at which it is produced;
- (d) provide litter receptacles in public places; and
- (e) prepare and submit to the Authority for approval, a long-term plan for the management of waste that conforms to the requirements of the Authority including any national waste strategy published by the Authority.

(2) Each local authority shall report annually to the Authority on the types of wastes and the quantity of each type of waste, generated and disposed of within its area of jurisdiction and on the implementation of its waste management plan.

#### *Site Restoration Orders*

46. (1) Where waste has been deposited in any place in breach of this Act or of a condition of a waste management licence or a special waste management licence, the Director may serve a site restoration order on a person referred to in subsection (2) requiring that person to

remove the waste and to restore the site to a condition satisfactory to the Director, and to take any other measures stipulated in the order that the Director considers appropriate to give effect to the purpose of this Act.

(2) A site restoration under subsection (1) may be served on:

- (a) any person whom the Director has reason to believe deposited the waste;
- (b) any person whom the Director has reason to believe ordered or permitted the waste to be deposited; or
- (c) any owner, occupier, or person having charge, management or control of the place or premises.

(3) Any person on whom a site restoration order has been served shall immediately take all reasonable measures to comply with the order.

Penalty: [200,000] Emalangeni or imprisonment for [one year].

(4) Any person on whom a site restoration order has been served may apply to the Board for a review of the decision to issue the order or of any directions in the order in accordance with section 82.

(5) The Board shall revoke a site restoration order if, after considering the representations made to it by the appellant, it is satisfied that the person on whom the order was served is not a current owner, occupier, or person having charge, management or control of the place or premises, and did not deposit, or order or permit the waste to be deposited.

### *Regulations*

47. (1) The Minister may, on the advice of the Authority, make regulations to regulate waste management and waste disposal, and without limiting the generality of this provision, may make regulations:

- (a) to classify and define categories of waste, including hazardous waste and clinical waste, and to deem certain substances to fall within or outside such categories;
- (b) to exempt certain categories of waste and persons from the application of some or all of the provisions of this Part;
- (c) to regulate the issuance, amendment, expiry, revocation or imposition of licences and conditions in licences;
- (d) to establish administration fees required for the issuance of licences;
- (e) to restrict the locations at which waste disposal and waste

management may be carried out;

- (f) to require specified categories of persons involved in the generation, management and disposal of waste to gather data and to submit reports, studies and plans, and prescribing the form and content of these reports, studies and plans;
- (g) to require compliance with plans and empowering the Director to require compliance with plans submitted under paragraph (f);
- (h) to require and regulate the control of litter and nuisances associated with waste;
- (i) to require the payment of charges and administration fees for the collection, management or disposal of waste;
- (j) to establish mandatory standards for the disposal of waste;
- (k) to require the separation of types of waste at the point of generation, during management and upon disposal;
- (l) to prohibit or regulate the movement and carriage of waste or any category of waste, including:
  - (i) prohibiting and regulating the import, export or transit through any countries, of waste;
  - (ii) establishing standards for the movement of any waste;
  - (iii) requiring licences for the movement of waste;
  - (iv) regulating and establishing standards for the packaging and labeling of waste and for documents accompanying consignments of waste in transit;
  - (v) requiring manifesting systems and other systems for tracking the movement of hazardous waste or clinical waste; and
  - (vi) requiring proof of arrangements for the safe and orderly movement and final disposal of the waste, including, proof of prescribed notification and prior informed consent of competent authorities of the state of import and any transit states and proof of the existence of prescribed arrangements specifying sound waste management and disposal;
- (a) to require and regulate deposit and return systems for products and for packaging and containers;
- (b) to require, regulate and restrict the use of notices, marks and labels

on products, packaging and containers;

- (c) to require the physical separation of waste types by persons involved in the generation, management or disposal of waste;
- (d) to regulate and promote waste reduction, reuse, recycling, and recovery;
- (e) to prohibit and regulate the disposal of reusable, recyclable and recoverable wastes;
- (f) to require that importers, manufacturers, distributors, and vendors of products, packaging and containers accept the return of their products, packages and containers from the persons who acquired the products from them; and
- (g) to impose responsibility for any stage of hazardous waste or clinical waste management upon the generators, transporters, handlers and receivers of the waste.

#### *Designation of waste control areas*

48. (1) If the Minister, acting on the advice of the Authority, and after consultation with the organs of Government responsible for rural development and any other competent authority with responsibility for a non-urban area, considers that the disposal of waste in that non-urban area is resulting in an adverse effect, or that there is a significant risk that it will result in an adverse effect, the Minister may, by notice in the Gazette, designate the area as a waste control area.

(2) The organ of Government or public body that has primary responsibility for waste management in a waste control area:

- (a) shall prepare and submit to the Authority for approval, a plan for the management of waste in the waste control area that conforms to the requirements of the Authority including any national waste strategy published by the Authority;
- (b) shall designate one or more local waste disposal sites or local waste collection sites within each waste control area;
- (c) shall inform the public within the waste control area of the location of these designated waste disposal and waste collection sites; and
- (d) may request the Minister to prescribe guidelines for the disposal of waste within the waste control area, either by regulation or in the form of a code of practice issued in accordance with section 88;
- (e) shall report at least once annually to the Authority on the implementation of its waste management plan.

(3) An organ of Government or public body with primary responsibility for waste management in a waste control area, may with the consent of the Minister, delegate some or all of its functions under this section to another organ of Government, public body, chief or traditional authority, or to an organisation which is representative of the people in the waste control area.

## **PART VII – INTERNATIONAL MATTERS**

### *International Agreements*

49. (1) The Government shall exercise and give effect to Swaziland's sovereignty over its natural resources, including its genetic resources, and its powers and rights to manage the living and non-living natural resources within its territories and in areas over which it exercises rights of sovereignty, to the fullest extent permitted under international law.

(2) The Government shall co-operate with other Governments, and with domestic and international organisations in order to protect the regional and global environment.

(3) After signing an international agreement designed to protect the environment the Minister, shall as soon as is practicable:

- (a) cause the agreement to be ratified;
- (b) present any necessary bills to Parliament for passage and assent to be made into law; and
- (c) take appropriate measures to give effect to the agreement, including making regulations.

(4) A court of competent jurisdiction may use any international agreement designed to protect the environment which has been ratified by Swaziland, as an aid to interpreting any domestic legal rule of Swaziland that can reasonably be regarded as being intended to implement the requirements of that agreement.

(5) The Minister, on the advice of the Authority, may make regulations:

- (a) to implement any international agreement designed to protect the environment that has been ratified by Swaziland; and
- (b) to bring the laws of Swaziland into conformity with laws, standards, guidelines and practices applied internationally or in the region, provided that these regulations do not conflict with the purpose of this Act.

## PART VIII – PUBLIC PARTICIPATION

### *Register of Environmental Information*

50. (1) The Authority shall create and maintain an environmental information registry.

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

- (a) a copy of this Act, the regulations, any international environmental agreements to which Swaziland is a signatory, and any policies, plans, guidelines, studies, reports, decisions, recommendations, and other publications relating to the environment published by the Authority, the Minister or the Government;
- (b) a copy of every Environmental Management Strategy and Environmental Management Strategy review report issued by any Ministry of the Government;
- (c) any information relating to ambient environmental quality held by the Authority or the Ministry;
- (d) every State of the Environment Report and every national environmental action plan;
- (e) every national waste management strategy;
- (f) any information relating to contaminant discharges held by the Authority or the Ministry;
- (g) a copy of each application for a licence under this Act;
- (h) a copy of each licence, order and approval issued under this Act;
- (i) details of all charges laid and convictions entered for contraventions of this Act;
- (j) an explanation of the means by which a person may, under this Act, comment on an application for a licence or appeal a decision to issue a licence under this Act.

(3) The registry shall be in the form of paper documents that are kept in one location and are accessible for public viewing during ordinary business hours, and, as far as reasonably practicable, also in the form of electronic documents accessible through a world wide web site on the internet.

(4) The registry shall be created no later than 6 months after the coming into force of this Act.

(5) Any person may apply in writing to the Director requesting that any information that is not in the public domain should not be included in the Registry, on the basis that it is commercially confidential or for reasons of state security.

(6) If the Director is satisfied that the information is of a confidential nature and that maintaining that confidentiality would not unreasonably prejudice the purpose of this Act or the public interest, the Director may exclude the information, or aggregate, edited or otherwise presented it in a manner which would protect the interests of concern.

(7) If the Director is not so satisfied the Director shall advise the applicant in writing that the information will be made public within 30 days unless the applicant applies to the Minister for a review of the decision in accordance with section 82 in which case the confidentiality of the information shall be maintained pending the determination of the appeal.

#### *Requests for environmental information*

51. (1) Any person may request from the Minister , the Authority or any other organ of Government any information relating to the environment that is not available in the registry but that could reasonably assist that person in contributing to the enhancement, protection and conservation of the environment and the sustainable management of natural resources

(2) Upon receiving a request in accordance with subsection (1), the organ of Government shall assess the request, and shall:

- (a) if the request is too vague or uncertain to enable identification of the information sought, or if that organ of Government is unaware of the existence of the information sought, notify in writing the person requesting the information that this is the case; or
- (b) provide an opportunity for the person to view or copy any available documents.

(3) No information need be provided under this section if it is exempt from being made public under another section of this Act.

(4) The organ of Government responding to the request may charge an administration fee that will cover:

- (a) the expenses of providing copies; and
- (b) the other administrative costs of dealing with the request, including labour costs, if more than one day was reasonably required to respond to the request.

(5) Fees charged under subsection (4) shall be paid into a fund established for the purpose of collection fees and revenue for use by that organ of Government; or if no such fund is established, to the Consolidated Revenue Fund.

### *Public review*

52. (1) Before finalising any document that is required by this Act to be subjected to public review, the responsible authority shall:

- (a) distribute copies of the document to the Ministry, the Authority, and to Ministries and other parties who have an interest in, or are likely to be affected by, the contents of the document ; and
- (b) inform the public that the document is being made available for public review by advertising the public review in the Gazette and in a national newspaper circulating in Swaziland at least once a week for two consecutive weeks:
  - (i) specifying the place(s) and the times where copies of the document will be available for inspection;
  - (ii) inviting interested or affected persons to submit objections, comments or representations; and
  - (iii) specifying the procedure for the submission of objections, comments and representations and the date on which the public review period will terminate, which shall not be less than 20 days calculated from the date of the last notification in the newspaper.

(3) The responsible authority shall immediately after receipt of a submission, acknowledge receipt of it, and send a copy to the Authority.

(4) The responsible authority and the Authority shall not, if so requested by a person who made a written submission, disclose or make public personal or other information provided by that person.

### *Public Hearings*

53. (1) The responsible authority shall request the Minister to convene a public hearing if at least ten written and substantiated objections have been submitted during the public review process, and after considering all submissions the responsible authority is of the opinion that the high degree of public concern over the document, or the sensitive or significant nature of the matters referred to in the document, require that the public should have the opportunity to make submissions or comments at a public hearing.

(2) The responsible authority shall within 60 days of the end of the public review period, decide whether or not to request the Minister to convene a public hearing and shall notify the Authority in writing giving reasons for its decision.

(3) The Authority may, within 30 days of being notified that the responsible authority has decided not to request the Minister to convene a public hearing, apply to the Minister for a review of the decision of the responsible authority in accordance with section 82.

(4) If the Minister is requested, or decides to convene a public hearing the Minister shall:

- (a) publish a notice, at least once a week for two consecutive weeks, in at least two national newspapers circulating in Swaziland, stating the date and place where the public hearing is to be held at least 15 days before the public hearing is held; and
- (b) display and make available for inspection and copying all relevant reports, documents, and written submissions made during and after the period of public review until the public hearing is finalised.

(5) A public hearing shall be held within 30 days of the date of publication of the last newspaper advertisement in accordance with subsection (4).

#### *Findings of Public Hearings*

54. (1) The chairperson of the public hearing shall make and deliver within 60 days after that public hearing a report of its findings approved by all the appointed hearing officers who participated in the public hearing, to the Minister for a decision.

(2) The Minister shall make the report of the public hearing available for public inspection for a period of not less than 20 days, and shall advertise details of where and when it may be inspected and copied.

#### *Public participation in licensing decisions*

55. (1) No licence may be issued or refused under this Act until four weeks after the day that a copy of the application for the licence was first placed on the registry.

(2) Any person may comment on a licence application by lodging a notice of comment on the registry.

(3) The Director shall consider any comments placed on the registry at least one week prior to issuance or refusal of the licence, and shall respond collectively to all comments other than frivolous or vexatious comments, by placing a notice of response on the registry no later than the day upon which the Director makes a decision on the application.

(4) The Director shall, as soon as possible after deciding whether or not to grant a licence, notify each person who submitted a comment in respect of a licence application of the decision and of where further details may be obtained.

(5) Any person may, within 10 days of the date on which the licence is issued or within 10 days of being notified of the decision under subsection (4), apply for the review of the decision or of any terms or conditions of the licence in accordance with section 82.

#### *Orders initiated by the public*

56. (1) Any person may in writing request the Director to issue an order under this Act.

(2) The request shall set out reasons for the request, including the detailed factual grounds upon which the Director would have jurisdiction to issue the order.

(3) The Director shall consider the request and within two months shall decide whether or not to issue an order, and shall notify the requesting person in writing of that decision, the reasons for that decision, and, if applicable, the date upon which the Director intends to issue the order.

(4) If the Director decides not to issue an order the requesting person may within 10 days of the date of being notified of the decision under subsection (3), apply to the Minister for a review of the decision in accordance with section 82.

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

#### *Prosecutions initiated by the public*

57. (1) Any person may in writing request the Director to investigate an alleged contravention of this Act.

(2) The request shall set out reasons for the request, including the detailed factual grounds for believing that a contravention has occurred.

(3) The Director shall consider the request and within one month shall decide whether to commence an investigation, and shall notify the requesting person in writing advising of that decision, the reasons for that decision, and, if applicable, the date upon which the Director intends to commence the investigation.

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

(5) Any person acting under subsection (4) shall in writing notify the Director prior to laying the charge.

(6) No costs or damages shall be awarded against a person who initiates a prosecution after informing the Director in accordance with this section, unless the court finds that the primary motivation for the prosecution was not a concern for the public interest or for the enhancement, protection and conservation of the environment

#### *Civil Actions*

58. (1) Any person may sue for damages or for an interdict in respect of acts or omissions that constitute a contravention of this Act or that could cause an adverse effect, whether or not that person or any person has suffered or is likely to suffer, any loss or harm from the acts or omissions.

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

(3) In any proceedings under subsection (1), the court shall order any damages awarded to be applied in the following order:

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

(4) No costs or damages shall be awarded against a person who initiates civil proceedings under subsection (1) unless the court finds that the primary motivation for the proceedings was not a concern for the public interest or the enhancement, protection or conservation of the environment.

### *Regulations*

59. (1) The Minister may make regulations that enhance the ability of the public to acquire environmental information, to participate in decision-making and to protect the environment, and without limiting the generality of the foregoing, may make regulations:

- (a) expanding the scope of the information held in the registry;
- (b) improving public access to the registry;
- (c) enabling persons to request and obtain copies of documents maintained in the registry upon payment of an administration fee that will cover the expenses of providing those copies;
- (d) establishing rules, procedures and mechanisms for the enhanced provision of information to the public through responding to requests for environmental information;
- (e) protecting employees from dismissal, discipline, penalty or other forms of coercion or intimidation for complying with this Act or the regulations or for notifying the Authority or the Ministry of any non-compliance;
- (f) establishing rules and procedures and prescribing forms in relation to the registry, in relation to making decisions under this Act, including decisions on licences, orders and approvals, and in relation to proceedings under this Act; and

- (g) providing for technical and financial assistance to be given to members of the public and to non-governmental organisations for the purpose of activities identified as advancing the purpose of this Act.

## PART IX - COMPLIANCE AND ENFORCEMENT

### *Inspectors*

60. (1) The Board may designate in writing any employee of the Authority, Public Officer or official of a local authority, either by name or *ex officio*, as an inspector for the purpose of this Act.

(2) The Board may, with the consent of the Attorney General, designate an inspector as a senior inspector.

### *Powers of inspectors*

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

- (a) enter into or upon any building, vehicle, aircraft, vessel, land, waters, or other place, other than place actually used as a dwelling;
- (b) stop any vehicle or vessel that the inspector reasonably believes:
  - (i) is being operated in contravention of this Act;
  - (ii) is discharging or has discharged a contaminant in contravention of this Act; or
  - (iii) is licensed or is required to be licensed under this Act;
- (c) take samples;
  - (a) take photographs and videos;
  - (b) record or copy any information by any method;
  - (c) require the production of any document, record or other thing that is required to be kept under this Act, and any other document that is related to the purposes of the inspection and remove it for the purpose of making copies or extracts, provided that nothing shall be removed without providing a receipt;
  - (d) inspect, seize and take copies of any documents which may constitute evidence of the commission of an offence under this Act;

- (e) make reasonable inquiries of any person, orally or in writing;
- (f) seize any vessel, vehicle, aircraft or equipment that the inspector has reasonable grounds to believe has been used in the commission of an offence under this Act;
- (g) remove any waste or other substance or thing deposited or discharged in contravention of this Act.

(3) An inspector acting under subsection (1) shall, upon demand of an occupant, show his or her identification card and badge and shall explain the purpose of the inspection.

(4) Any person who is asked by an inspector taking action under subsection (1) to do any thing that is necessary in order to enable the inspector to carry out that action, shall immediately comply with the request.

#### *Powers of senior inspectors*

62. (1) Without prejudice to the right, under this Act, the regulations or any other law, of any other person to do so, a senior inspector may lay charges for contraventions of this Act or the regulations.

(2) A senior inspector may prosecute any charge laid under this Act or the regulations, or may obtain the assistance of any other person to do so.

(3) A senior inspector may apply to a magistrate for a warrant to enter and search premises accompanied by a member of the police.

(4) A senior inspector who applies for a warrant shall, after making reasonable enquiries, disclose in the application:

- (a) details of every other application which the inspector knows to have been made within the previous 20 days in respect of the same place or vehicle;
- (b) the offence or offences alleged in each previous application; and
- (c) the result of every such application.

#### *Prevention Order*

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

(2) A prevention order may require that person:

- (a) to create a written emergency response plan that is adequate to reduce or eliminate the risk;

- (b) to provide a copy of that plan to the Director;
- (c) to have any necessary equipment, facilities and trained personnel available to deal with the risk;
- (d) upon an identified event or set of circumstances occurring, to implement the plan; and
- (e) to take whatever other measures may be necessary to ensure that any emergency can be effectively responded to.

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

Penalty: [20,000] Emalangenzi or imprisonment for [one year] and if the person failed to comply with a requirement specified in the prevention order within the time specified, to a further fine not exceeding [500] Emalangenzi for every day or part of a day after the date specified in the order during which the offence continued.

(4) Any person on whom a prevention order has been served may apply to the Minister for a review in accordance with section 82.

#### *Protection order*

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

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

(2) A protection order may require the person on whom it is served to take any measures that will assist in avoiding, remedying or mitigating the adverse effects and without limiting the generality of the foregoing, to take any measures:

- (a) to stop the activity that is resulting is likely to result in, an adverse effect;
- (b) to control the activity;
- (c) to assess the actual or anticipated extent of the adverse effect;
- (d) to remedy any adverse effects caused by the activity; and/or
- (e) to prevent a recurrence of the activity or the adverse effect.

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

Penalty: [20,000] Emalangenis or imprisonment for [one year] and if the person failed to comply with a requirement specified in the protection order within the time specified, to a further fine not exceeding [500] Emalangenis for every day or part of a day after the date specified in the order during which the offence continued.

- (4) Any person on whom a protection order has been served may apply to the Minister for a review in accordance with section 82.

#### *Emergency protection order*

65. (1) Any Inspector who observes the discharge of a contaminant into the environment in an amount, concentration or manner that constitutes a risk to human health or property, or that causes or has the potential to cause adverse effects, may serve an emergency protection order on:

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

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

- (a) to stop the discharge;
- (b) to control the discharge;
- (c) to clean up or remove the contaminant or other substance from any place; and/or
- (d) to prevent a recurrence of the discharge.

- (4) Any person on whom an emergency protection order is served shall comply with the requirements of the order by the date or dates specified in the order and if no date is specified, the person must comply with the order immediately.

Penalty: [20,000] Emalangenis or imprisonment for [one year] and if the person failed to comply with a requirement specified in the order within the time specified, to a further fine not exceeding [500] Emalangenis for every day or part of a day after the date specified in the order during which the offence continued.

(5) Any person on whom an emergency protection order has been served may apply to the Minister for a review in accordance with section 82.

#### *Compliance Order*

66. (1) If the Director has reason to believe that any condition of a licence issued under this Act has been breached, the Director may serve a compliance order on the licence holder requiring that person to remedy the breach within a reasonable period stipulated in the order.

(2) The compliance order may:

- (a) suspend the licence with immediate effect if the Director considers that this is necessary to prevent or mitigate an imminent risk of significant adverse effects to the environment or to human health occurring; and
- (b) require the licence holder to take specified measures to prevent or abate any adverse effect.

(3) If the licence holder fails to comply with the compliance order the Authority may:

- (a) take the necessary steps to remedy the breach and recover the cost from the licence holder in accordance with section 67;
- (b) alter the conditions of the licence; and/or
- (c) revoke the licence.

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

Penalty: [20,000] Emalangenis or imprisonment for [one year] and if the person failed to comply with a requirement specified in the compliance order within the time specified, to a further fine not exceeding [500] Emalangenis for every day or part of a day after the date specified in the order during which the offence continued.

(5) Any person on whom a compliance order has been served may apply to the Minister for a review in accordance with section 82.

#### *Cost Orders*

67. (1) If any person fails to comply with a requirement in an order, licence or approval issued under this Act, the Director may cause the required measures to be taken and may issue a cost order requiring that person to reimburse the Authority for the cost of taking the measures.

(2) Any person to whom a cost order has been issued may, within 20 days of the order being served, apply for a review of the order in accordance with section 82.

(3) If no application for the review of a cost order is made within the period mentioned in subsection (2), the cost order may be enforced as if it were an order of court.

### *Offences*

68. It is an offence for any person:

- (a) intentionally to obstruct an inspector in the exercise or performance of powers or duties under this Act;
- (b) intentionally or negligently to make a statement that is false or misleading in a material particular, where the statement is made:
  - (i) in response to a requirement to furnish information under this Act; or
  - (ii) for the purpose of obtaining the granting or variation of a licence, permit or consent under this Act;
- (c) intentionally to make a false entry in any record or document required to be kept or completed under this Act;
- (d) falsely to pretend to be an inspector;
- (e) to contravene this Act or to breach the conditions of a licence, approval or order issued or made under this Act.

### *Liability of managers of bodies corporate*

69. (1) If a body corporate commits an offence under this Act, every director or partner and any other person concerned in the management of the body corporate commits the offence unless that person proves that:

- (a) the offence was committed without his or her consent or connivance; and
- (b) the person exercised all such diligence to prevent the commission of the offence as ought to have been exercised by that person having regard to the nature of his or her functions in that capacity and to all the circumstances.

(2) Every director or partner and any other person concerned in the management of, a body corporate to which a licence or order has been issued under this Act shall take all reasonable steps to prevent the body corporate from contravening or failing to comply with the licence or order.

Penalty: [50,000] Emalageni or imprisonment for [one year].

(3) Nothing in this section detracts from the liability or responsibility attached to any person under any other Act or law.

### *Defences*

70. (1) Except as otherwise specified in this Act, in any prosecution under this Act it is a defence for the person charged to prove that they took all reasonable precautions and exercised all such diligence to prevent the commission of the offence as ought to have been exercised by that person having regard to all the circumstance.

(2) It is not a defence to a charge under this Act that the defendant was rendered unable to comply by an act or omission of the defendant that would have constituted a contravention of this Act.

### *Continuing offences and penalties*

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

- (a) in the case of an individual, shall not exceed Emalangeni [100] per day on a first conviction, and not more than Emalangeni [500] per day on each subsequent conviction; and
- (b) in the case of a legal person, shall not exceed Emalangeni [5,000] per day on a first conviction, and not more than Emalangeni [10,000] per day on each subsequent conviction.

(3) Every natural person convicted of a contravention of section 34, section or section 41(1) is liable upon conviction, for each day or part of a day on which the offence occurs or continues, to a fine of not more than Emalangeni [500] on a first conviction, and not less than Emalangeni [100], and not more than Emalangeni [20,000], or to a term of imprisonment of not more than [2 years], or to both, on each subsequent conviction.

(4) Every body corporate convicted of a contravention of section 34 or section 41(1) is liable upon conviction, for each day or part of a day on which the offence occurs or continues, to a fine of not more than Emalangeni [10,000] on a first conviction, and not less than Emalangeni [1,000] and not more than Emalangeni [50,000], and to winding up, or to both, on each subsequent conviction.

(5) A person found guilty of an offence under this Act for which no other penalty is provided is liable to a fine of [5000] Emalangeni, or imprisonment for [six months], or to both.

### *Deprivation of monetary benefits*

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

### *Costs of Investigations and Prosecution*

73. Upon the application of the prosecutor, any court that convicts a person of an offence under this Act shall summarily and without pleadings inquire into the costs of investigating and prosecuting the offence, and may in addition to any other penalty imposed, order the person convicted to pay an amount equal to that cost to the person(s) who incurred the costs, despite any maximum penalty elsewhere provided.

### *Suspension and revocation of licences*

74. Any court that convicts a person of an offence under this Act may suspend, revoke or amend any licence issued to that person under this Act.

### *Protection, repair and costs orders*

75. Any court that convicts a person of an offence under this Act may, in addition to any other penalty imposed:

- (a) order the person to take and pay for measures to avoid, remedy or mitigate any adverse effects arising from or likely to arise from the offence; and
- (b) if the person fails to comply with an order under paragraph (a), may issue an order allowing the Director to take those measures, and requiring the person to pay the Director's costs of so doing.

### *Fixed penalties*

76. (1) The Minister may by regulation prescribe those offences against this Act in respect of which alleged offenders may pay a fine prescribed in the regulation instead of being tried by a court for the offence, provided that the maximum fine which may be prescribed for any one offence shall not exceed:

- (a) [100] Emalangeni if the alleged offender is required to pay the fine immediately in order to avoid prosecution;
- (b) [200] Emalangeni if the alleged offender is a natural person; or
- (c) [5000] Emalangeni if the alleged offender is legal person.

(2) An inspector who has reason to believe that a person has committed an offence prescribed under subsection (1) may, at or about the time that the alleged offence is believed to have been committed, give an infringement notice to the alleged offender.

- (3) An infringement notice shall be in the prescribed form and shall in every case:
  - (a) contain a description of the alleged offence;

(b) state that if the alleged offender does not wish to have be charged and tried by a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid either:

(i) to the authorised Public Officer identified in the notice within 28 days after the giving of the notice; or

(ii) in the case of an offence in respect of which an on the spot fine is prescribed, to the Inspector .

(4) An authorised Public Officer may, in a particular case, extend the period of 28 days for payment of the modified penalty and may do so whether or not that period has elapsed.

(5) If the modified penalty specified in the infringement notice is paid within 28 days or such further time as is allowed and the notice is not withdrawn, the bringing of proceedings and the imposition of penalties are prevented to the same extent as they would be if the alleged offender had been convicted by a court of, and punished for, the alleged offences.

(6) Any person who receives payment of a modified penalty, including an on the spot fine, shall give an official receipt for the money to the person who makes the payment.

(7) The Director may, whether or not the modified penalty has been paid, withdraw the infringement notice by sending to the alleged offender a notice of withdrawal in the prescribed form.

(8) If an infringement notice is withdrawn after payment of the modified penalty, the amount shall be refunded.

(9) Payment of a modified penalty is not to be regarded as an admission for the purpose of any civil or criminal proceedings.

(10)The Director may appoint any Public Officer other than an inspector to be an authorised person for the purposes of this section.

### *Presumptions*

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

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

### *Documentary Evidence*

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

#### *Civil Damages*

79. (1) The Minister may, without prejudice to any other legal action, institute an action for damages caused to the environment.

(2) In any such action, damages shall be payable to the Environment Fund.

(3) Where damages cannot be quantified precisely, the competent civil court may liquidate such damages.

#### *Financial assurance*

80. (1) The Minister may make regulations:

- (a) defining and classifying guarantees, bonds, letters of credit and other types of financial assurance;
- (b) requiring from any person to whom a licence, order or approval is issued or has been issued the provision of financial assurance;
- (c) enabling the Authority or its delegate to use funds from financial assurance mechanisms to carry out actions specified in any licence or order, and to take such steps as are necessary to carry out those actions, and defining the circumstance in which the Authority may do so;
- (d) regulating the holding, transfer, reduction and release of financial assurance;
- (e) prescribing penalties and allowing the revocation of licences for the failure to provide financial assurance when required; and
- (f) otherwise allowing for and regulating the use of financial assurance for the purpose of protecting the environment.

## PART X – REVIEWS AND APPEALS

### *Right of Review*

81. (1) Any person who is aggrieved by any decision made, or direction given, by the Authority taken in the exercise of its powers and functions under this Act, may apply in accordance with section 82 for a review of that decision or direction by delivering a review application to the Director.

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

### *Applying for a review*

82. (1) A review application shall be accompanied by payment of any review fee prescribed by regulation and shall be delivered to the Director within the period specified in the relevant section, or if no period is specified, within 30 days after the date on which the applicant was given notice of the decision or direction that the applicant wants reviewed.

(2) The Board has a discretion to accept a review application delivered out of time if it considers it is equitable to do so.

(3) A review application shall:

- (a) state the name and address of the applicant;
- (b) set out or otherwise identify sufficiently the decision or direction that is to be reviewed; and
- (c) set out the grounds for the review and state briefly the facts on which the applicant relies.

(4) On receiving a review application, the Director may reconsider the matter and may make a new decision.

(5) If the Director does not consider it appropriate to change the original decision or if the Director makes a new decision that is not acceptable to the applicant, the Director shall immediately forward the application to the Board.

(6) On receiving a review application the Board shall cause an inquiry to be conducted concerning the matters raised in the review application by a person or persons appointed by the Board in writing for that purpose.

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

(8) The Board shall notify the applicant in writing of the reasons for dismissing a review application and the applicant may appeal against the decision to any competent court.

#### *Staying of orders*

83. (1) If an application has been made for the review of a direction in an order issued under this Act, the applicant may at any time prior to the determination of the review by the under section 82 apply to the Board, or if the inquiry is being conducted, to the person conducting the inquiry, for a temporary stay of the order.

(2) The Board or person conducting the inquiry may, upon providing the applicant and the Director an opportunity to make oral or written submissions, decide to stay the order, to stay certain provisions of the order, or to dismiss the application for a stay.

#### *Conduct of inquiry*

84. (1) The applicant and the person who made the decision or gave the direction shall be given a reasonable opportunity of being heard by, and making written submissions to, the person conducting the inquiry.

(2) An inquiry shall be conducted fairly according to the substantial merits of the case without regard to technicalities.

(3) A person conducting an inquiry under this Act has the power to summon and examine witnesses on oath as if that person were a Commissioner as defined in the Commissions of Enquiry Act, No. 35 of 1963 and the provisions of sections 10, 11, 13, 14, 15, 16 and 17 of that Act shall apply with the necessary modifications.

(4) A person conducting an inquiry is not bound by any rules of evidence and may conduct the inquiry and obtain information as that person considers appropriate.

(5) On completing the inquiry, the person conducting it is to report to the Board giving that person's findings and recommendations.

(6) If the person conducting an inquiry considers that it is desirable and necessary to do so, the person may, either on that person's own initiative or in response to an application by the applicant or by the person who made the decision or gave the direction being reviewed, refer a question of law arising in the inquiry for determination in the Supreme Court.

(7) If a question of law is referred to the Supreme Court, the inquiry shall not be concluded until the judgement of the Court has been made and taken into account.

### *Review by the Board*

85. (1) When the Board receives the report of the person conducting the inquiry, the Board shall consider and determine the review application and may:

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

(2) In determining a review application, the Board :

- (a) shall have regard to the purpose of this Act and the principles set out in section 5;
- (b) may have regard to relevant environment policies, guidelines and codes of practice published by the Authority;
- (c) shall have regard to, but is not bound by, the findings and recommendations of the person conducting the inquiry.

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

(4) The decision of the Board on a review application is final and shall be given effect.

(5) The Minister may, at the request of the Board, order an applicant whose application has been dismissed wholly or in part to reimburse the Authority for some or all of the charges, costs and any other expenses reasonably incurred by the Authority in connection with the review proceedings, including charges for expert opinions.

## **PART XI – GENERAL AND TRANSITIONAL PROVISIONS**

### *Repeal and amendment of laws*

86. (1) Upon the coming into force of this Act, the Swaziland Environment Authority Act 1992 and the Natural Resources Act 1951 are repealed.

(2) Despite paragraph (1), regulations that are made pursuant to the Acts referred to in that paragraph remain in force unless amended or revoked by another regulation or Act, and the rights and obligations of the Swaziland Environment Authority established under the Swaziland Environment Authority Act, 1992 are deemed to be the rights and obligations of the Authority.

(3) Despite subsection (1), licences and permits issued under, and other rights, privileges, duties, obligations and liabilities acquired pursuant to, the Acts referred to in that paragraph, remain in force unless specifically abrogated, rescinded, revoked, repealed, suspended or otherwise changed pursuant to another Act, regulation or legal rule; but shall have no effect on the rights, privileges, duties, obligations and liabilities created in this Act, except as specified in this Act.

### *Immunity*

87. No person shall be held liable in any civil, criminal or other proceedings in respect of any act done or not done in good faith in the exercise or purported exercise of functions under this Act.

### *Codes of Practice*

88. (1) The Minister may, by notice in the Gazette, issue codes of practice for the purposes of this Act and may amend or revoke them in the same manner.

(2) A code issued under this section:

- (a) may incorporate by reference any other relevant document, either as it is in force at the time the code is issued or as it may be subsequently amended;
- (b) may provide that in any criminal proceedings relating to an alleged contravention of a provision of this Act, proof of compliance with the relevant provisions of the code shall constitute a defence.

(3) The Minister shall not issue, amend or revoke a code of practice except on the recommendation of the Director after the Director has consulted with those persons and bodies whom the Director believes will be affected by the proposed code of practice, and in the case of a new or amended code, unless the new or amended code has been subjected to public review in accordance with section 52.

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

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

(6) The Minister shall cause any code issued or revised under this section to be printed and distributed, including making copies of it available for sale to the public and available for inspection at the Registry.

### *Regulations*

89. (1) The Minister may make regulations to better administer this Act and to facilitate the achievement of the purpose of this Act, and without limiting the generality of the foregoing may make regulations:

- (a) relating to animal welfare and the prevention of cruelty to animals;
- (b) in respect of matters which are incidental or supplementary to any matter in respect of which the Minister is expressly authorised to make regulations under this Act;
- (c) prescribing fees or charges payable in respect of any matter arising under, provided for, or authorised by, this Act;
- (d) prescribing offences against regulations made under this Act and prescribing fines not exceeding [10 000] Emalangeni in respect of any one offence;
- (e) prescribing the forms of contents of applications, licences, approvals, consents, registers, notices, orders and other documents required for the purpose of this Act, or authorising the Director to prescribe such forms;
- (f) prescribing requirements as to information to be given in or in connection with returns, applications and other documents delivered or made for the purposes of this Act, and the evidence to be supplied in support;
- (g) regulating the authentication of any certificate, notice or other document issued under this Act;
- (h) requiring that any information or document required to be submitted under this Act be verified by statutory declaration;
- (i) providing the procedures for the service of notices, orders and documents under this Act and the times at which they shall be taken to have been served; and
- (j) prescribing the procedures to be followed for objections, reviews and appeals under this Act, and the making, consideration, hearing and determination of objections, reviews and appeals.

(2) In order to achieve the purpose of this Act, the Minister may make any regulations under this Act in the absence of absolute or conclusive scientific proof in respect of adverse effect or risk, provided that the regulation mentions the precautionary principle as the rationale for so doing.

### *Supremacy of the Act*

90. Where there is an inconsistency between the provisions of this Act and any other law that affects the environment, other than the Constitution, this Act shall prevail.

**SCHEDULE 1**  
(section 11)

**SWAZILAND ENVIRONMENT AUTHORITY**

*Meetings of the Board*

1. (1) The Board shall meet at least once every three months at a time and a place decided by the Board.
- (2) The Chairperson of the Board shall, within fourteen days of receipt of a written request to hold a meeting signed by any three members of the Board, convene a meeting of the Board.
- (3) In the absence of the Chairperson, but subject to the quorum, the members present may elect one of them to act as Chairperson.
- (4) The quorum for a meeting of the Board shall be five members of whom at least two shall not be Public Officers.
- (5) All decisions of the Board shall be made by a majority of the votes of the members present and where the votes are equally divided, the Chairperson, or in the absence of the Chairperson the acting Chairperson, shall have a second or casting vote.
- (6) The Board may invite any person whose presence is in its opinion desirable to attend and participate in the deliberations of any meeting of the Board but that person shall not have the right to vote.
- (7) The Board shall ensure that minutes are kept of the proceedings of every meeting of the Board and of every meeting of a committee constituted by the Board.

*Committees of the Board*

2. The Board may:
  - (a) appoint committees consisting of persons chosen by the Board, upon terms determined by it, to advise it on the exercise of any of its functions and powers;
  - (b) seek advice from any person or consult any Public Body, in the discharge of its functions and any such person or public body shall give whatever advice or assistance as the Authority may reasonably require.

*Validity of acts*

3. The validity of any act or proceedings of the Board shall not be affected by any vacancy or absence among its members of any defect in the appointment of a member of the Board.

### *Disclosure of interests*

4. (1) If a member of the Board or of a committee constituted by the Board, or the spouse of a member, has a direct or indirect personal interest in any matter coming before the Board or the committee for consideration, that member shall, not later than the first meeting held after the relevant circumstances have come to his or her knowledge, disclose the nature of the interest.  
  
(2) A disclosure of an interest shall be recorded in the minutes of the meeting and the member concerned:
  - (a) shall not take part in any discussion or decision of the Board or the committee with respect to that matter; and
  - (b) shall be disregarded for the purposes of constituting a quorum for any such discussion or decision.

### *Provision of information to the Minister*

5. The Authority shall provide the Minister with whatever information concerning the state of the environment in Swaziland and the activities and proposed activities of the Authority, that the Minister may require, provided that the Authority shall not be required under this provision to provide the Minister with information that the Authority does not possess and cannot reasonably be expected to obtain.

### *Financial Resources of the Authority*

6. (1) The Authority shall be endowed with an initial capital of [# Emalangeni] which shall be paid by the Government out of the Consolidated Fund, without further appropriation other than this Act, by warrant under the hand of the Minister responsible for Finance.  
  
(2) The funds and resources of the Authority consist of:
  - (a) money appropriated by Parliament from the Consolidated Fund for the purpose of the Authority;
  - (b) any money and property paid or provided to the Authority by way of grants, fees, subsidies, donations, gifts, charges, rent, interest and other income derived from the investment of the Authority's funds;
  - (c) any money derived from the disposal of or dealing with real or personal property held by the Authority;
  - (d) all other moneys lawfully received by or made available to the Authority.

### *Financial Management of the Authority*

7. The Authority shall perform its functions in accordance with prudent commercial principles and must ensure as far as possible that its revenue is sufficient to meet its expenditure.

### *Bank Accounts and financial powers*

8. (1) The Authority shall open and maintain such bank accounts as are necessary for the performance of its functions.
- (2) The Authority may, to the extent that it thinks it necessary to carry out its functions:
- (a) borrow money by way of loan, advance or overdraft;
  - (b) obtain and provide credits;
  - (c) pay commission;
  - (d) give, take or arrange security.

### *Estimates*

9. (1) The Board shall, during the course of each financial year, cause estimates of the Authority's profit and loss, capital expenditure, and cash flow and balance sheet projections in respect of the next financial year to be prepared and to be submitted to the Minister by a date specified by the Minister. In respect of the first financial year the Authority shall prepare and submit estimates to the Minister not later than twelve weeks from the coming into force of this Act.
- (2) The estimate shall be made in the form and shall contain the information directed by the Minister in consultation with the Minister responsible for Finance.
- (3) If the Minister approves the estimates, the Minister shall cause them to be submitted to the Minister responsible for Finance by a date specified by that Minister.
- (4) If it becomes necessary to revise these estimates, the revised estimates shall be submitted to the Minister responsible for Finance at least one month before the beginning of the next financial year of the Authority.

### *Accounts and Records*

10. The Board shall ensure that proper accounts and records of the transactions and affairs of the Authority are kept and shall do everything necessary to ensure that:
- (a) all moneys received are properly accounted for;
  - (b) all payments out of its funds are correctly made and properly authorised; and

- (c) adequate control is maintained over its property and over the incurring of liabilities by the Authority.

#### *Annual Financial Statements*

- 11. (1) The Authority shall cause financial statements to be prepared in respect of each financial year.
- (2) The financial statements referred to in subparagraph (1) must:
  - (a) present fairly the financial transactions of the Authority during the financial year to which they relate;
  - (b) present fairly the financial position of the Authority at the end of the financial year; and
  - (c) be audited and certified in the manner required by the Minister responsible for Finance.

#### *Auditors and Auditing*

- 12. (1) The Board shall obtain the consent of the Minister and the Minister responsible for Finance before appointing the auditors of the Authority, and shall dismiss the auditors if directed to do so jointly by the Minister and the Minister responsible for Finance.
- (2) Without prejudice to subparagraph (1), the Minister, in consultation with the Minister responsible for Finance, may direct the Director of Audit to examine and audit the accounts of the Authority in accordance with section 20 of the Finance and Audit Act, 1967 (as amended).

#### *Annual Report*

- 13. (1) The Authority shall, within four months after the end of its financial year, prepare and submit to the Minister and to the Minister responsible for Finances, an annual report containing:
  - (a) a copy of its annual audited accounts for the financial year as well as any report by the auditors on its management and accounting practices;
  - (b) a report on the operations of the Authority during the preceding financial year; and
  - (c) any other information as the Minister may direct in writing.
- (2) The Minister, within six months of the end of the Authority's financial year, shall lay the annual audited accounts of the Authority before Parliament

### *Partnerships and Joint Ventures*

14. The Authority may enter into an agreement with another person or body to establish a partnership or joint ventures provided that this may only be done to achieve a purpose that is, or for purposes that are, consistent with the functions of the Authority under this Act and for the attainment of the purpose of the Act.

### *Tendering*

15. (1) Subject to subparagraph (2), the Authority shall not enter into any contract for the supply of goods or materials or for the execution of work or for the rendering of services, to or for the benefit of the Authority, which is estimated by the Authority to involve an expenditure exceeding [100 000 Emalangen], unless the Authority has published its intention to enter into such a contract and the contract is awarded in accordance with a competitive tendering process.

(2) The Minister may permit the Authority to dispense with the process of competitive tendering if the Minister, taking account of the importance of promoting free competition for public sector contracts, is satisfied that the special circumstances pertaining to the contract mean that adopting a competitive tendering process would be inappropriate.