

BERMUDA STATUTORY INSTRUMENT

BR 45/1993

CLEAN AIR RULES 1993

*[made under section 25 of the Clean Air Act 1991 [title 20 item 13] and
brought into operation on 1 October 1993]*

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PART I

PRELIMINARY

Citation

- 1 These Rules may be cited as the Clean Air Rules 1993.

Interpretation

- 2 (1) In these Rules—
 - "the Act" means the Clean Air Act 1991 *[title 20 item 13]*;
 - "controlled plant", "licence", "permit" (subject to paragraph (2)), "regulation" and "rule" have the meanings respectively assigned to them in the Act;
 - "plant" means a controlled plant;

"prescribed fee" means the relevant fee prescribed under the Government Fees Act 1965 [title 15 item 18].

- (2) In these Rules "permission"—
- (a) means a permit, licence, approval or other sanction (however called) for which a regulation or a rule provides; but
 - (b) does not include a permit provided for in sections 4 to 6, or a licence provided for in sections 7 to 9, of the Act.

PART II

CONSTRUCTION PERMITS

Manner of applying for permits

3 (1) An application for a permit shall be made either by the person who will own the plant, or by the person who will operate it, or by the agent of either of them.

- (2) The application shall—
- (a) be signed by the applicant, and also by the owner if the applicant is not the owner; and
 - (b) be addressed to the Authority; and
 - (c) be otherwise in such form, and contain such information, as the Authority may require.
- (3) The application shall be accompanied by the prescribed fee.

Applications to alter plants

4 (1) If a person wishes to alter a plant, he shall apply to the Authority for a permit under this rule.

(2) Paragraph (2) of rule 3 applies *mutatis mutandis* in relation to an application under this rule as it applies in relation to an application under that rule.

- (3) The application shall be accompanied by the prescribed fee.

Form of permits

5 A permit shall be in such form as the Authority thinks fit.

Authority to publish applications

6 The Authority shall give public notice in the Gazette of every application under this Part.

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Objections

7 (1) Any person may within 14 days of the publication of a Gazette notice under rule 6 object in writing to the application to which the notice relates.

(2) An objection to an application shall—

- (a) be signed by the objector; and
- (b) give the reference number of the application; and
- (c) state—
 - (i) the name and address of the objector; and
 - (ii) the grounds of the objection; and
 - (iii) whether he has an interest in land near the land to which the application relates (identifying the land and describing his interest).

Representations

8 The Authority may invite any person to make representations on any application under this Part.

Notice to applicants of objections etc.

9 The Authority shall ensure that a copy of any objection under rule 7 or any representation under rule 8 is made available to an applicant not less than seven days before the time when the Authority is to consider the application, so that the applicant may make a submission in the matter if he thinks fit.

Authority to consider objections etc.

10 The Authority shall consider every objection, representation or submission respecting an application under this Part before it decides the application.

Publicity of the record

11 (1) Any person may examine the record of an application under this Part and, upon payment of the prescribed fee, obtain a copy of it.

(2) The following documents constitute the record above referred to—

- (a) the application;
- (b) the relevant Gazette notice under rule 6;
- (c) every objection under rule 7;
- (d) every written representation under rule 8;
- (e) every submission under rule 9;

- (f) every recommendation made to the Authority about the application by any Government Department or agency;
- (g) the Authority's decision on the application.

PART III

OPERATING LICENCES

Manner of applying for licences

- 12 (1) An application for an operating licence shall be made by or on behalf of the owner or the operator of the plant.
- (2) The application shall—
- (a) be signed by the applicant, and also by the owner if the applicant is not the owner; and
 - (b) be addressed to the Authority; and
 - (c) give the number of any relevant construction permit; and
 - (d) be otherwise in such form, and contain such information, as the Authority may require.
- (3) The application shall be accompanied by the prescribed fee.

Form of licences

13 An operating licence shall be in such form as the Authority thinks fit.

Term of licences

14 An operating licence shall, subject to the Act, be valid for such period not exceeding five years as is specified in the licence.

Licence to be available for inspection

15 The holder of an operating licence shall keep it available for inspection by the Authority upon request.

Amendment of licences

- 16 (1) If a person wishes to have an operating licence amended, he shall make application to the Authority under this rule specifying the number of the licence.
- (2) Paragraph (2) of rule 12 applies mutatis mutandis in relation to an application under this rule as it applies in relation to an application under that rule.
- (3) An application under this rule shall be accompanied by the prescribed fee.

PART IV
PERMISSIONS

Procedure for permissions etc.

17 The provisions of the Schedule have effect in relation to permissions.

PART V
MEETINGS OF THE AUTHORITY ETC.

Agendas of meetings

18 (1) The Authority shall, not less than 24 hours before a meeting at which it will consider an application made to it under Part II or III of these Rules, post up, in such place as the Minister may appoint by notice published in the Gazette, a copy of the Authority's agenda relating to that application.

(2) That agenda shall set forth—

- (a) the name of the applicant; and
- (b) the reference number of the application; and
- (c) the location of the plant to which the application relates; and
- (d) a summary of the application.

Access by the public

19 A meeting of the Authority is not open to the public unless the Authority decides otherwise.

Minutes

20 The minutes of the Authority relating to a decision on an application under Part II or III of these Rules—

- (a) shall within 24 hours of their confirmation be posted up in such place as the Minister may appoint by notice published in the Gazette; and
- (b) shall remain posted up there until the expiration of the period within which an appeal may be made against that decision.

Notification of decisions

21 (1) The Authority shall, as soon as may be after it has made a decision on an application under Part II or III of these Rules, give the applicant notice in writing of that decision.

(2) Where an objection or a representation relating to such an application has been made to the Authority under these Rules, the Authority shall give a copy of the Authority's decision on the application to the person who made that objection or representation.

PART VI

APPEALS

Appeals against decisions on permits and licences

22 (1) Where pursuant to paragraph (a) of subsection (1) of section 16 of the Act an appeal is made against a decision, the notice of appeal shall be delivered to the Minister within 21 days of the date on which the appellant received the decision.

(2) The notice shall—

(a) be signed by the appellant or his representative; and

(b) set forth—

(i) the grounds of the appeal; and

(ii) a summary statement of the appellant's arguments on each such ground; and

(c) be accompanied by the prescribed fee.

Appeals against decisions on emission control orders

23 (1) Where pursuant to paragraph (b) of subsection (1) of section 16 of the Act an appeal is made against an emission control order, the notice of appeal shall be delivered to the Minister within 7 days of the date on which the order was served under subsection (1) of section 12 of the Act.

(2) The notice shall—

(a) be signed by the appellant or his representative; and

(b) set forth—

(i) the grounds of the appeal; and

(ii) a summary statement of the appellant's arguments on each such ground; and

(c) be accompanied by the prescribed fee.

PART VII

MISCELLANEOUS

Exercise of statutory functions

24 Except where the Act or these Rules provide otherwise, a person or body on whom or which a function is conferred or imposed by these Rules may follow such procedure as he or it chooses in exercising that function.

Offences

- 25 (1) A contravention of rule 15 is an offence.
- (2) A person who, for any purposes of these Rules—
- (a) issues a document, or supplies information, which is false or misleading in a material respect; or
 - (b) signs a document which is false or misleading in a material respect; or
 - (c) takes part in the preparation or issue of a document, or the supplying of information, which is false in a material respect,

commits an offence unless he proves—

- (aa) if an individual, that he had no knowledge of the falsity or misleading character of the document or information, and took every reasonable precaution to ensure its accuracy; and
 - (bb) if not an individual, that every person acting on his behalf had no such knowledge, and took every such reasonable precaution, as aforesaid.
- (3) A person convicted of an offence is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding \$5,000 or to both.
- (4) "Offence" in this rule means summary offence.

Commencement

26 These Rules come into operation on the commencement of the Act.

SCHEDULE

(Rule 17)

PERMISSIONS

Interpretation

1 In this Schedule—

"the authority", in relation to a permission, means the person or body having power to grant the permission;

"holder", in relation to a permission, means the person to whom the permission has been granted.

Duty to apply

2 A person who requires a permission shall make application for it under paragraph 3.

Content of applications

3 An application for a permission shall—

(a) be signed by the applicant; and

(b) be addressed to the authority; and

(c) specify the permission that is sought; and

(d) be otherwise in such form, and contain such information, as the authority may require; and

(e) be accompanied by the prescribed fee.

Cancellation, suspension and variation of permissions

4 The authority may, subject to paragraphs 5 and 6, in writing cancel, suspend or vary a permission—

(a) at the request of the holder; or

(b) on the ground that the holder has contravened a requirement of, or a condition attached to, his permission, or a requirement made of him by or under the Act, being a requirement or condition relevant to the matter in question.

Preconditions to cancelling, suspending or varying permissions

5 Before it cancels, suspends or varies a permission under subparagraph (b) of paragraph 4, the authority shall—

(a) give the holder notice in writing of the ground or grounds on which it intends to act; and

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- (b) afford him an opportunity to make objection in writing within the period of thirty days after receipt of the notice; and
- (c) take any such objection into consideration;

and, if the authority decides to cancel, suspend or vary the permission, the authority shall cause the instrument cancelling, suspending or varying the permission (as the case may be) ("the instrument") to be served on the holder.

(2) Subject to paragraph 6, the cancellation, suspension or variation of a permission takes effect on the expiration of twenty-one days beginning on the date on which the instrument was served on the holder.

Appeals

6 (1) A holder may appeal to the Minister against the cancellation, suspension or variation of his permission under subparagraph (b) of paragraph 4.

(2) The bringing of such an appeal suspends the cancellation, suspension or variation appealed against pending the determination or abandonment of the appeal.

(3) An appeal under this paragraph must be in writing and be brought within twenty-one days of the date on which the instrument was served on the holder.

(4) On an appeal under this paragraph, the Minister may confirm, vary or reverse the authority's decision and exercise any power that the authority could have exercised in the matter under appeal.