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## ENVIRONMENT ACT 2008

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## ACT NO. 10 OF 2008

**Environment Act 2008**

An Act to make provision for the protection and management of the environment and conservation and sustainable utilization of natural resources of Lesotho and for connected matters.

Enacted by the Parliament of Lesotho.

## PART I - PRELIMINARY

**Short title, commencement and application**

1. (1) This Act may be cited as the Environment Act 2008.
- (2) This Act shall come into operation on such date as the Minister may, by notice published in the Gazette appoint and the Minister may appoint different dates for the coming into operation of different Parts of this Act.
- (3) This Act shall bind the State.

**Interpretation**

2. In this Act, unless the context otherwise requires -
  - “air quality” means the maximum concentration of a human produced pollutant permitted in the atmosphere as prescribed under this Act;
  - “ambient air” means the atmosphere of colourless gases enveloping the earth, but does not include the air within an enclosed structure or within an underground space;
  - “analysis” means an examination or study of a matter, substance or process for the purpose of determining its composition, qualities or its physical, chemical or biological effect on a segment of the environment and includes an examination of emissions or recordings of noise or sub-sonic vibrations to determine the level of the matter or any other characteristics of the matter, noise or sub-sonic vibration or its effect on a segment of the environment;

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“analyst” means a person designated under section 91;

“appointed member” means a member of the Council appointed by the Prime Minister;

“beneficial use” means a use of the environment in a sustainable manner or an element or segment of the environment in a sustainable manner;

“biological diversity” means the variability among living organisms from all sources including *inter alia* terrestrial ecosystems and aquatic ecosystems and the ecological habitats of which they are part and includes genetic diversity within species, between species and ecosystems;

“chemical” means a chemical substance in any form whether by itself or in a mixture or preparation whether manufactured or derived from nature and includes industrial chemicals, pesticides and fertilizers;

“Council” means the National Environment Council established under section 5;

“Department” means the Department of Environment;

“developer” means the proponent of a development project or activity that is subject to an environment impact assessment process;

“Director” means the Director of the Department of Environment;

“discharge” includes deposit, emission and leakage;

“District Development Coordinating Committee” means the District Development Coordinating Committee established under the Local Government Act 1997<sup>1</sup>;

“effluent” means waste liquid or any other fluid from domestic, agricultural, trade, commercial or industrial sites, treated or untreated and discharged directly or indirectly into the environment or segment of the environment;

“element” means any of the principal constituent parts of the environment including water, atmosphere, soil, vegetation, climate, sound, odour, aesthetics, fish and wildlife;

“environment” means the physical factors of the surroundings of the human beings including land, water, atmosphere, climate, sound, odour, taste, biological factors of animals and plants and the social factors of aesthetics and includes both natural and the built environment;

“environmental audit” means the systematic, documented, periodic and objective evaluation of how well environmental organisation, management and equipment are performing in conserving the environment and its resources;

“environmental impact assessment” means a systematic examination of a project or activity conducted to determine whether or not that project or activity may have adverse impact on the environment;

“environmental inspector” means a person designated under section 89;

“environmental law” means any law which relates to environmental issues;

“environmental monitoring” means the continuous determination of actual and potential effects of any project, activity or phenomenon on the environment whether short term or long term;

“environmental planning” means both long-term and short-term planning that takes into account environmental issues;

“environmental resources” means both the renewable or non-renewable resources of the air, land and water including the living resources of flora and fauna and their aesthetical qualities;

“environmental restoration order” means an order provided for under this Act;

“environmentally friendly” means any phenomenon or activity that does not cause appreciable harm or degradation to the environment;

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“genetic resources” means genetic material of actual or potential value;

“handling” includes production, transportation, use, storage, and discharge of toxic hazardous chemicals;

“hazardous substance” means a chemical, waste, gas, liquid, odour, heat, pharmaceutical, plant, animal which is harmful to the environment and includes narcotics and drugs and radioactive materials which are harmful to the environment;

“hazardous waste” means waste which is poisonous, corrosive, noxious, explosive, inflammable, radioactive, toxic or harmful to the environment;

“Line Ministry” means a Ministry, Department, parastatal or agency in which any law vests functions for the protection, conservation or management of any segment of the environment or whose activities may have an impact on the environment as defined in this Act;

“local authority” has the same meaning as in the Local Government Act 1997;

“Minister” means the Minister responsible for environment;

“Ministry” means the Ministry responsible for the administration of this Act”;

“National Environmental Action Plan” means the plan provided for under section 16;

“noise” means any sound that is likely to be injurious to human health or the environment;

“oil” includes -

- (a) crude oil, fuel oil, lubricating oil, petrol, paraffin and any other petroleum product capable of causing pollution whether in a solid or liquid form; and
- (b) any other substance which may be prescribed by the

Minister,

by notice published in the gazette, to be oil for the purposes of this Act;”

“ozone layer” means the ozone layer defined in the Vienna Convention for the Protection of the Ozone Layer 1985;

“person” includes any company or association or body of persons corporate or unincorporate;

“pollutant” means a substance whether liquid, solid or gaseous which directly or indirectly alters the quality of a segment or element of the receiving environment so as to affect any beneficial use adversely or is hazardous or potentially hazardous to human health or the environment and includes objectionable odours, radio-activity, noise, temperature change or physical, chemical or biological change to any segment or element of the environment;

“polluter-pays principle” means that the cost of cleaning up a segment of the environment damaged by pollution, compensating victims of pollution, cost of beneficial uses lost as a result of an act of pollution and other costs that are connected or incidental to the foregoing, is to be paid or borne by the person convicted of pollution under this Act or any other applicable law;

“pollution” means any indirect or direct alteration of the physical, thermal, chemical, biological or radio-active properties of a segment of the environment by discharging, emitting or depositing substances or wastes so as to affect any beneficial use adversely, to cause a condition which is hazardous or potentially hazardous to public health, safety, welfare or to animals, birds, wildlife, fish or aquatic life or to plants or cause a contravention of any condition, limitation or restriction to which is subject to a licence issued under this Act;

“precautionary principle” means that where there are threats of damage to the environment, whether serious or irreversible, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation;

“Prime Minister” means the Prime Minister of Lesotho;

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“Principal Secretary” means the Principal Secretary of the Ministry responsible for environment;

“project” includes both project and policy that leads to projects which have or are likely to have an impact on the environment;

“spill” means a discharge of a pollutant into the environment from or out of a structure, vehicle, vessel, aircraft or other carrier or container, which -

- (a) is abnormal having regard to all the circumstances of the discharge; and
- (b) poses a serious threat to the environment and human health;

“soil” means an upper layer of earth and includes sand, rock, shales, minerals, vegetation and soil flora, and fauna in the soil and derivatives such as dust;

“standard” means the limits of pollution established under this Act or under the regulations made under this Act or any other law;

“strategic environmental assessment” means an assessment of the positive and adverse effects that the implementation of Bill, regulation or of a public policy, programme or plan is likely to have on the environment;

“sustainable development” means development that meets the needs of the present generation without compromising the ability of future generations to meet their needs by maintaining the carrying capacity of the supporting ecosystems;

“sustainable use” means present use of the environment or natural resources which does not compromise or impose on the ability to use the same by future generations or degraded the carrying capacity of supporting ecosystems;

“Tribunal” means the Environmental Tribunal established under section 98;

“waste” means any substance that may be prescribed as waste or any matter, whether liquid, solid, gaseous, or radio-active, which is discharged, emitted or deposited in the environment in such volume, composition or manner as to cause an alteration of the environment;

“water” means drinking water, water used for domestic and industrial purposes and for animals, plants and includes river, stream, water-course, reservoir, well, dam, canal, channel, lake, swamp, open drain or underground water; and

“wetland” means an area permanently or seasonally flooded by water where plants and animals have become adapted.

## PART II - GENERAL PRINCIPLES

### **Principles of environmental management**

3. (1) The Director shall ensure that the principles of environmental management set out in subsection (2) are observed.

(2) The principles of environmental management referred to in subsection (1) are as follows:

- (a) to assure every person living in Lesotho the fundamental right to a clean and healthy environment;
- (b) to ensure that sustainable development is achieved through the sound management of the environment;
- (c) to use and conserve the environment and natural resources of the Basotho Nation for the benefit of both present and future generations, taking into account the rate of population growth and the productivity of available resources;
- (d) to maintain stable and functioning relations between the living and non-living parts of the environment through preserving biological diversity and respecting the principle of optimum sustainable yields in the use of natural resources;

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- (e) to reclaim lost ecosystems where possible and reverse the degradation of natural resources;
  - (f) to publish data on environmental quality and natural resources;
  - (g) to encourage participation by the people of Lesotho in the development of policies, plans and processes for the management of the environment;
  - (h) to ensure that waste generation is minimized and safely disposed of;
  - (i) to prevent, any interference with the climate and adverse disturbances of the atmosphere and take compensatory measures for any unavoidable interference;
  - (j) to take measures to preserve the cultural heritage of the Basotho Nation for the benefit of both present and future generations;
  - (k) to establish adequate environmental protection standards and monitor changes in environmental quality;
  - (l) to require prior environmental impact assessment of proposed projects or activities which are likely to have adverse effects on the environment or natural resources;
  - (m) to ensure that environmental awareness is treated as an integral part of education at all levels;
  - (n) to ensure that the cost of environmental abuse or impairment are borne by the polluter;
  - (o) to promote co-operation with other governments and relevant national, international and regional organisations and other bodies concerned with the protection of the environment; and

- (p) to ensure that appropriate measures are taken to prevent soil erosion.

### **Right to a clean and healthy environment**

4. (1) Every person living in Lesotho -

- (a) has a right to a scenic, clean and healthy environment; and
- (b) has a duty to safeguard and enhance the environment including the duty to inform the Director of all activities and phenomena that may affect the environment significantly.

(2) Every person may, where the right referred to in subsection (1) is threatened as a result of an activity or omission which is causing or likely to cause harm to human health or environment, bring action against the person whose activity or omission is causing or is likely to cause harm to human health or the environment.

(3) The action referred to in subsection (2) may -

- (a) seek prevention or discontinuance of the activity or omission, which is causing or is likely to cause harm to human health or the environment;
- (b) request that the on-going activity be subjected to an environmental audit;
- (c) request that the on-going activity be subjected to an environmental monitoring;
- (d) request that measures to protect the environment or human health be taken by the person whose activity or omission is causing or is likely to cause harm to human health or the environment.

(4) The court shall in exercising its jurisdiction, be guided by the following principles of sustainable development -

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- (a) the polluter pays principle;
  - (b) the precautionary principle;
  - (c) the principle of eco-system integrity;
  - (d) the principle of public participation in the development of policies, plans and processes for the management of the environment; and
  - (e) the principle of inter-generational and intra-generational equity.

### PART III - INSTITUTIONAL ARRANGEMENTS

#### **Establishment of National Environment Council**

5. (1) There is established a body to be known as the National Environment Council.

(2) The Council shall consist of the following:

- (a) the Minister responsible for environment, who shall be the Chairman;
- (b) the Minister responsible for trade, industry and marketing;
- (c) the Minister responsible for agriculture;
- (d) the Minister responsible for local government;
- (e) the Minister responsible for public works;
- (f) the Minister responsible for development planning;
- (g) the Minister responsible for health;
- (h) the Minister responsible for natural resources;

- (i) the Minister responsible for forestry and land reclamation;
- (j) the Minister responsible for science and technology;
- (k) the Principal Secretary who shall be the secretary;
- (l) a representative of Lesotho Council of Non-Governmental Organisations appointed by the Minister on the recommendation of the Lesotho Council of Non-Governmental Organisations;
- (m) a representative of the business sector appointed by the Minister on the recommendation of the business sector;
- (n) a representative of the Lesotho National Council of Women appointed by the Minister on the recommendation of the Lesotho Council of Women;
- (o) a representative of youth appointed by the Minister on the recommendation of a legally registered youth organization;
- (p) a person who has knowledge and experience in environmental issues appointed by the Minister.

(3) The Chairman may invite any other Minister to the meetings of the Council when issues of that Minister's department are discussed but such Minister shall not have power to vote.

### **Tenure of office**

6. (1) An appointed member shall hold office for a period of three years from the date of appointment and is eligible for re-appointment upon the expiration of the term of office.

(2) An appointed member shall vacate office if he -

- (a) is unable to exercise the functions of his office;

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- (b) has been convicted of a criminal offence and sentenced to imprisonment without the option of a fine;
  - (c) is unfit for his duties;
  - (d) has been absent from three consecutive meetings of the Council without the permission of the Chairman.

(3) An appointed member of the Council may resign his office by writing to the Minister.

### **Meetings of the Council**

7. (1) The Council shall meet at least 2 times a year and as often as it deems necessary.

(2) Nine members of the Council shall form a quorum at a meeting of the Council.

(3) The Chairman shall preside at the meetings of the Council and in his absence, members present shall elect one of their number, who shall be a Minister to preside.

(4) Any question before the Council at a meeting shall be decided by the majority of the members present and voting, and in the event of an equality of votes the Chairman or the person presiding shall have a casting vote.

(5) The Chairman may invite any person to attend and participate in the discussions of the Council but that person shall not have a right to vote.

(6) The Council may determine its rules of procedure.

### **Functions of the Council**

8. The Council shall -

- (a) set national goals and objectives and determine policies and priorities for the protection of the environment having due regard to the recommendations of the

Minister;

- (b) promote coordination and co-operation among Line Ministries, local authorities, private sector, non-governmental organisations and other organisations engaged in environmental protection programmes;
- (c) promote the harmonization of the plans and policies of the various sectors;
- (d) identify obstacles to the implementation of environmental policy and programmes and ensure implementation of these policies and programmes;
- (e) promote the integration of environmental considerations in all aspects of socio-economic planning;
- (f) review progress made by Line Ministries, local authorities and parastatals on any aspect of environmental projects and programmes;
- (g) monitor and review the activities of Line Ministries concerned with the protection and management of the environment; and
- (h) issue, to Line Ministries such directives as it may determine.

### **Department of Environment**

9. (1) This Act shall be administered by the Department which is an office in the public service.

(2) The Department shall be under the direct supervision and control of the Director.

(3) The Director shall -

- (a) be a public officer;

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- (b) be responsible for the day to day business of the Department; and
  - (c) carry out the duties and functions provided under this Act and such other duties as the Minister may assign to him;
  - (d) be responsible to the principal Secretary for the proper discharge of his functions under this Act.

### **Functions of the Director**

10. (1) The functions of the Director are to -
- (a) propose and develop policies on all aspects of environmental protection and management pursuant to national objectives and goals set by the Council;
  - (b) co-ordinate, monitor and supervise all sectoral activities in the field of environment and all environmental management programmes and where he deems it necessary, issue directions to any Line Ministry or local authority for the promotion of such programmes;
  - (c) implement national environmental policy;
  - (d) ensure the integration of environmental concerns in national planning through co-ordination with all Line Ministries and other relevant bodies;
  - (e) initiate legislative proposals, standards and guidelines on the environment in accordance with this Act;
  - (f) review and approve environmental impact assessments and environmental impact statements submitted in accordance with this Act;
  - (g) identify projects, activities, policies and programmes or types of projects, policies or activities for which environmental impact assessment must be conducted

under this Act;

- (h) undertake research, compile and disseminate information about the environment;
- (i) promote public awareness through formal and non-formal education on environmental management issues;
- (j) mobilize and monitor the use of resources for environmental management;
- (k) prepare in consultation with the relevant Line Ministries and other relevant bodies proposals of the country's environmental policies and formulate implementation strategies for such policies;
- (l) monitor and assess projects or activities that are being carried out by relevant Line Ministries and bodies to ensure that the environment is not damaged by such projects or activities and that environmental management objectives are being adhered to and adequate early warning on impending environmental emergencies is given;
- (m) undertake in co-operation with relevant Line Ministries and relevant bodies programmes intended to enhance public awareness about the need for sound environmental management and secure public support by encouraging efforts made in that regard;
- (n) publish and disseminate manuals, codes, standards, guidelines or any other material relating to environmental management and prevention or abatement of pollution;
- (o) render advice and technical support, where possible, to bodies engaged in environment and natural resource management so as to enable them to carry out their responsibilities effectively;

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- (p) prepare and publish every five years a report on the state of environment and environment management in Lesotho;
  - (q) promote and implement co-operation in environment management with similar bodies in other countries and with international bodies concerned with the protection of the environment;
  - (r) collect and make available through publication and other appropriate means and in co-operation with public and private organisations, basic scientific data and other information pertaining to pollution, degradation and environmental protection matters;
  - (s) establish such environmental criteria, guidelines, specifications or standards for the protection of the land, air, water, health and welfare of the population from environmental degradation;
  - (t) establish guidelines and procedures for industrial, agricultural or any other activities in order to minimize damage to environment;
  - (u) investigate reports of pollution and other related matters;
  - (v) initiate and co-ordinate actions required in a state of environmental emergency or any other situations which may pose a serious threat to the environment and public health; and
  - (w) carry out such other functions as may be required by the Council or the Minister, as may be incidental or conducive to the exercise by the Director of any or all the functions provided under this Act.

(2) The Director may, in the performance of his functions under subsection (1), delegate, by notice published in the Gazette, any of his functions to a Line Ministry, a technical advisory committee or any public officer.

**Environment Coordinating Committee**

11. (1) There shall be an Environment Coordinating Committee which shall consist of -

- (a) the Principal Secretary, who shall be the Chairman;
- (b) the Principal Secretary of the Ministry responsible for natural resources;
- (c) the Principal Secretary of the Ministry responsible for local government;
- (d) the Principal Secretary of the Ministry responsible for finance and planning;
- (e) the Principal Secretary of the Ministry responsible for agriculture;
- (f) the Principal Secretary of the Ministry responsible for forestry and land reclamation;
- (g) the Principal Secretary of the Ministry responsible for trade and industry;
- (h) the Principal Secretary of the Ministry responsible for health;
- (i) the Principal Secretary of the Ministry responsible for public works;
- (j) the Principal Secretary of the Ministry responsible for science and technology;
- (k) the Director who shall be the secretary.

(2) The Committee shall -

- (a) ensure that there is maximum cooperation and coordination among Line Ministries and other organisations,

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- dealing with environment protection and management;
- (b) develop such policies and administrative measures as are necessary to ensure prompt and effective consultation on matters relating to environment protection and management;
  - (c) ensure that information relating to environmental issues is shared among the Line Ministries so as to develop a better understanding of environmental issues and of problems relating to enforcement of environmental laws;
  - (d) advise the Minister and, where requested, the Council, on matters relating to environmental standards, guidelines, codes of practice and other control measures for the purpose of avoiding duplication of functions among Line Ministries and of ensuring proper enforcement of environmental laws; and
  - (e) ensure compliance with, implementation and enforcement of, any direction given by the Minister in relation to the coordination in the administration and enforcement of an environmental law among the various Line Ministries.

### **District Environment Officer**

12 (1) There shall be in every district, a District Environment Officer, who shall be a public officer.

(2). The District Environment Officer shall be a member of the District Development Coordinating Committee and shall -

- (a) advise the District Development Coordinating Committee on all matters relating to the environment and the performance of its functions under section 17;
- (b) report to the Director on all matters relating to the protection and management of the environment and con-

servation and sustainable utilization of natural resources in the district;

- (c) promote environmental awareness in the district on the protection and management of the environment and the conservation of natural resources;
- (d) gather and manage information on the environment and the utilization of natural resources in the district;
- (e) submit such reports to the Director as the Director may require; and
- (f) perform such other functions as the Director may assign to him.

### **Technical advisory committees**

13. (1) The Minister may establish such technical advisory committees as he thinks fit to advise him on matters pertaining to the scientific and technical aspects of environmental protection and management.

(2) The technical advisory committee established under subsection (1) shall provide advice on any matter specified by the Minister.

(3) The technical advisory committee shall be discharged on submission of its opinion on the matter referred to it unless the Minister requests for further advice or directs otherwise.

### **Proceedings of the Technical Advisory Committee**

14. (1) The Director shall be the Chairman of the technical advisory committee established under section 13.

(2) Subject to the provisions of this Act, the technical advisory committee shall regulate its meetings and adopt its own procedure.

### **Establishment of environmental units and the role of Line Ministries**

15. (1) Each Line Ministry shall establish an environmental unit that

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shall have such functions, duties and powers as the Line Ministry may assign to it, which shall include,

- (a) responsibility for assuring compliance by that Line Ministry with the requirements of this Act; and
- (b) liaison with the Director on matters involving environment and all matters with respect to which co-operation or shared responsibility is desirable or required under this Act.

(2) Each Line Ministry shall carry out its functions and duties in connection with the environment as prescribed in any law provided that such law does not conflict with the provisions of this Act.

(3) A Line Ministry charged with the management of any segment of the environment under any law shall submit to the Director -

- (a) an annual report concerning the state of that segment of the environment and the measures taken by that Line Ministry to maintain or improve the environment; and
- (b) through its environmental unit such other report as may be required by the Director.

(4) A Line Ministry shall report as soon as practicable to the Director through its environmental unit any contravention of any environmental law relating to its sphere of responsibility.

(5) Where a Line Ministry suspects or detects any contravention of an environmental law beyond its sphere of responsibility, it shall through its environmental unit forthwith inform the Director and the relevant Line Ministry.

(6)

A Line Ministry shall in respect of its sphere of responsibility -

- (a) supervise enforcement of national environmental standards, guidelines, notices, orders and directives issued under an environmental law;

- (b) verify compliance with environment laws;
- (c) conduct such regular monitoring, sampling, testing and analyses so as to ensure compliance with environmental laws;
- (d) provide such assistance as may be required for reviewing an environmental impact assessment report, and in case of a spill or environmental emergency;
- (e) carry out directions issued by the Minister.

(7) Where a Line Ministry fails to prosecute an offence or take action or issue a notice in connection with a breach, or with an alleged or suspected breach, of an environmental law, the Minister may issue such direction as he thinks fit to the Line Ministry.

(8) Where a Line Ministry fails to comply with a direction of the Minister under subsection (7) within the time prescribed in the direction,

- (a) the Director may carry out the task required in the direction;
- (b) the Minister may report the failure of the Line Ministry to the Council for consideration.

(9) A Line Ministry shall -

- (a) have all the powers conferred on an environmental inspector under sections 23(3), 24(3), 50(1) and (2) and 90 of this Act;
- (b) make available to other Line Ministries and the Department all facilities required for carrying out any environmental monitoring, laboratory analysis and tests;
- (c) keep a record of all inspections and compliance monitoring exercises and information and environmental data as a result of such monitoring;

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- (d) at the Minister's request, provide the Minister with a copy of the record.

#### PART IV - ENVIRONMENTAL PLANNING

##### **Environment planning at national level**

16. (1) The Director shall, in every five years, prepare, in consultation with relevant Line Ministries, a National Environmental Action Plan, which shall be submitted to Cabinet for consideration and approval.

- (2) The National Environmental Action Plan shall -
- (a) be the basis for national environment planning and implementation of development programmes;
  - (b) provide general guidance for the management and protection of the environment and natural resources of Lesotho;
  - (c) identify the principal environmental problems facing Lesotho;
  - (d) recommend methods for building national awareness on the importance of sustainable use of the environment and natural resources for national development;
  - (e) take into account District Environment Action Plans as provided for under section 17;
  - (f) identify and recommend policy and legislative approaches for preventing, controlling or mitigating specific as well as general adverse impacts on the environment;
  - (g) be disseminated to the public; and
  - (h) provide for any other matter that the Minister may prescribe.
- (3) The National Environment Action Plan shall be binding on all

Government Ministries, parastatals, non-governmental organisations, public agencies, companies, body corporate and all persons.

### **Environmental planning at district level**

17. (1) A District Development Coordinating Committee shall in consultation with the Director and in addition to its existing role -
- (a) prepare every five years, a District Environment Action Plan;
  - (b) coordinate the activities of Line Ministries in the protection and management of the environment and conservation and sustainable utilization of natural resources in the district; and
  - (c) promote and disseminate information relating to the environment through public awareness programmes and prepare reports on the state of the environment in the district every five years.
- (2) The District Environmental Action Plan shall -
- (a) be in conformity with the National Environmental Action Plan;
  - (b) identify environmental problems in the district in question and shall be binding on all district local communities, and persons within the district;
  - (c) be disseminated to the public; and
  - (d) contain such matters as may be prescribed for under this Act.
- (3) A District Development Coordinating Committee shall -
- (a) report to the Director on all matters relating to the environment and conservation and utilization of natural resources in the district under its jurisdiction; and

- (b) submit such reports as the Director may require.

### **Environmental management plans**

18. (1) Every Line Ministry shall prepare an environmental management plan within such a period as the Minister may specify.

(2) An environmental plan prepared in terms of subsection (1) shall contain the following -

- (a) a description of the functions exercised by the relevant Ministry in respect of the environment;
- (b) a description of environmental standards or guidelines established or applied by the Line Ministry;
- (c) a description of the policies, plans and programmes that are designed to give effect to the plan;
- (d) the degree of compliance required of other persons; and
- (e) arrangements for cooperation with other persons on environmental management.

## **PART V - ENVIRONMENT IMPACT ASSESSMENT, AUDIT AND MONITORING**

### **Types of projects for which an environment impact assessment or strategic environment assessment is required**

19. (1) An environment impact assessment or project brief, as the case may be, shall be undertaken on projects and activities specified in Part A of the First Schedule.

(2) A strategic environmental assessment shall be undertaken on matters specified in Part B of the First Schedule.

(3) Notwithstanding subsection (1), the Minister may by regulations, prescribe -

- (a) the category of projects or activities for which only a project brief is required by reason of their nature, scope, scale and location;
- (b) the category of projects or activities for which an environmental impact assessment study is required by reason of their nature, scope, scale and location.

(4) The Minister may, by notice published in the Gazette, amend the First Schedule to this Act.

### **Submission of a project brief**

20. (1) A developer shall, prior to commencing, carrying out, executing or conducting a project or activity specified in Part A of the First Schedule, submit to the Director and the relevant Line Ministry a project brief stating -

- (a) the nature of the project;
- (b) the activities that shall be undertaken;
- (c) the possible products or by-products anticipated and their environmental consequences;
- (d) the number of people the project shall employ;
- (e) the area of land, air or water that may be affected;
- (f) any other matters that may be prescribed;
- (g) and such other matters as the Director may in writing require from the developer or any other person who the Director reasonably believes has information relating to the project.

(2) Where, upon examining the project brief, the Director considers that further information is required to be stated in the project brief, the Director may require the developer, in writing, to provide such further information as the Director deems necessary.

(3) If after considering the project brief, the Director, in consultation with the Line Ministry is of the view that the proposed project will not have any significant impact on the environment, he may approve the project or activity with such conditions as he deems appropriate.

(4) The Director may, where he is of the view that the project or activity is likely to have significant impact on the environment invite written or oral comments from the public thereon and where necessary may consult the community of the areas where the proposed project will be situated, of the proposed project and the contents of the project brief.

(5) Notwithstanding section 19(3)(a), the Director may, after considering the project brief, and in consultation with the Line Ministry, require that an environmental impact study be made in accordance with the provisions of this Act, if he is of the opinion that the project is likely to have significant impact on the environment.

### **Environmental impact studies and statements**

21. (1) A developer applying for an environmental impact assessment licence in respect of a project or activity which an environmental impact assessment study is required or where the Director has determined in accordance with section 20(5) that an environmental impact study should be undertaken, the developer shall make an environmental impact study and submit an environmental impact statement on the completion of the study.

(2) The developer shall within 30 days of completing the environmental impact study submit the environmental impact statement relating to the study to the Director and the relevant Line Ministry.

(3) The environment impact statement shall be open for public inspection and may be inspected on payment of the prescribed fees by any person at a place and time to be determined by the Minister.

(4) The Director shall prepare guidelines concerning the conduct of environmental impact studies and the preparation of environmental impact statements.

(5) Without prejudice to the generality of what may be included in an environmental study conducted according to subsection (4) of this section,

the environmental impact statement shall provide for the following -

- (a) a detailed description of the proposed project or activity and of activities it is likely to generate;
- (b) a description of the potentially affected environment including specific information necessary for identifying and assessing the environmental effects of the proposed project or activity;
- (c) a description of the technology, method and processes that shall be used in the implementation of the project or activities and the main alternatives and reasons for declining to use those alternatives;
- (d) reasons for selecting the proposed site and rejecting alternative sites;
- (e) environmental impact of the proposed activity or project including the direct, indirect, cumulative, short term or long term effects on the environment of the project;
- (f) an identification and description of measures proposed for eliminating, minimizing or mitigating the anticipated adverse effects of the project or activity on the environment;
- (g) an indication of whether the environment of any other State or area beyond the limits of national jurisdiction is likely to be affected and the mitigating measures to be undertaken;
- (h) a brief description of how the information provided for in this section has been generated;
- (i) an identification of gaps in knowledge and uncertainties which were encountered in completing the required information;
- (j) the social, economic and cultural effects the project is

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likely to have on people and society;

- (k) the irreversible and irretrievable commitment of resources which will be involved by the project if implemented in the manner proposed by the developer;
  - (l) a comprehensive mitigation plan;
  - (m) any other matters that the Minister may prescribe.
- (6) A comprehensive mitigation plan shall include -
- (a) a full description of the mitigation measures that will be implemented in order to prevent, reduce or otherwise manage the environmental effects of the project.
  - (b) how the measures referred to in paragraph (a) will be implemented; and
  - (c) any other information that the Minister may prescribe.

(7) Experts whose names and qualifications are approved by the Director after consultation with the relevant Line Ministry shall undertake an environmental impact study.

(8) Costs of conducting the environmental impact study shall be borne by the developer.

### **Review of Environmental impact statements**

22. The Director may, on receipt of the environmental impact statement submitted to him in accordance with section 21 and in consultation with the relevant Line Ministry, study the environmental impact statement and if he deems it proper in its form and content shall -

- (a) invite public comments on the environment impact statement in general;
- (b) invite the comment of those persons who are most likely to be affected by the proposed project by specific-

- ly drawing their attention to the environmental impact statement;
- (c) consider the environmental impact statement and all the comments made;
  - (d) require the holding of a public hearing for persons most likely to be affected by the proposed project or activity if he deems it necessary;
  - (e) approve the project or activity after consultation with the relevant Line Ministry if he is satisfied that the project or activity shall not result in significant damage to the environment;
  - (f) require the developer to redesign the project or do such other thing as the Director considers necessary, taking into consideration the suggestions or comments made and all environmental factors; or
  - (g) reject the project where he is of the opinion that the project may cause significant and irreversible damage to the environment.

### **Environmental monitoring**

23. (1) The Director shall, in consultation with the relevant Line Ministry, monitor -

- (a) all environmental elements with a view of making an assessment of a possible change in the environment and their possible environmental impacts;
- (b) the operation of an industry, project or activity with a view to determining its immediate and long-term effects on the environment; and
- (c) the operation of all projects in existence at and after the commencement of this Act with a view of determining whether they comply with the provisions of this Act.

(2) The Director may, where he determines that the project does not comply with the provisions of this Act, require that the developer of a project or activity take remedial measures in a manner and within such time as the Director may determine.

(3) An environmental inspector may enter upon any land or premises for the purpose of monitoring environmental effects upon the environment or any activities that are carried out on that land or premises.

### **Environmental audit**

24. (1) The Director shall, in consultation with the relevant Line Ministry, be responsible for carrying out periodic environmental audit of activities or projects that are likely to have adverse effects on the environment.

(2) The Director may require -

- (a) the holder of an environmental impact assessment licence;
- (b) the operator or developer of a project or activity for which an environmental impact statement has been made; or
- (c) a person who has legal right in land or the owner of the premises where a project or activity for which environmental impact statements has been made,

to keep and submit to the Director reports on how far the project or activity conforms in operation with the terms and conditions of the licence at such periods as the Director deems necessary.

(3) An environmental inspector may enter any land or premises for the purposes of determining how far the activities carried out on that land or premises conform with the statements made in the environmental impact statement issued in respect of that land or those premises.

(4) A person who has a legal right in the land or the owner of the premises or a developer of a project or activity for which an environmental impact statement has been made, shall take all reasonable measures to mitigate

undesirable effects not contemplated in the environmental impact statement and shall report those measures to the Director annually or whenever the Director requires.

### **Environmental impact assessment licence and record of decision**

25. (1) No person shall operate, execute or carry out a project or activity specified in the First Schedule without an environmental impact assessment licence issued by the Director.

(2) The Director may, if he is satisfied that the environmental impact statement is adequate, issue an environmental impact assessment licence on the terms and conditions appropriate and necessary to facilitate sustainable development and sound environmental management.

(3) The Director shall, in issuing or refusing to issue a licence under this section, issue a record of decision which shall include:

- (a) the decision of the Director;
- (b) key factors of that decision including responses to material issues raised by any person during the environmental impact assessment process;
- (c) the date of the decision;
- (d) a copy of the environmental impact assessment licence if issued;
- (e) information with respect to the right of any person to seek reconsideration of the decision of the Director and how such reconsideration may be sought.

(4) No licensing authority appointed under any other law shall issue a licence or permit by virtue of any law with respect to a project or activity for which environmental impact assessment may be required unless the application for a licence is accompanied by an environmental impact assessment licence issued under this Act, or the Director has certified in writing that an environmental impact assessment is not required under this Act.

(5) A person aggrieved by the decision of the Director to issue or refuse to issue a licence under this section may, within 30 days of being informed of that decision, request in writing setting forth the reasons of his request that, the Director reconsider his decision.

(6) The Director shall within 30 days of receipt of a written request for reconsideration under this section, issue a decision affirming, modifying or reversing his earlier decision. The decision of the Director shall become part of the record of decision.

(7) A person who contravenes the provisions of subsection (1), commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

### **Submission of environmental impact assessment report after issue of environmental impact assessment licence**

26. (1) The Director may, after the issue of an environmental impact assessment licence, direct the holder of a licence to submit fresh environmental impact statement, where -

- (a) there is a substantial change or modification in the project or in the manner in which the project is being operated; or
- (b) the project poses environmental threat, which could not be reasonably foreseen at the time of the first study.

(2) A person being a holder of an environmental impact assessment licence who fails to comply with the direction issued under subsection (1) -

- (a) commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both; and
- (b) shall have his environmental impact assessment licence canceled.

**Transfer of environmental impact assessment licence**

27. (1) The holder of an environmental impact assessment licence may transfer it to another person only in respect of the project in relation to which the licence was issued.

(2) Where the licence referred to in subsection (1) is transferred, the person to whom it was issued to and the person to whom it is transferred to, shall jointly and in writing notify the Director of the transfer, within 30 days of the transfer.

(3) The holder of the environmental impact assessment licence shall, where no joint notification of a transfer is given be deemed for the purposes of this Act to be the owner or the person having charge, or management or control of the project.

(4) A transfer of an environmental impact assessment licence shall be effective from the date the Director is notified of the transfer.

(5) No person shall transfer an environmental impact assessment licence contrary to the provisions of subsections (1), (2) and (3).

(6) A person who contravenes the provisions of this section, commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

**PART VI - ENVIRONMENTAL QUALITY STANDARDS****Water quality standards**

28. (1) The Director shall, in consultation with the relevant Line Ministry -

(a) establish criteria and procedures for the measurement of water quality;

(b) establish minimum water quality standards for all the waters of Lesotho and for the following different uses -

(i) drinking water;

- 
- (ii) water for industrial purposes;
  - (iii) water for agricultural purposes;
  - (iv) water for recreational purposes;
  - (v) water for fisheries;
  - (vi) water for wildlife; and
  - (vii) any other water uses which may be prescribed;
- (c) determine conditions for the discharge of effluents into the aquatic environment;
  - (d) make guidelines for the preservation of fishing areas, aquatic areas, and other areas where water may need special protection;
  - (e) identify areas of research and initiate or commission research on the effects of water pollution on the environment, human beings and fauna and flora;
  - (f) order or carry out investigations of actual or suspected water pollution including the collection of data;
  - (g) document the analytical methods by which water quality and pollution control standards can be determined;
  - (h) collect, maintain and interpret data from industries and local authorities on the pre-treatment nature and levels of effluents;
  - (i) prescribe measures for the treatment of effluent before discharging it into the sewerage systems;
  - (j) establish standards for the discharge of effluent into waters of Lesotho;
  - (k) recommend the undertaking by a plant operator, of

works necessary for the treatment of effluent before it is discharged into the waters; and

- (1) do or perform anything or act necessary for the monitoring and control of water pollution.

(2) The Director may, in consultation with the relevant Line Ministry, prescribe different quality standards to apply in different areas of Lesotho with respect to different segments of the environment and the Director may, from time to time, vary such standards.

(3) A person who contravenes the provisions of this section commits an offence and is liable on conviction to a fine not less than M5, 000 or to imprisonment for a term not less than 2 years or to both.

### **Air quality standards**

29. (1) The Director shall, in consultation with the relevant Line Ministry -

- (a) establish criteria for the measurement of air quality;
- (b) establish -
  - (i) ambient air quality standards;
  - (ii) occupational air quality standards;
  - (iii) emission standards for various sources;
  - (vi) criteria and guidelines for air pollution control for both mobile and stationary sources; and
  - (v) any other air quality standards, which may be prescribed from, time to time;
- (c) take measures to reduce existing sources of air pollution by requiring the redesign of plants or the installation of new technology or both in order to meet the requirements of standards established under this sec-

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tion;

- (d) make guidelines to minimize emissions of green house gases and identify suitable technologies to minimize air pollution;
- (e) consider the rate of emission concentration and nature of pollutants emitted;
- (f) consider the best practicable technology available in controlling pollutants during the emission process;
- (g) determine the analytical technology available in controlling pollutants during the emission process;
- (h) order or carry out investigations of actual or suspected air pollution including pollution produced by aircraft, motor vehicles, factories and power generating stations;
- (i) order an industry or any other source of air pollution to file returns and provide any information as it may require; and
- (j) do any other thing, which may be necessary for the monitoring and controlling of air pollution.

(2) No person shall emit or cause to emit a substance, which causes air pollution in contravention of emissions standards, established under this Act.

(3) A person who contravenes the provisions of subsection (2), commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

(4) A person who is convicted under subsection (3) shall in addition to a fine or imprisonment -

- (a) pay the costs which may be incurred by any Line Ministry or the Department in the restoration of the environment damaged or destroyed as a result of the

emission; and

- (b) pay the costs incurred by a third party in the form of repair, restoration, restitution or compensation as may be determined by a court of law.

### **Standards for waste**

30. (1) The Director shall, in consultation with the relevant Line Ministry -

- (a) prescribe standards for waste, waste classification and analysis and formulate and advise on standards of disposal methods and means for such waste;
- (b) issue guidelines for the handling, storage, transportation, segregation and destruction of hazardous waste;
- (c) identify materials and processes that are dangerous to human health and the environment; and
- (d) issue guidelines and prescribe measures necessary for the management of the materials and processes identified under paragraph (c).

(2) A person who contravenes the standards or guidelines made under this section, commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

### **Soil quality standards**

31. (1) The Director shall, in consultation with the relevant Line Ministry -

- (a) establish -
  - (i) criteria and procedures for the measurement and determination of soil quality;
  - (ii) minimum standards for the management of the

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quality of the soil;

- (b) issue guidelines for -
  - (i) the disposal of any substance in the soil;
  - (ii) the optimum manner for the utilization of any soil;
  - (iii) the identification of the various soils;
  - (iv) the practices that will conserve the soil; and
  - (v) the prohibition of practices that will degrade the soil;
- (c) do any other thing necessary for the monitoring and controlling of soil degradation.

(2) No person shall use or dispose of soil contrary to the established standards for the management of the quality of soil or guidelines issued pursuant to this section.

(3) A person who contravenes the provisions of subsection (2), commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

### **Standards for noise**

32. (1) The Director shall, in consultation with the relevant Line Ministry -
- (a) set minimum standards for emissions of noise and vibration pollution into the environment;
  - (b) establish criteria and procedures for the measurement of noise and vibration pollution into the environment from existing and future sources;
  - (c) establish criteria and procedures for the measurement

of sub-sonic vibrations;

- (d) issue guidelines for the minimization of sub-sonic vibrations referred to in paragraph (b);
- (e) establish standards for the emission of sub-sonic vibrations, which are likely to have significant impact on the environment;
- (f) establish noise levels and noise emission standards applicable to construction sites, plants, machinery, motor vehicles, aircraft including sonic boom, industrial and commercial activities;
- (g) supply appropriate measures to ensure the abatement and control of noise from sources referred to in paragraph (f);
- (h) measure the levels of noise emanating from sources referred to in paragraph (f); and
- (i) establish guidelines for the abatement of unreasonable noise or vibration pollution emitted into the environment from any source.

(2) The measurement of the levels of noise emanating from sources referred to in paragraph (f) shall be given to the owner or occupier of the premises from which the noise is emanating.

### **Standards for ionization and other radiation**

33. (1) The Director shall, in consultation with the relevant Line Ministry -

- (a) establish the standards for the minimization of ionizing and other radiation in the environment;
- (b) establish criteria and procedures for the measurement of ionizing and other radiation;

- 
- (c) request inspection and examination of an area, place or premises or vehicle or any vessel in or upon which the Director has reasonable cause to believe that radioactive material or any source of ionizing radiation is stored, leased, transported or disposed of;
  - (d) where there is reasonable cause to believe that a person is -
    - (i) contaminated with radioactive material, or
    - (ii) in unlawful possession of an ionizing radiation source,

request that the person be examined;

- (e) collect information which the Director must disseminate to the public in order to warn and protect the public in case of actual or potential public exposure to radioactive material, ionizing radiation or the environment;
- (f) conduct an ionizing radiation control and protection measures; and
- (g) do all things necessary for the monitoring and control of pollution from radiation.

(2) A person who contravenes the standards made under this section, commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

### **Standards for the control of noxious smells**

34. (1) The Director shall, in consultation with the relevant Line Ministry establish -

- (a) procedures for the measurement and determination of noxious smells;

- (b) minimum standards for the control of pollution of the environment by noxious smells; and
- (c) guidelines for measures for the abatement of obnoxious smells, whether from human activities or from naturally occurring phenomena.

(2) A person who contravenes the standards or guidelines made under this section, commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

### **Guidelines for environmental disasters**

35. (1) The Director shall, in consultation with the relevant Line Ministry, prepare guidelines for the management of environmental disasters including -

- (a) major oil spills and gas leakages;
- (b) spills of hazardous substances;
- (c) industrial accidents;
- (d) natural disasters including floods, droughts and major pests infestation, or other intrusion of alien species of fauna and flora; and
- (e) fire.

(2) A person who contravenes the standards or guidelines made under this section, commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

### **Other standards**

36. (1) The Director shall, in consultation with the relevant Line Ministry -

- (a) establish standards for -

- 
- (i) buildings and other structures;
  - (ii) industrial products;
  - (iii) materials used in industry, agriculture and for domestic uses;
  - (iv) solid waste; and
  - (v) such other matters and activities that may affect the environment; and
- (b) establish criteria and procedures as it may consider necessary for the determination of the standards referred to in paragraph (a).

(2) A person who contravenes the standards or guidelines made under this section, commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

## PART VII - POLLUTION CONTROL

### **Prohibition of discharge of hazardous substances, chemicals and materials or oil into the environment and spillers liability**

37. (1) No person shall discharge any hazardous substance, chemical, oil or mixture containing oil in any waters or any other segment of the environment except in accordance with guidelines prescribed by the Director in consultation with the relevant Line Ministry.

(2) A person who discharges a hazardous substance, chemical, oil or mixture containing oil into any waters of other segment of the environment contrary to subsection (1), commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

(3) Upon conviction, the person discharging a hazardous substance, chemical, oil or a mixture containing oil into the environment may, in addition to any other sentence imposed by the court -

- (a) pay the cost of the removal, including any costs which may be incurred by the Department or any Line Ministry, agency or organ in the restoration of the environment damaged or destroyed as a result of the discharge; and
- (b) the cost of the third parties in the form of reparation, restoration, restitution or compensation as may, from time to time, be determined by a court of law.

(4) The owner or operator of a production or storage facility, motor vehicle or vessel from which a discharge occurs contrary to this section shall mitigate the impact of the discharge by -

- (a) giving immediate notice of the discharge, to the Director and other relevant Line Ministries;
- (b) immediately commencing clean-up operations using the best available clean-up methods;
- (c) complying with such directions as the Minister may, from time to time, prescribe.

(5) The Director may seize the production facility, motor vehicle or vessel until the owner or operator takes mitigation measures.

(6) The Director may dispose of production or storage facility, vessel or motor vehicle seized in accordance with subsection (5) to meet the cost of clean-up and restoration measures where the owner, after a passage of a reasonable time, fails to take the necessary measures.

### **Prohibition of pollution**

38. (1) No person shall pollute or permit any other person to pollute the environment in excess of any standards or guidelines established under this Act.

(2) A person who pollutes or permits any other person to pollute the environment in excess of any standards and guidelines established under this Act, commits an offence and is liable on conviction to a fine not less than

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M5,000 or to imprisonment for a term not less than 2 years or to both.

(3) A person who pollutes or permits any other person to pollute the environment otherwise than in accordance with this Act may be required by the Director to clean-up, remove or dispose of the pollutant in such manner and within such period as the Director may direct.

(4) In addition to any sentence that may be imposed upon a polluter under subsection (2), the court may require such person to -

- (a) pay the full cost of cleaning up the environment and of removing the effects of the pollution; or
- (b) clean up the environment and remove the effects of the pollution.

(5) Without prejudice to the provisions of subsections (2) and (3), the court may also require the polluter to meet the costs of the pollution to third parties through compensation, restoration or restitution.

### **Water pollution prohibited**

39. (1) No person shall discharge any poisonous, toxic, exotoxic, obnoxious substance, or any matter which is likely to cause harm to human health or aquatic environment into any waters.

(2) A person who discharges or permits any person to discharge into the waters of Lesotho, contrary to the water pollution standards established under this Act, a poisonous, toxic, exotoxic, obnoxious substance or any matter which is likely to cause harm to human health or aquatic environment, commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

(3) Subsections (1) and (2) shall not apply to a substance discharged into any water in Lesotho for purposes of treating the water or aquatic life.

(4) A person who is convicted under subsection (2) shall, in addition to a fine stipulated in that subsection -

- (a) pay the costs incurred by the Department or Line Ministry or organ for the restoration of the environment damaged or destroyed as a result of his activities; and
- (b) pay the costs incurred by a third party in the form of reparation, restoration, restitution or compensation as may be determined by a court of law.

### **Effluents to be discharged only into sewerage system and effluent discharge licence**

40. (1) A person who owns or operates a trade or industrial undertaking shall discharge any effluent or other pollutants originating from the trade or industrial undertaking into a sewerage system.

(2) A person who, at the commencement of this Act, owns or operates a trade or industrial undertaking shall, within 12 months of the coming into operation of this Act discharge any effluent or other pollutants originating from the trade or industrial undertaking into the sewerage system.

(3) A person who owns or operates a trade or industrial undertaking shall, before discharging any effluents or pollutants into the sewerage system, apply in writing to the Director for a licence to discharge the effluents or pollutant into the sewerage systems.

(4) An effluent licence shall be valid for a period of one year from the date of issue.

(5) For every issue or renewal of an effluent discharge licence the licensee shall pay to the Director a prescribed fee.

(6) A person who contravenes the provisions of subsections (1), (2) and (3), commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

(7) The Minister may, by notice published in the Gazette, prescribe such fees as he deems necessary for the monitoring, cleaning up, removing or disposing of pollutants discharged or emitted in the environment.

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### **Duty to supply information to environmental inspectors**

41. (1) A person who owns or operates an irrigation project scheme, sewerage system, industrial production plant, workshop or any other undertaking which discharges or is likely to discharge effluents or other pollutants into the environment shall submit to the Director or environmental inspector accurate information about the quality of such effluent or other pollutants.

(2) A person who at the commencement of this Act owns or operates an irrigation project scheme, sewerage system, industrial production plant, workshop or any undertaking which discharges or is likely to discharge effluents or other pollutants into the environment, shall within 3 months of the coming into operation of this Act submit to the Director or an environmental inspector accurate information about the quality and quantity of such effluent or other pollutants.

(3) A person who contravenes the provisions of this section, commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

### **Cancellation of effluent discharge licence**

42. The Director may, in consultation with the Line Ministry and in writing, cancel an effluent discharge licence -

- (a) if the holder of the licence contravenes the provisions of this Act or regulations made pursuant to this Act;
- (b) if the holder fails to comply with any conditions specified in the licence; or
- (c) if the Director considers it in the interest of the environment or in the public interest.

### **Register of effluent discharge licence**

43. (1) The Director shall maintain a register of all effluent discharge licences issued under this Act.

(2) The register shall be a public document and may be inspected at any reasonable time by any person and on the payment of the prescribed fees.

### **Pollution licence**

44. (1) No person shall carry out any project or activity, which is likely to pollute the environment in excess of any standards or guidelines issued under this Act unless he is in possession of pollution licence.

(2) A person who, at the commencement of this Act is carrying on a project or activity which is likely to pollute the environment in excess of any standards or guidelines prescribed under this Act shall, within 12 months of the coming into operation of this Act apply for a pollution licence.

(3) An application for a pollution licence shall be made in writing to the Director in the prescribed form.

(4) A pollution licence shall be in a prescribed form and subject to conditions as may be prescribed or specified in the licence.

(5) An application for a pollution licence shall be accompanied by the prescribed fee.

(6) The Director may, where he rejects an application for a pollution licence, state in writing the reasons for rejecting the application.

(7) A pollution licence shall be valid for a period of one year from the date of issue.

(8) The Director may, before issuing a pollution licence -

- (a) consider the possible effects of the emission on the quality of ambient air;
- (b) consider existing licences affecting the same air resource;
- (c) give due regard to the requirements of the residents, human settlements and other industrial and commercial

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activities;

- (d) solicit the comments of local authorities and concerned Ministries or organisations;
- (e) where the information accompanying the application appears inadequate, require the applicant to furnish further information relating to the project or activity in question, its location, materials, technology design or other appropriate matters; or
- (f) where it appears necessary to conduct an environmental impact assessment study, require the applicant to conduct an environmental impact assessment study in respect of that project or activity.

(9) The fee to be charged under this section shall be determined in accordance with the polluter pays principle referred to in section 4 of this Act.

(10) A person contributing the greater amount of pollution shall bear the largest burden in paying for cleaning the environment.

(11) A person who contravenes the provisions of this sections commits an offence and is liable on conviction to a fine not less than M10,000 or to imprisonment for a term not less than 3 years or to both.

### **Emissions by conveyance**

45. (1) A person who -
- (a) owns or operates a motor vehicle, train, boat or aircraft or any similar conveyance shall not operate it contrary to the established emission standards; or
  - (b) imports machinery, equipment or any similar device which is likely to cause emissions into the ambient air shall not import it contrary to the prescribed emission standards for the machinery, equipment, or any similar device.

(2) A person who contravenes the provisions of this section commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

### **Additional licensing procedure**

46. The Director may establish additional procedure for the application and issue of a pollution licence.

### **Noise in excess of established standards prohibited**

47. (1) No person shall emit or cause to emit noise in excess of the noise emission standards established under section 32 of this Act.

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

### **Exemptions**

48. (1) Notwithstanding the provisions of section 47, the Director may on request by any person issue a permit in writing, allowing excessive emission of noise under such terms and conditions as the Director may determine.

(2) Where an exemption has been given under subsection (1), a worker exposed to excessive levels of noise shall be adequately protected in accordance with the directives issued by the Director.

### **Offences relating to ionizing radiation**

49. (1) No person shall import, process, mine, export, possess, transport, use or dispose of radioactive materials or other sources of dangerous radiation unless he holds an ionizing radiation licence issued under this Act or the regulations made under this Act.

(2) An ionizing radiation licence issued under this section shall be valid for 1 year.

(3) A person issued an ionizing radiation licence shall pay the prescribed fee for the ionizing radiation licence.

(4) A person who contravenes the provisions of subsection (1) commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

(5) Where a person is convicted in respect of this section, the environmental inspector may, in addition to the penalties provided in subsection (4), seize, impound, destroy or dispose of radioactive materials or other source of dangerous ionizing radiation in such manner as the court may consider necessary to protect the public and the environment, or return them to the owner on orders of the court and under any other conditions set out in the licence issued by the Director.

### **Powers of inspectors relating to ionizing radiation**

50. (1) An environmental inspector may -

- (a) enter, inspect and examine a place, area, premises, vehicle, vessel or a conveyance of any description on which he has reasonable grounds to believe that radioactive materials or any source of ionizing radiation is stored, used, transported or disposed of; or
- (b) order presentation of a licence authorising the possession or use of radioactive material or sources of dangerous ionizing radiation.

(2) Notwithstanding the provisions of paragraph (a) of subsection (1), an environment inspector shall not enter a private dwelling house unless he has obtained a court order authorising him to enter, inspect and examine the private dwelling house.

### **Offences relating to noxious smell**

51. (1) No person shall pollute the environment with noxious smells contrary to the established standards for the control of noxious smells.

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable on conviction liable to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

**PART VIII- SPILL AND ENVIRONMENTAL EMERGENCY****Duty to notify the Director**

52. (1) An environmental unit, an officer of a Line Ministry or of a local authority who is informed of a spill, shall notify the Director of the spill.
- (2) An owner of a pollutant which is spilled shall forthwith -
- (a) notify the Director of the spill;
  - (b) inform the Director of -
    - (i) the circumstances of the spill;
    - (ii) any action taken or proposed to be taken in relation to the spill;
  - (c) do everything possible to -
    - (i) prevent, or eliminate the adverse effects of the spill; and
    - (ii) restore the environment to the way it was before the spill.

**Measures taken by Director**

53. (1) Where the owner of a pollutant which is spilled -
- (a) is reasonably suspected of contravening section 52(2)(c);
  - (b) cannot promptly be identified;
  - (c) requests the assistance of the Director in relation to a spill,

the Director may initiate any action and take any measures necessary in the public interest to prevent and eliminate the adverse effects on the environment and to restore the environment to the way it was before the spill.

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(2) In the event of a spill, the Director may order the owner of the pollutant which is spilled, to take such action, within such period as he may specify in order to -

- (a) prevent or eliminate the adverse environmental effects;
- (b) restore the environment to the way it was before the spill; or
- (c) dispose of or deal with the pollutant or any object reasonably suspected to be affected by the pollutant.

(3) The Director may direct any person conducting an activity which may, in the Director's opinion, cause a spill -

- (a) to prepare a contingency plan satisfactory to the Director;
- (b) to make such modification as he thinks appropriate to an existing plan.

### **Clean-up and removal operations**

54. The Minister may, by notice published in the Gazette, prescribe -

- (a) the procedures for clean-up and removal operations in the event of a spill;
- (b) the method of storage and disposal of any pollutant or any object, plant, animal, or any part of the environment removed in a clean-up or removal operation or otherwise affected by a pollutant.

### **Liability for spill**

55. (1) A person affected in any way by a spill shall have a right to claim damages from the owner of a pollutant.

- (2) For the purpose of an action for damages under this section -
  - (a) the owner of a pollutant is liable for any damages caused by a spill; or
  - (b) a pollutant shall be deemed to be in the custody of the owner of the pollutant.
- (3) Where there are several owners of a pollutant, the action may be directed against all or any one of them.
- (4) Where damage is caused by a spill to the environment, or to any property, object or thing which is not the subject of private ownership, the Attorney-General may claim damages against the owner of the pollutant in accordance with this section.

### **Recovery of expenses**

56. (1) The Director may recover from the owner of a pollutant which is spilled, all costs and expenses incurred by the Department as a result of -
- (a) any clean-up or removal operation;
  - (b) any measure taken to prevent, eliminate and ameliorate the adverse effects of a spill on the environment;
  - (c) any measure taken to dispose of or to deal with the pollutant.
- (2) The costs and expenses referred to in subsection (1) shall be deemed to be civil debts owed by the owner of a pollutant to the State.

### **Environmental emergency**

57. (1) Notwithstanding any written law to the contrary, where a major threat to the environment is posed as a result of a spill or otherwise, the Prime Minister may, in consultation with the Minister, declare an environmental emergency.
- (2) Notwithstanding any written law to the contrary, where an

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emergency is declared under subsection (1), the Minister may make such order as he thinks fit to any Line Ministry for the purpose of the protection of the environment.

(3) The Minister may prepare such contingency plan as is appropriate in the event of an emergency situation.

### **Powers in case of spill or emergency**

58. A person engaged in an action or measure taken by the Minister in the case of a spill, or in furtherance of an order by the Minister in the case of emergency, may -

- (a) without warrant enter any premises and have such access through or over any building structure, vehicle or water or air;
- (b) construct or set up any structure, machinery, material and equipment on any premises;
- (c) remove the pollutant or any object, plant, animal, to any part of the environment which is reasonably suspected to be affected by the pollutant; and
- (d) stop, inspect, search and detain any vehicle.

## **PART IX - ENVIRONMENTAL MANAGEMENT**

### **Identification and protection of areas**

59. (1) Every local authority shall, under its area of jurisdiction, identify areas, which are at risk from environmental degradation.

(2) An area is at risk from environmental degradation if -

- (a) it is prone to soil erosion;
- (b) vegetation cover has been removed or is likely to be removed from the area at a rate faster than it is being replaced; or

- (c) any other land use activity in that area is likely to lead to environmental degradation.

(3) Every local authority shall notify the Director of an area it has identified as being at risk from environmental degradation.

(4) The Director may in consultation with the relevant Line Ministry, develop, issue and implement procedures, guidelines and measures necessary for sustainable use of areas identified under subsection (1) after they have been rehabilitated and the vegetation growing on them and all natural resources.

(5) The guidelines, procedures and measures referred to in subsection (4) shall provide for -

- (a) control of forests and any natural resources located in or on the hilly or mountainous area;
- (b) protection of water catchment area;
- (c) prevention of soil erosion;
- (d) regulation of human settlement;
- (e) appropriate farming methods;
- (f) disaster preparedness;
- (g) afforestation and reforestation;
- (h) the farming capacity of hilly and mountainous areas in relation to animal husbandry;
- (i) any other measure that the Director may consider necessary.

(6) Every local authority shall ensure that the guidelines issued and measures prescribed under this section are implemented.

(7) No person shall act or do anything contrary to guidelines or

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measures prescribed by the Director.

(8) A person who contravenes the provisions of subsection (7) commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

### **Re-forestation and afforestation**

60. (1) Every District Development Coordinating Committee shall prepare a District Environment Action Plan which must specify which of the areas identified in accordance with section 59 should be targeted for afforestation or reforestation.

(2) Every local authority shall, through encouraging voluntary self-help in their respective communities take measures to plant trees and other vegetation in areas specified under subsection (1) which are within its area of jurisdiction and not subject to any personal interest in land.

(3) Where the areas specified under subsection (1) are subject to any personal interest in land, the holder of that interest shall take measures to plant trees and other vegetation in those areas.

(4) Where a person who has an interest in land fails to comply with the provisions of subsection (3), the local authority shall determine measures to ensure compliance.

### **Protection of rivers, riverbanks, wetlands etc.**

61. (1) The Director shall, in consultation with the relevant line Ministry issue guidelines and prescribe measures for protection of riverbanks, rivers, wetlands, lakes and lakeshores.

(2) No person shall in relation to a river, riverbank, lake, lakeshore or wetland and without prior approval of the Director carry out the following activities -

- (a) use, erect, construct, place, alter, extend, remove or demolish a structure in or under the river, riverbanks, lake, lakeshore, or wetlands;

- (b) excavate, drill, tunnel or disturb the river, riverbank, lake, lakeshore or wetland;
  - (c) introduce or plant any part of a plant, plant specimen whether alien or indigenous, dead or alive in a river, riverbank, lake, lakeshore or wetland;
  - (d) deposit a substance in a river, riverbank, lake, lakeshore or wetland or in or under its bed, which is likely to have adverse environmental effects on the river, lake or wetland;
  - (e) direct or block a river, lake or wetland from its natural course; or
  - (f) drain a river, lake or wetland.
- (3) The Minister may by notice published in the Gazette -
- (a) declare a river, riverbank, lake, lakeshore or wetland a protected area; and
  - (b) impose any restrictions as it considers necessary for the protection of the river, riverbank, lake, lakeshore and wetland from environmental degradation.
- (4) The Minister may, in declaring a river, riverbank, lake, lakeshore or wetland a protected area, take into consideration the following -
- (a) the geographical size of the river, riverbank, lake, lakeshore or wetland; and
  - (b) the interests of the communities resident around the river, riverbank, lake, lakeshore or wetland concerned.
- (5) A person who contravenes the provisions of subsection (1) commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

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**General and specific orders, for standards for the management of river, riverbanks, lake, lakeshore and wetlands**

62. (1) The Minister may by notice in the Gazette publish general or specific orders, or standards for the management of rivers, riverbanks, lakes, lakeshores or wetlands.

(2) The orders or standards referred to in subsection (1) may include protection or conservation measures in respect of any area at risk of environmental degradation and provide for the following -

- (a) measures for the prevention or control of soil erosion;
- (b) the conservation of any vegetation growing around a river, lake or wetlands;
- (c) the contingency plan for the prevention and control of deliberate or accidental discharge of any substance from any source, which is likely to pollute the river, wetland or lake;
- (d) plans for the protection of wetlands, rivers, and riverbanks, lakes and lakeshores;
- (e) the control measures to be taken in harvesting aquatic living and non-living resources to ensure optimum sustainable yield; and
- (f) promotion of environmental friendly tourism.

(3) Notwithstanding the provisions of this section and section 61, the Minister may authorise sustainable use of river, riverbanks, and lakes, lakeshores or wetland where such use is not likely to cause adverse effects on the riverbanks, lakeshore or wetlands.

(4) The Director shall, in consultation with the relevant Line Ministry, issue guidelines for the management of the environment of rivers and lakes.

(5) No person shall act contrary to orders, standards and guidelines

issued pursuant to subsection (1).

(6) A person who contravenes the provisions of this section commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

### **Protection of forests**

63. (1) The Director shall, in consultation with the relevant Line Ministry, issue guidelines and prescribe measures for the protection and management of all forests in Lesotho.

(2) The guidelines issued and measures prescribed pursuant to subsection (1) shall take into account the following -

- (a) forests in protected areas, including forest reserves, national parks and game reserves; and
- (b) forests on land subject to interest held by private persons.

(3) All forests shall be managed in accordance with the principle of sustainable development.

(4) The commercial or industrial exploitation of forests shall be carried out in accordance with the principle of optimum sustainable use.

(5) Traditional use of forests, which are indispensable to the local community, shall be carried out in accordance with the principle of sustainable development.

(6) Notwithstanding the provisions of subsection (3), (4) and (5), the Director may in consultation with the relevant Line Ministries, expressly exclude human activities in any forest area by declaring a forest area a specially protected forest area.

(7) No person shall act contrary to the guidelines issued and measures prescribed by the Director for the sustainable management of all forests in Lesotho.

(8) A person who contravenes the provisions of subsection (7), commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

### **Conservation of energy and planting of trees or woodlots**

64. The Director shall, in consultation with the relevant Line Ministry -
- (a) promote the use of renewable sources of energy by -
    - (i) promoting research in appropriate renewable sources of energy;
    - (ii) creating incentives for the promotion of renewable sources of energy;
  - (b) promote measures for the conservation of non-renewable sources of energy; and
  - (c) take measures to encourage the planting of trees and woodlots by individual users, institutions and by community groups.

### **Conservation of Biological Diversity**

65. (1) The Director shall, in consultation with the relevant Line Ministry, issue guidelines and prescribe measures for the conservation of biological diversity.
- (2) In issuing guidelines under subsection (1), the Director may -
- (a) integrate a conservation and sustainable utilization ethic in relation to biological diversity with existing Government activities and activities of private persons;
  - (b) specify national strategies, plans and programmes for the conservation and sustainable use of biological diversity;
  - (c) prepare and maintain an inventory of biological diver-

sity of Lesotho;

- (d) determine which components of biological resources are threatened with extinction;
- (e) identify actual and potential threats to biological diversity and devise measures to remove or mitigate their effects; or
- (f) prohibit or restrict any trade or traffic in any component of biological diversity.

(3) A person who contravenes any guidelines or a measure prescribed under this section commits an offence and is liable on conviction to a fine not less than M5, 000 or to imprisonment for a term not less than 2 years or to both.

### **Conservation of biological resources in *situ***

66. (1) The Director shall, in consultation with the relevant Line Ministry -

- (a) prescribe measures to ensure the conservation of biological resources in *situ*;
- (b) issue guidelines for -
  - (i) land use methods that are compatible with the conservation of biological diversity;
  - (ii) the selection and management of protected areas so as to promote the conservation of the various terrestrial and aquatic ecosystems of Lesotho;
  - (iii) the selection and management of buffer zones near protected areas;
  - (iv) special measures for protection of species, ecosystems, and habitats faced with extinction;

- (v) prohibiting or controlling of the introduction of alien species;
- (vi) integrating traditional knowledge for the conservation of biological diversity with mainstream scientific knowledge.

(2) A person who contravenes any guidelines or a measure prescribed under this section commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

(3) In this section “*in situ*” means conservation within the natural ecosystems and habitat of the biological organism.

### **Conservation of biological resources *ex-situ***

67. (1) The Director shall, in consultation with the relevant Line Ministry -
- (a) prescribe measures for the conservation of biological diversity *ex-situ* especially for species threatened with extinction;
  - (b) issue guidelines for the establishment and operation of -
    - (i) botanical gardens;
    - (ii) game parks, and
    - (iii) any other facilities which the Director may consider necessary;
  - (c) ensure that species threatened with extinction which are conserved *ex-situ* are re-introduced into their native habits and ecosystems where -
    - (i) the threat to the species has been terminated; or
    - (ii) viable population of the threatened species has

been achieved.

(2) A person who contravenes any guidelines or a measure prescribed under this section commits an offence and is liable on conviction to a fine not less than M5, 000 or to imprisonment for a term not less than 2 years or to both.

(3) In this section, “*ex-situ*” means conservation outside the natural habitat of the biological organisms.

### **Access to genetic resources of Lesotho**

68. (1) The Director shall, in consultation with the relevant Line Ministry, issue guidelines and prescribe measures for the sustainable management and utilization of genetic resources of Lesotho for the benefit of the people of Lesotho.

(2) Without prejudice to subsection (1), guidelines and measures issued or prescribed pursuant to subsection (1) shall specify -

- (a) appropriate arrangements for access to the genetic resources of Lesotho by non-citizens or non-residents of Lesotho and fees to be charged for that access;
- (b) the sharing of benefits derived from genetic resources of Lesotho; or
- (c) any other matters that the Director may consider necessary for the sound management of the genetic resources of Lesotho.

(3) A person who contravenes any guidelines or a measure prescribed under this section commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

### **Management of rangelands**

69. (1) The Director shall, in consultation with the relevant Line Ministry, issue guidelines and prescribe measures for the sustainable manage-

ment and utilization of rangelands.

(2) In issuing the guidelines and prescribing measures referred to in subsection (1), the Director shall be guided by -

- (a) the carrying capacity of the land;
- (b) the conservation of the soil;
- (c) the risk to desertification faced by a rangeland; and
- (d) any other factor, which the Director may in consultation with the relevant Line Ministry, considers appropriate.

(3) A person who contravenes any guidelines or a measure prescribed under this section, commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

### **Land use planning**

70. (1) The Director shall, in consultation with the relevant Line Ministry, issue environmental standards and guidelines in respect of land use plans.

(2) The Director and the relevant Line Ministry shall monitor the implementation of a land use plan prepared in accordance with this section.

(3) A person who contravenes any guidelines or standards issued under this section, commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

### **Protection of natural heritage sites**

71. (1) The Director shall, in consultation with the relevant Line Ministry -

- (a) identify elements, objects and sites in the natural environment, which are of national importance to the peo-

ple of Lesotho;

- (b) in such manner as may be prescribed, maintain a register of all elements, objects and sites identified pursuant to paragraph (a); and
- (c) issue guidelines and prescribe measures for the management and protection of cultural elements, objects and sites registered in accordance with this section.

(2) A person who contravenes any guidelines or a measure prescribed under this section, commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

### **Protection of natural environmental areas**

72. (1) The Minister may, in consultation with the relevant Line Ministry, declare by notice in the Gazette, any area of land, river or lake as a protected natural environment for the purposes of promoting and preserving specific ecological processes, natural environmental systems, natural beauty or places of indigenous wildlife or the preservation of biological diversity in general.

(2) The Director shall, in consultation with the relevant Line Ministry, issue guidelines and prescribe measures for the management and protection of natural environmental areas.

(3) A person who contravenes any guidelines or a measure prescribed under this section, commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

### **Protection of the ozone layer**

73. (1) The Director shall, in consultation with the relevant Line Ministry -

- (a) undertake or commission other persons to undertake national studies and give due recognition to develop-

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ment in scientific knowledge relating to substances, activities and practices that deplete the stratospheric ozone layer and other components of the stratosphere to the detriment of public health and the environment;

- (b) issue guidelines, and institute programmes relating to -
  - (i) the elimination of substances that deplete the ozone layer;
  - (ii) management practices and activities likely to lead to the degradation of the ozone layer and the stratosphere; or
  - (iii) the reduction and minimization of risks to human health created by the degradation of the ozone layer and the stratosphere.

(3) A person who contravenes any guidelines or a measure prescribed under this section, commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

### **Management of dangerous materials**

74. (1) The Director shall, in consultation with the relevant Line Ministry -

- (a) identify materials and processes that are dangerous to human health or the environment; and
- (b) issue guidelines and prescribe measures for the management of materials and processes identified pursuant to paragraph (a).

(2) A person who contravenes any guidelines or a measure prescribed under this section, commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

**Management of hazardous waste**

75. (1) The Director shall, in consultation with the relevant Line Ministry -

- (a) adopt standards or criteria for the classification of hazardous wastes with regard to determining -
  - (i) extremely hazardous waste;
  - (ii) corrosive waste;
  - (iii) carcinogenic waste;
  - (iv) flammable waste;
  - (v) persistent waste;
  - (vi) toxic waste;
  - (vii) explosive waste;
  - (viii) radioactive waste;
  - (ix) wastes, reactive otherwise than as described in the foregoing;
  - (x) any other category of waste which the Director may consider necessary.

(2) The Director may, in consultation with the relevant Line Ministry issue guidelines for the management of each category of hazardous waste classified under subsection (1).

(3) A person who contravenes any guidelines issued under this section commits an offence and is liable on conviction to a fine not less than M10,000 or to imprisonment for a term not less than 3 years or to both.

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## **Application for a waste licence**

76. (1) No person shall -
- (a) own or operate a waste disposal site or plant other than domestic waste;
  - (b) generate hazardous waste;
  - (c) store hazardous waste;
  - (d) handle or transport hazardous waste;
  - (e) dispose of hazardous waste;

unless he is in possession of a licence to own or operate a disposal site, generate, store, transport or dispose of hazardous waste.

(2) A person referred to in subsection (1) shall apply in writing to the Director for a licence, which may be issued on such terms and conditions as the Director may determine.

(3) A licence issued in respect of subsection (1) may be granted by the Director subject to any other licence that may be required in terms of this Act or any other law.

(4) A person whose activities generate waste shall employ measures essential to minimize waste through treatment, determination or recycling.

(5) Where the Director rejects an application for waste licence, the Director may, in writing, state reasons for rejecting the application.

(6) A person aggrieved by decision of the Director may in writing appeal to the Tribunal.

(7) A person, who at the commencement of this Act is carrying on the business or operating a waste disposal site, plant, generating, storing, transporting or disposing hazardous waste, shall, apply in writing to the Director for a licence under this section within 12 months of the coming into operation of this Act.

(8) The waste licence shall be valid for a period of one year and for every issue or renewal of a waste licence the licensee shall pay to the Director the prescribed fee.

(9) A person who contravenes the provisions of this section commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 5 years or to both.

### **Importation and exportation of hazardous waste prohibited**

77. (1) No person shall import into Lesotho any hazardous waste or substances.

(2) No person shall export from Lesotho to any country hazardous waste or substances unless he has a licence issued by the Director.

(3) The exporter of hazardous waste or substance shall before a licence is issued produce to the Director written confirmation from an appropriate authority of the receiving country that the hazardous waste or substance may be exported to that country.

(4) No person shall transport within Lesotho hazardous waste or substances except under a licence issued by the Director subject to such conditions as the Director may impose.

(5) A person who contravenes the provisions of this section commits an offence and is liable on conviction to a fine not less than M20,000 or to imprisonment for a term not less than 10 years or to both.

(6) Any person who imports any hazardous waste or substance into Lesotho contrary to subsection (1) shall be responsible for the removal of the waste from Lesotho and for its safe disposal.

### **Cancellation of a waste licence**

78. The Director may in writing, cancel a waste licence where -

- (a) the holder of the licence fails to comply with the conditions specified in the licence; or

- 
- (b) the Director considers it in the interest of the environment or public health or in the public interest.

### **Court order to cease operation**

79. The Director may apply to the High Court for an order compelling a person to immediately stop waste generation, handling, transportation, storage or disposal of hazardous waste where such generation, handling, transportation, storage or disposal presents imminent and substantial danger to public health, the environment or natural resources.

### **Register of waste licences and other pollution licences**

80. (1) The Director shall maintain a register of all waste licences and any other pollution licence issued pursuant to this Act.

(2) The register referred to in subsection (1) shall be a public document and may be inspected by any person at a reasonable time on the payment of a prescribed fee.

### **Management of toxic and hazardous chemicals and substances**

81. (1) The Director shall, in consultation with the relevant Line Ministry, issue guidelines, and prescribe measures for the management of toxic and hazardous substances.

(2) The guidelines issued and measured prescribed pursuant to subsection (1) may provide for the following -

- (a) classification of toxic and hazardous chemicals and substances;
- (b) registration of chemicals and substances;
- (c) packaging of chemicals and substances;
- (d) advertising of chemicals and substances;
- (e) control of imports and exports of toxic or hazardous chemicals and substances;

- (f) labeling of chemicals and substances;
- (g) distribution, storage, transportation and handling of toxic and hazardous chemicals and substances;
- (h) monitoring of the effects of chemicals and their residue on human health and the environment;
- (i) disposal of expired and surplus chemicals and substances;
- (j) disposal of used chemicals and substances; and
- (k) restricting or banning of toxic or hazardous chemicals and substances.

### **Handling of toxic or hazardous chemicals or substances**

82. (1) No person shall handle toxic or hazardous chemicals unless it is in accordance with the guidelines issued or measures prescribed under section 81.

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable on conviction to a fine not less than M20,000 or to imprisonment for a term not less than 10 years or to both.

(3) In addition to a fine or imprisonment under subsection (2), a person convicted shall -

- (a) pay the costs incurred by the Department or the Line Ministry or organ in the restoration of the environment damaged or destroyed as a result of the discharge; or
- (b) pay the costs to third parties in the form of reparation, restoration, restitution or compensation as may be determined by the Director in consultation with the relevant Line Ministry.

(4) The owner or operator of a production or storage facility, vehicle or conveyance or any other thing from which a discharge occurs contrary

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to this section shall -

- (a) give immediate notice of the discharge, to the Director and the relevant Line Ministry;
- (b) apply clear-up operations using the best clean up methods;
- (c) comply with directions that the Director may give.

(5) The Director may seize the production or storage facility, vehicle, conveyance or any other thing from which a discharge occurred until the owner or operator of that production, storage facility, conveyance or any other thing from which a discharge occurred has taken measures to mitigate the impact of the discharge or stop the discharge.

(6) Where the owner or operator fails to take necessary measures referred to in subsection (4), within a period of 1 month from the date the Director is notified of the discharge, the Director may apply for court order to dispose of the production or storage facility conveyance or any other thing from which the discharge occurred so as to meet the costs of taking the necessary remedial or restoration measures.

### **Total Ban**

83. (1) No person shall import into Lesotho hazardous chemicals and substances specified in the Second Schedule.

(2) No person shall manufacture, handle, sell or transport hazardous chemicals specified in the Second Schedule.

(3) A person who contravenes the provisions of subsections (1) or (2), commits an offence and is liable on conviction to a fine of not less than M10,000 or to imprisonment for a period of not less than 2 years or to both.

(4) A court convicting a person for an offence under this section or regulations made under this Act may in addition to the penalty prescribed in subsection (3) order that the toxic or hazardous chemical or substance, which is the subject of the offence, be confiscated, and direct the manner in which it should be disposed of.

(5) This section shall not apply in relation to Mercury Compounds used by health institutions for health purposes.

(6) The Minister may, by notice published in the Gazette, amend the Second Schedule to this Act.

(7) In this section, “health institutions” means pharmaceuticals, hospitals and clinics.

## PART X - ENVIRONMENTAL RESTORATION NOTICE AND ORDER

### **Environmental restoration notice**

84. (1) The Director may issue to any person, in respect of a matter relating to the management of the environment and natural resources, an environmental restoration notice.

(2) An environmental restoration notice referred to in subsection (1), may be issued for the following purposes -

- (a) requiring the person whose activities have degrading effect on the environment or natural resources to restore that environment or natural resources as near as it may be to the state in which it was before he began activities which have degrading effect on the environment or natural resources;
- (b) preventing the person from taking an action which is causing or is likely to cause harm to the environment or natural resources.

(3) An environmental restoration notice may have any terms or conditions and impose on the person on whom it is served, obligations, which in the opinion of the Director may enable the notice to achieve the purposes for which it was issued.

(4) Notwithstanding the provisions of this section, the restoration notice may require a person on whom it is served to -

- (a) take an action, which may prevent the commencement

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or continuation or the cause of pollution;

- (b) restore land, including the replacement of soil, the replanting of trees and other flora and outstanding geological, archaeological or historical features of the land or the area to the land specified in the order;
- (c) take an action which shall prevent the commencement or continuation or cause of the environmental hazard;
- (d) cease to take an action, which is causing or is likely to cause pollution or an environment hazard;
- (e) remove or alleviate damage to land or the environment or to the amenities of the areas;
- (f) prevent damage to the land or the environment, aquifers beneath the land and flora and fauna in, on or under the land specified in the order or land or the environment contiguous to the land specified in the order; or
- (g) remove or dispose of waste or refuse deposited on land specified in the notice.

(5) The Director shall have power to inspect, at any reasonable time, any activity on any premises for purposes of determining whether the activity is harmful to the environment of the conservation of natural resources or whether to make an environmental restoration notice under subsection (1).

(6) For purposes of subsection (5), the Director may enter any premises at any reasonable time to enforce the environmental restoration notice and the Director shall not be responsible for the consequences of any action reasonably taken by him in good faith under this section.

(7) The Director may delegate the power referred to in subsections (5) and (6) to an inspector or any person duly authorised by him and anything done by that person shall be deemed to be done by the inspector or by the Director and shall be valid for all purposes.

(8) In exercising the powers under this section, the Director shall

be guided by the principles of good environmental management specified in this Act.

(9) A person who fails or refuses to comply with the environmental restoration notice, made under this section commits an offence and is liable on conviction to imprisonment for a fine not less than M5, 000 or to imprisonment for a term not less than 2 years or to both.

### **Service of environmental restoration notice**

85. (1) Where the Director reasonably suspects that harm has been or is likely to be caused to the environment by any person's activity, he may serve on that person an environmental restoration notice requiring that person to take action within 21 days of the service of the notice, to remedy or prevent the harm to the environment as may be specified in the notice.

(2) An environmental restoration notice shall specify clearly and in a manner that may be precisely understood -

- (a) the activity to which it relates;
- (b) the person to whom it is addressed;
- (c) the time at which it comes into effect;
- (d) the action which must be taken to remedy the harm to the environment;
- (e) the time within which the action must be taken;
- (f) the powers of the Director to have any of his designated officers to enter any land and undertake the action specified in paragraph (d);
- (g) the penalties which may be imposed if the action specified in paragraph (d) is not undertaken;
- (h) the right of the person served with an environmental restoration notice to appeal to the court or Tribunal against that notice.

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(3) The environmental inspector may inspect an activity to determine whether that activity is harmful to the environment or human health.

(4) The Director may -

- (a) take into account the findings of the inspection in determining whether or not to serve an environmental restoration notice;
- (b) seek and take into account technical, professional and scientific advice, which it considers to be desirable for a satisfactory decision to be made on an environmental restoration notice.

(5) An environmental restoration notice shall continue to apply to the activity in respect of which it was served even if it has been complied with.

(6) A person served with an environmental restoration notice shall comply with all terms and conditions of the environmental restoration notice served on him.

(7) A person who is -

- (a) involved in an activity which is the subject of the inspection; or
- (b) residing, working on or developing land on which the activity, which is the subject of the inspection, is taking place,

is not entitled to a hearing or making representation to the person who is conducting an inspection.

### **Reconsideration of restoration notice**

86. (1) A person who is served with an environmental restoration notice may, within 21 days of the service of the environmental restoration notice give in writing, reasons why he is requesting the Director to reconsider the environmental restoration notice.

(2) Where a written request is made as provided for under subsection (1), the environmental restoration notice shall continue to be effective until varied, suspended or withdrawn.

(3) The Director shall, within 31 days of receiving the request made in accordance with subsection (1), reconsider the environmental restoration notice and notify in writing the person who made the request of its decision on the environmental restoration notice.

(4) The Director may, after reconsidering the environmental restoration notice confirm, vary, suspend or withdraw the environmental restoration notice.

(5) The person who has requested a reconsideration of an environmental restoration notice is entitled to a hearing before a decision is made by the Director.

### **Action by the Director in case of non compliance with an environmental restoration notice**

87. (1) Where a person on whom an environmental restoration notice is served fails, neglects or refuses to comply with the requirements of the notice, the Director may -

- (a) enter or authorise another person to enter any land or premises under the control of the person on whom the environmental restoration notice was served; and
- (b) take all necessary action in respect of the activity to which that notice relates,

so as to enforce the notice.

(2) Where the Director exercised the power provided for under subsection (1), he may recover as a civil debt, in a court of competent jurisdiction, from the person referred to in subsection (1), the expenses necessarily incurred by the Director in the exercise of his power.

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## **Issue of environmental restoration order by a court**

88. A court of competent jurisdiction may, in proceedings brought the Director or by any other person, issue an environmental restoration order against a person whose activities have caused harm or are causing harm or are likely to cause harm to the environment.

## **PART XI - INSPECTION, ANALYSIS AND RECORDS**

### **Designation of environmental inspectors**

89. The Minister may, by notice published in the Gazette, designate duly qualified public officers to be environmental inspectors within such areas and in relation to such subject matter as may be specified in the Gazette designating them.

### **Powers and duties of environmental inspectors**

90. (1) An environmental inspector may, in the performance of his duties under this Act or the regulations made under this Act, without warrant -

- (a) enter any land, premises, vessel or vehicle or any other thing for purposes of determining whether the provisions of this Act are being complied with;
- (b) require the production of, inspect, examine and make a copy of licences, registers, records and any other document or thing relating to this Act or any other law relating to the environment and the management of natural resources;
- (c) take samples of any articles and substances to which this Act relates and submit them for tests and analysis;
- (d) carry out periodic inspections of all establishments and undertakings which manufacture, produce as by-products, import, export, store, sell, distribute, or use any substances that are likely to have significant impact on the environment, to ensure that the provisions of this Act are complied with;

- (e) make examinations and inquiries so as to discover whether the provisions of this Act are being complied with;
- (f) carry out such other inspections as may be necessary to ensure that the provisions of this Act are complied with;
- (g) issue a notice requiring the owner or operator of a manufacturing plant, undertaking or establishment which pollutes or is likely to pollute the environment to take appropriate remedial measures including the installation of new plant or machinery, where necessary;
- (h) require the owner or operator of the manufacturing plant or undertaking or establishment referred to in paragraph (g) to implement remedial measures that the environmental inspector may, in the notice closing down that manufacturing plant undertaking or establishment, direct;
- (i) issue a notice requiring the operator of a manufacturing plant, undertaking or establishment to cease activities deleterious to the environment;
- (j) seize any plant, equipment, vessel, vehicle, manufacturing plant, substance or any other thing which he believes has been used in the commission of an offence against this Act or the regulations made under this Act;
- (k) close, a manufacturing plant or other establishment, undertaking or other activity which pollutes or is likely to pollute the environment contrary to the provisions of this Act; or
- (l) request a police officer to arrest a person whom he reasonably believes has committed an offence under this Act.

(2) The Director may, for purposes of enabling environmental inspectors to monitor compliance with the provisions of this Act or the regula-

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tions made under this Act, install an equipment on any land, premises, manufacturing plant, vehicle or vessel or any other thing.

(3) The environmental inspector shall, in exercising his powers under this Act or the regulations made under this Act, suitably identify himself to a person who owns or operates a manufacturing plant, undertaking or establishment operating contrary to the provisions of this Act.

(4) The Minister may prescribe the form and manner in which samples for analysis shall be taken.

(5) A person who tampers with the equipment installed by the environmental inspector under this section commits an offence and is liable on conviction to a fine not less than M20,000 or to imprisonment for a term not less than 10 years or to both.

### **Designation of analytical laboratories, analysts and reference analysts**

91. The Minister may, by notice published in the Gazette designate -
- (a) a laboratory which may, amongst other things, be used for analytical and reference purposes; or
  - (b) persons who shall serve as analysts or reference analysts for the purposes of this Act.

### **Certificate of analysis**

92. (1) A laboratory designated as an analytical or reference laboratory under this Act shall issue a certificate of analysis on a substance submitted to it pursuant to this Act.

(2) The certificate of analysis shall state the methods of analysis followed and be signed by the analyst or reference analyst.

(3) A certificate issued pursuant to subsection (1) shall be sufficient evidence of the facts stated in the certificate for the purposes of this Act.

## **Record keeping**

93. (1) The Minister may, by notice in the Gazette, prescribe the activities for which records shall be kept for the purposes of this Act, the contents of those records and the manner in which they shall be kept.

(2) The records kept in accordance with subsection (1) or any other records kept, for purposes of this Act, at the site of an establishment or undertaking shall be made available to the Director or an environment inspector for the purposes of -

- (a) an environmental audit;
- (b) environmental monitoring;
- (c) pollution control;
- (d) inspection; and
- (e) any other purpose that may be prescribed by the Minister.

(3) The records kept pursuant to this section and any other records kept for purposes of this Act or the regulation made under this Act shall be copied and transmitted to the Director at such intervals as the Director may determine.

(4) The Director shall keep all records transmitted to the Director pursuant to subsection (3) and maintain their confidentiality where circumstances so require.

## **PART XII- INTERNATIONAL ENVIRONMENTAL CONVENTIONS**

### **Conventions and treaties on the environment**

94. (1) Where Lesotho is a party to an international or regional convention or agreement, concerning the management of the environment or natural resources, the Director shall, in consultation with the relevant Line Ministry -

- 
- (a) initiate and prepare legislative proposals for consideration by the relevant Ministry for purposes of implementing those international or regional conventions or agreements; and
  - (b) identify appropriate measures necessary for the implementation of conventions or agreements.

(2) The Director shall keep a register of all international conventions or agreements concerning the management of the environment or natural resources to which Lesotho is a party.

### PART XIII - INFORMATION, EDUCATION AND PUBLIC AWARENESS

#### **Freedom of access to environmental information**

95. (1) A person who desires to obtain information relating to the implementation of this Act or any other information concerning the management of the environmental or natural resources shall subject to section 93(4) have access to that information.

(2) A person referred to in subsection (1) shall -

- (a) apply to the Director in writing indicating the type of information he desires to obtain; and
- (b) pay a fee, which may be prescribed by the Minister.

(3) The Director may grant access to the information referred to in this section, on such terms and conditions, as the Director may deem necessary.

(4) Freedom of access to information pursuant to this section does not extend to proprietary information, which shall be treated by the Director as confidential.

(5) In this section, “proprietary information” means information relating to any manufacturing process, trade secret, trade mark, copyright, patent or formula protected by any other law.

**Director to collect, analyze and disseminate environmental information**

96. (1) The Director shall -
- (a) gather information on the environment and natural resources on the existing data;
  - (b) subject to any other law, have access to any data collection on the environment and natural resources;
  - (c) analyze information relating to the environment and natural resources;
  - (d) disseminate information to public and private users;
  - (e) carry out public information and education campaigns in the field of environment;
  - (f) exchange information relating to environment with non-governmental organisations or any other regional and international organisations;
  - (g) co-ordinate the management of environmental information with the relevant Line Ministries;
  - (h) advise the Council on existing information gaps and needs; or
  - (i) establish in consultation with relevant Line Ministries, guidelines and principles for the gathering, processing and dissemination of environmental information.
- (2) The Director shall every 5 years, publish a report on the state of the environment and environment management in Lesotho.
- (3) The Director may, publish any other information he considers necessary for public education on the environment and other environmental issues.

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## **Environmental education**

97. The Director shall, in consultation with the relevant Line Ministry, take appropriate measures for the integration of education on the environment in all levels of education.

### **PART XIV - ENVIRONMENTAL TRIBUNAL**

#### **Establishment of the Environmental Tribunal**

98. (1) There is established a Tribunal to be known as the “Environmental Tribunal”.

(2) The Tribunal shall consist of -

- (a) a chairman who shall be a person who is a legal practitioner of not less than 5 years and shall be appointed by the Minister after consultation with the Chief Justice;
- (b) a person who holds a degree in law and has experience in environmental issues and who shall be appointed by the Minister;
- (c) a person who has experience in environmental issues and who shall be appointed by the Minister.

(3) A member and the chairman shall hold office for a term not exceeding 5 years and are eligible for re-appointment.

(4) 2 members of the Tribunal shall form a quorum.

(5) At a meeting of the Tribunal, the chairman shall have a deliberative vote, and in the case of equality of votes he shall also have a casting vote.

(6) The Tribunal may -

- (a) regulate its own procedure;
- (b) appoint one of its members to act as chairman where

the chairman is absent.

(7) There shall be a secretary of the Tribunal who shall be an officer of the Department.

(8) Where a person who is not a public officer is appointed a member of the Tribunal, he shall receive such allowance as the Minister after consultation with the Minister responsible for Finance, may determine.

(9) A member of the Tribunal who has a direct interest in a matter, which is the subject of the proceedings before the Tribunal, shall not take part in those proceedings.

### **Sittings of the Tribunal**

99. The Tribunal shall sit in such place and at such times as the Chairman may appoint.

### **Appeals to the Tribunal**

100. (1) A person who is aggrieved by -
- (a) a decision to issue or refuse to issue a licence or to the transfer of his licence issued under this Act or the regulations made under this Act;
  - (b) the imposition of or failure to impose any condition, limitation or restriction in a licence issued under this Act or the regulations under this Act;
  - (c) the revocation, suspension or variation of a licence issued under this Act or the regulations made pursuant to this Act; or
  - (d) the imposition of an environmental restoration order made under this Act or the regulations made pursuant to this Act,

may, within 21 days of the date upon which he is informed of a decision or order of any authority assigned to enforce this Act, appeal to the Tribunal

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against that decision or order provided that no person may appeal to the Tribunal from the issuance or refusal to issue a licence unless he has first sought reconsideration of the Director's decision as provided in this Act.

(2) A person making an appeal in accordance with subsection (1) shall -

- (a) give to the secretary of the Tribunal a written notice of appeal; and
- (b) set out in the notice of appeal the grounds upon which the appeal is based.

(3) A person aggrieved by the decision of the Tribunal may appeal to the High Court within 30 days from the date of the decision of the Tribunal.

### **Proceedings of the Tribunal**

101. (1) The proceedings of the Tribunal shall be open to members of the public except where the Tribunal for good cause, otherwise directs.

(2) The Tribunal shall not be bound by rules of evidence and shall admit as evidence any matter, which in its opinion shall assist it to arrive at a just and equitable decision for the advancement of the objects of this Act.

(3) The Tribunal shall have power to -

- (a) summon any person to give evidence in any proceedings before the Tribunal or to produce to the Tribunal any document relevant to the proceedings before it;
- (b) confirm, vary, amend or alter a decision made by the Director or an environmental inspector or reverse or substitute such decision for any decision which is just and equitable and which is in the interest of the protection and management of the environment or the conservation and sustainable utilization of natural resources.

**PART XV - OFFENCES****Offences relating to environmental inspectors**

102. A person who -

- (a) hinders or obstructs an environmental inspector in the execution of his duties under this Act;
- (b) fails to comply with the lawful order or requirements made by an environmental inspector in accordance with this Act;
- (c) refuses an environmental inspector entry upon any land or into any premises which he is empowered to enter by this Act;
- (d) impersonates an environmental inspector;
- (e) refuses an environmental inspector access to records kept in accordance with this Act;
- (f) fails to state or wrongly states his name or address to an environmental inspector in the course of his duties under this Act;
- (g) misleads or gives wrong information to an environmental inspector under this Act;
- (h) fails to carry out an improvement order issued by an environmental inspector under this Act,

commits an offence and is liable on conviction, to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

**Offences relating to environmental impact assessment**

103. Any person who -

- (a) fails to submit a project brief contrary to section 20;

- (b) fails to prepare an environmental impact statement contrary to sections 21 and 25;
- (c) fraudulently makes a false statement on an environmental impact statement submitted under section 21,

commits an offence and is liable on conviction, to a fine not less than M10,000 or to imprisonment for a term not less than 3 years or to both.

### **Offences relating to records**

104. A person who -

- (a) fails to keep records of the activities, products, by-products, and wastes required to be kept by this Act;
- (b) fraudulently alters any records required by this Act,

commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

### **Offences relating to environmental standards and guidelines**

105. A person who -

- (a) contravenes any environmental standards or guidelines for which no other penalty is specifically provided for; or
- (b) contravenes a measure prescribed under this Act for which no other penalty is specifically provided,

commits an offence and is liable on conviction to a fine not less than M5,000 or to imprisonment for a term not less than 2 years or to both.

### **General penalty**

106. A person who commits an offence against any provision of this Act or of regulations made thereunder for which no other penalty is specifically provided is liable to a fine not less than M5,000 or to imprisonment for a term not

less than 2 years or to both.

### **Liabilities of bodies corporate and partnerships**

107. (1) Where an offence is committed under this Act or regulations made under this Act by a body of persons -

- (a) in the case of a body corporate other than a partnership, every director or an officer of the body corporate shall also be deemed to be guilty of the offence; and
- (b) in the case of a partnership, every partner or officer of that body shall also be deemed to be guilty of that offence.

(2) No person shall be deemed to be guilty of an offence by virtue of subsection (1) if he proves that the offence was committed without his knowledge or connivance and that he exercised all due care and diligence to prevent the commission of the offence having regard to all the circumstances.

### **Forfeiture, cancellation, community service and other orders**

108. (1) The court, before which a person is prosecuted for an offence against this Act or any regulations, standards or guidelines made under this Act, may, in addition to any other order -

- (a) upon the conviction of the accused; or
- (b) if it is satisfied that an offence was committed notwithstanding that no person has been convicted of the offence,

order that the substance, equipment and appliance used in the commission of the offence be forfeited to the State and be disposed of as the court directs.

(2) In making an order under subsection (1), the court may also order that the cost of disposing of the substance, equipment and appliance referred to in subsection (1), be borne by the accused.

(3) The court may further order that any licence, permit or other

authorisation given under this Act and to which the offence relates be canceled.

(4) The court may, in addition to any fine may impose upon an accused person, require him to do community work, which promotes the protection of the environment.

(5) The court may also issue an environmental restoration order against the accused in accordance with Part IX of this Act.

## PART XVI - MISCELLANEOUS

### **Jurisdiction of the courts**

109. (1) Notwithstanding anything to the contrary in any law contained, a subordinate court of Second Class or higher class shall have jurisdiction to impose any punishment provided for in this Act.

(2) Any court mentioned in subsection (1) shall have jurisdiction to try any person under this Act whenever the thing in respect of which such offence was committed was found within or was conveyed from, to or through the jurisdiction of that court.

### **Immunity**

110. No suit, prosecution or other legal proceedings may be brought against a member of the Council, officers of the Department, an environmental inspector, an analyst or other officials in their personal capacity for anything done in good faith under the provisions of this Act or the regulations, guidelines or standards made under this Act.

### **Disclosure of interest**

111. (1) A member of the technical advisory committee, who has any direct or indirect interest in any matter being considered or dealt with by the technical advisory committee, shall as soon as possible after the commencement of the meeting disclose to the Director the nature of that interest, and such disclosure shall be recorded in the minutes of the technical advisory committee, and such member shall not take part in any deliberation or decision of the technical advisory committee, with respect to the matter.

(2) A member who fails to disclose his interest under subsection (1) shall be removed from the technical advisory committee.

### **Allowance of members of the Council and Technical Advisory Committee**

112. A member of the technical advisory committee other than a public officer and an appointed member of the Council shall be paid such expenses and allowances as may be determined by the Minister after consultation with the Minister responsible for finance.

### **Regulations**

113. (1) The Minister may make regulations for the purpose of giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations made under subsection (1) may -

- (a) provide for the issue, amendment and revocation of any licence issued under this Act;
- (b) prescribe fees and levies to be charged under this Act;
- (c) provide for the protection of any particular species of fauna and flora;
- (d) provide for the control or restriction of access to genetic resources of Lesotho and provide for fees payable in respect of accessing germplasm and an export licence;
- (e) provide for the control of the manufacture, importation, exportation, collection, transportation, treatment, storage, recycling, recovery or disposal of substances which may be hazardous to the environment and public health;
- (f) provide for the disposal of waste generally;
- (g) provide for environmental impact assessment and specify sizes of projects and activities specified in the

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First Schedule;

- (h) provide for environmental management plan and strategic environmental assessment;
- (i) provide for comprehensive mitigation plan;
- (j) provide for conduct and certification of environmental practitioners;
- (k) provide for contingency plans in respect of projects;
- (l) provide for the control of ozone depleting substances;
- (m) provide for discharge of effluent into water and land;
- (n) provide for the protection of degraded areas;
- (o) provide for wetlands, river, and lakes management;
- (p) provide for noise control; and
- (q) prescribe anything required or permitted to be prescribed under this Act.

(3) Different regulations may be made under this Act.

(4) Regulations made under this section may adopt wholly or in part or with modification any regulations, rules, standards, guidelines, instructions, specifications, by-laws, codes or administrative procedures prescribed under any law either as in force at the time of the coming into operation of this Act or as amended from time to time.

(5) The regulations made under this Act may provide for penalties stipulated in this Act.

### **Inconsistency with other legislation**

114. (1) In the event of any inconsistency between the provisions of this Act and operation of any other law, the provisions of this Act shall prevail to

the extent of the inconsistency.

(2) A regulation made under this Act prevails over any statutory regulations to the extent of any inconsistency.

### **Repeal and savings**

115. (1) The Environment Act 2001<sup>2</sup> is repealed.

(2) Notwithstanding subsection (1) anything done under the provisions of the repealed law shall be deemed to have been done under the corresponding provisions of this Act.

### **Consequential amendment**

116. The Local Government Act 1997 is amended in section 78 by inserting the following subparagraph immediately after subparagraph (ii):

“(iiA) the District Environment Officer;”.

## FIRST SCHEDULE PART A

(Section 19)

### TYPES OF PROJECTS AND ACTIVITIES FOR WHICH AN ENVIRONMENTAL IMPACT ASSESSMENT IS REQUIRED

#### 1. **General -**

- (a) any activity out of character with its surroundings;
- (b) any structure of a scale not in keeping with its surroundings;
- (c) major changes in land use.

#### 2. **Urban and Rural Development including -**

- (a) designation of new urban areas;
- (b) establishment of industrial estates;

- 
- (c) establishment or expansion of recreational areas;
  - (d) establishment or expansion of recreational areas in mountain areas, national parks and game reserves;
  - (e) rezoning;
  - (f) shopping centres and complexes;
  - (g) hotels and other tourist facilities;
  - (i) buildings with a total floor space of 500m<sup>2</sup> or more;
  - (j) declaration of development areas; and
  - (k) other infrastructure (both urban and rural).

3. **Transportation including -**

- (a) major roads;
- (b) all roads in scenic, wooded or mountainous areas;
- (c) airports and airfields;
- (d) pipelines;
- (e) water transport activities;
- (f) bridges;
- (g) railways;
- (h) cable ways and cable stations; and
- (i) public transport mode transfer facilities.

4. **Dams, rivers and water resources including -**

- (a) reservoirs, levees, storage dams, barrages and weirs;

- (b) canals, channels, aqueducts, river diversions and water transfers;
- (c) flood control schemes;
- (d) pipelines and water reticulation systems;
- (e) projects or activities affecting other water sources such as ground water, springs and wells.

**5. Aerial spraying**

**6. Mining, mineral extraction including quarrying and open-cast extraction of -**

- (a) precious stones, minerals and metals;
- (b) coal;
- (c) stone and slate;
- (d) aggregates, sand and gravel;
- (e) clay;
- (f) tunneling;
- (g) diamonds;
- (h) limestone and dolomite;
- (i) base metals.

**7. Forestry related activities including -**

- (a) clearance of forest areas;
- (b) deforestation and afforestation;
- (c) timber harvesting;

- 
- (d) propagation of invasive alien species.

8. **Agriculture including -**

- (a) large scale agriculture;
- (b) use of agro-chemicals;
- (c) introduction of new crops, animals and management practices;
- (d) manufacture, handling, storage and transport of hazardous waste, chemicals and pesticides and other agro-chemicals;
- (e) use of new pesticides;
- (f) mass commercial production of livestock and battery and feedlot farming installations;
- (g) release of any organism outside its natural area of distribution that is to be used for biological pest control;
- (h) genetic modification of organisms and release of such organisms;
- (i) large scale land reclamation.

9. **Processing and manufacturing industries including -**

- (a) brick and earthenware manufacture;
- (b) explosives or ammunition plants;
- (c) tanning and dressing of hides and skins;
- (d) abattoirs and meat processing plants;
- (e) brewing and malting;

- (f) food processing plants;
- (g) bulk grain-processing plants;
- (h) mineral, processing reduction of areas or minerals;
- (i) smelting and refining of ores or minerals;
- (j) foundries;
- (k) plants for the manufacture or assembling of motor vehicles;
- (l) plants for the manufacture of textiles;
- (m) industries producing or utilizing hazardous substances or materials;
- (n) industries producing, handling, treating or disposing of effluent;
- (o) industries emitting major atmospheric pollutants;
- (p) industries transporting or storing hazardous substances or other chemical products;
- (q) industrial installations for the bulk storage of fuel;
- (r) bulk distribution facilities.

10. **Energy and electric infrastructure including -**

- (a) electrical generation stations;
- (b) electrical transmission lines;
- (c) electrical substations;
- (d) cable ways and cable way stations;

- 
- (e) nuclear installations.

**11. Waste handling, storage, transport, treatment and disposal including -**

- (a) sites for solid waste disposal and wastewater treatment;
- (b) sites for hazardous waste disposal;
- (c) sewerage treatment and disposal works;
- (d) activities or practices that may produce offensive odours;
- (e) industrial effluent;
- (f) major atmospheric emissions;
- (g) transportation and storage of hazardous substances or waste;
- (h) recycling plants.

**12. National conservation areas including -**

- (a) creation of national parks and game reserves;
- (b) commercial exploitation of natural fauna and flora;
- (c) introduction of alien species of fauna and flora into ecosystems;
- (d) establishment of natural heritage sites;
- (e) formulation or modification of forest management policies;
- (f) formulation or modification of water catchment management policies;

- (g) policies for management of ecosystems, especially by use of fire;
- (h) any government policy on the use of natural resources.

13. **Camp sites and hiking and ski trails developed for tourists.**

14. **Permanent racing and test tracks for cars and motorcycles.**

15. **Communication facilities, including telephone, television and radio transmission masts.**

16. **Projects or activities that could affect the following areas or features -**

- (a) selected development areas;
- (b) protected natural environments, wilderness areas, nature reserves or national parks;
- (c) mountain catchment areas;
- (d) national monuments;
- (e) national heritage sites;
- (f) archaeological and paleontological sites;
- (g) graves and burial sites;
- (h) national gardens of remembrance;
- (i) conservation areas;
- (j) sites of conservation significance;
- (k) meteorites;
- (l) lake areas.

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**17. Projects or activities that could affect any of the following areas or features which have been demarcated as such by central or local authority -**

- (a) streams and river channels, and their banks;
- (b) floodplains and wetlands;
- (c) indigenous forests;
- (d) high potential agricultural land;
- (e) caves;
- (f) green belts or public open space in municipal areas;
- (g) buildings;
- (h) battle sites;
- (i) burial sites;
- (j) immovable property;
- (k) landscapes;
- (l) islands in rivers;
- (m) biotic assemblages and communities;
- (n) habitat of Red Data Book species;
- (o) architectural precincts;
- (p) aquifers and aquifer recharge areas;
- (q) areas with a high natural water table;
- (r) damaged land;
- (s) unstable soil;

- (t) natural resource areas (including minerals);
- (u) sites of geological significance;
- (v) geologically and geo technically unstable areas;
- (w) areas or sites of outstanding natural beauty;
- (x) scenic drives and panoramic views;
- (y) areas or sites of special scientific interest;
- (z) areas or sites of religious or spiritual significance;
- (aa) areas or sites of special social, cultural or historical interest;
- (bb) bird migration sites.

FIRST SCHEDULE  
PART B

Section 19 (2)

Any Bill, regulation, public policy, programme or plan that could have significant impact on the environment.

SECOND SCHEDULE

**Section 83**

**Total Ban**

| Chemical   | Relevant CAS number (s) | Category  |
|------------|-------------------------|-----------|
| 2,4,5- T   | 93- 76- 5               | Pesticide |
| Aldrin     | 309- 00- 2              | Pesticide |
| Binapacryl | 485- 31- 4              | Pesticide |
| Captafol   | 2425- 06- 1             | Pesticide |
| Chlordane  | 57- 74- 9               | Pesticide |

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|  |              |                       |
|--|--------------|-----------------------|
| Chlordimeform  | 6164- 98- 3  | Pesticide             |
| Chlorobenzilate  | 510- 15- 6   | Pesticide             |
| DDT  | 50- 29- 3    | Pesticide             |
| Dieldrin   | 60- 57- 1    | Pesticide             |
| EDB (1,2 dibromoethane)  | 106- 93- 4   | Pesticide             |
| Endrin   | 2385-85-5    | Pesticide             |
| Ethylene dichloride  | 107- 06- 2   | Pesticide             |
| Ethylene oxide   | 75- 21- 8    | Pesticide             |
| Heptachlor   | 76- 44- 8    | Pesticide             |
| Hexachorobenzene   | 118- 74- 1   | Pesticide             |
| Mercury Compounds  | 99- 99- 9    | Pesticide             |
| Mirex  | 72-20-8      | Pesticide             |
| Monocrotophos  | 6923- 22- 4  | Pesticide             |
| Toxaphene (Camphechlor)  | 8001- 35- 2  | Pesticide             |
| Methamidophos (Soluble liquid formulations of the substance that exceed 600g active ingredient/1)  | 10265- 92- 6 | Pesticide Formulation |
| Methyl-parathion (emulsifiable concentrates (EC) with 19.5%, 40%, 50%, 60% active ingredient and dusts containing 1.5%, 2% and 3% active ingredient) | 298- 00- 0   | Pesticide Formulation |

|  |  |                       |
|--|--|-----------------------|
| Monocrotophos (Soluble liquid formulations of the substance that exceed 600g active ingredient/1)                                      | 6923- 22- 4                                  | Pesticide Formulation |
| Phosphamidon (Soluble liquid formulations for the substance that exceed 1000g active ingredient/1)                                     | 13171- 21- 6                                 | Pesticide Formulation |
| Dustable powder formulations containing a combination of Benomyl at or above 7%, Carbofuran at or above 10% and Thiram at or above 15% | 17804- 35- 2<br>1563- 66- 2<br>137- 26- 8    | Pesticide Formulation |
| Crocidolite  | 12001- 28- 4                                 | Industrial            |
| Asbestos   | 77536- 66- 4                                 | Industrial            |
| Actinolite   | 77536- 67- 5                                 |                       |
| Anthophyllite  | 12172- 73- 5                                 |                       |
| Amosite  | 77536- 68- 6                                 |                       |
| Tremolite  |  |                       |
| Polybrominated Biphenyls (PBBs)  | 13654- 09- 6<br>36355- 01- 8<br>27858- 07- 7 | Industrial            |
| Polychlorinated Biphenyls (PCBs) in concentrations equal or above 50ppm  | 1336- 36- 3                                  | Industrial            |

**NOTE**

1. Act No. 6 of 1997
2. Act No. 15 of 2001

## GOVERNMENT NOTICE NO. 237 OF 2008

## THE PARLIAMENT OF LESOTHO

STATEMENT OF OBJECTS AND REASONS OF THE ENVIRONMENT  
ACT, 2008

**(Circulated by the Authority of the Minister responsible for Tourism,  
Environment, and Culture, Hon. Lebohang Mtshwenyane)**

**Outline**

1. The purpose of the Environment Bill 2008 is to make provision for the protection and management of the environment and conservation and sustainable utilization of natural resources of Lesotho.
2. The Bill defines the broad activities and general principles of environmental management in Lesotho. It also invests each individual with a right to a clean and healthy environment, imposes a corrective duty to protect, maintain and enhance the environment and defines a “citizen-right” to take legal action against acts or omissions damaging to the environment.
3. The Bill creates an inter ministerial institution called the National Environment Council which is chaired by the Minister responsible for environment. Its responsibility is to formulate environmental policy and to facilitate the co-ordination and harmonisation of the policies, plans and activities of government organisations in the environment and natural resources field.
4. The Department of Environment is charged with responsibility to co-ordinate functions and activities of all line ministries on environmental issues without interfering with their day to day activities. It has power to review and approve environmental impact assessment.
5. The Bill introduces the concepts of environmental impact assessment (E.I.A), audits and monitoring of projects; Environmental Impact Assessment minimises environmental degradation. It helps to know about environmental degradation before a project is implemented. Environmental Impact Assessment refers to a study of the effects likely to arise from a proposed project on the environment. E.I.A. is carried out for the following reasons:
  - (a) to integrate environmental considerations in development plan-

ning;

- (b) to identify and enhance the positive impacts of the proposed projects;
- (c) to ensure that potential negative impacts are foreseen and addressed at an early stage in the project cycle; and
- (d) to ensure that affected and interested communities participate in the process.

6. The Bill also provides for audits of on-going activities and regular monitoring of the effects of economic activities on the environment and natural resources.

7. The Bill also provides for environmental standards. Without environmental standards and guidelines it is impossible to measure pollution on air, water, effluent etc.

8. The Bill establishes environment units in all Ministries and public corporations. Their function is to ensure that the Ministries comply with the provisions of environmental law.

9. The Bill introduces the principles and objectives of environmental management and sustainable development. These basic principles are the pollute pays principle, precautionary principle, ecosystem integrity and public participation.

10. The Bill also provides for environmental planning. The Department of Environment together with Line Ministries has to prepare the National Action Plan. (NEAP). NEAP is the basis for national environmental planning and implementation of development programmes. It will provide general guidance for management and protection of the environment and it also has to identify principal environmental problems facing the country. Planning at the local level is calculated to ensure sensitivity to local concerns and needs, particularly with regard to the use of local resources.

11. The Bill also provides for centralised system for the establishment of environmental quality criteria, standards and guidelines for air, water, effluent, noise vibrations, radiation and solid waste. This is in contrast to the present

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system where the sectoral agencies are supposed to set standards for their own specific sectors with the attendant risk of non-regulation or under regulation of certain issues. The Bill prohibits pollution in contravention of established environmental standards and guidelines and establishes a licensing system for polluting activities. The polluter is required to clean up the polluted environment, pay the full cost of cleaning up, and compensate third parties for damage arising from pollution.

12. The Bill also deals with the declaration of environmental protection areas for the management of sensitive ecosystems and species outside the existing protected area systems; and the issuance of environmental protection orders to enforce rational environmental management. It also addressed specific issues, which are the subject of international environmental agreements to which Lesotho is a party. These are the conservation of biological diversity; access to genetic resources; waste management (including the regulation of the generation, import and export of hazardous wastes); the management of pesticides and other hazardous substances; and the protection of the stratospheric ozone layer. All these issues cut across environmental resource sectors and should therefore be dealt with in a framework environmental law.

13. The Bill gives the Director of Environment powers to serve an environmental restoration notice to a person whose activities are or are likely to cause harm to the environment. This notice calls for that person to remedy or prevent harm to the environment.

14. The Bill provides for the establishment of an Environmental Tribunal to handle certain administrative decisions of the Director and environmental inspectors. These appeals concern environmental restoration orders and granting of licenses. The main objective is to avoid the delays, technicalities and expenses inherent in the normal judicial proceedings. The disputes which are likely to arise regarding the decisions of these authorities will need expeditious handling so as to facilitate timely economic decision-making. Other issues are, however, to be handled through the normal judicial process.

15. The Bill also provides for the declaration of an environmental emergency where there is a threat to the environment and human health.

16. The Bill also gives Magistrates courts power to hear environmental cases.





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