



BERMUDA

CLEAN AIR AMENDMENT ACT 2024

2024 : 39

TABLE OF CONTENTS

1	Citation
2	Amends section 2
3	Amends section 5
4	Amends section 6
5	Amends section 9
6	Amends section 11
7	Amends section 12
8	Inserts sections 12A to 12D
9	Amends section 13
10	Inserts sections 16A to 16G
11	Amends section 17
12	Amends section 26
13	Amends First Schedule
14	Amends Third Schedule
15	Inserts Fourth and Fifth Schedules
16	Transitional provisions
17	Commencement

WHEREAS it is expedient to amend the Clean Air Act 1991 to provide pollution reduction measures that address areas affected by poor air quality caused by controlled plants; to update criminal penalties for contravention; and to provide for connected purposes;

Be it enacted by The King's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

CLEAN AIR AMENDMENT ACT 2024

Citation

1 This Act, which amends the Clean Air Act 1991 (the “principal Act”), may be cited as the Clean Air Amendment Act 2024.

Amends section 2

2 Section 2 of the principal Act is amended by inserting in the appropriate alphabetical order the following definitions—

“approved air contaminant measurement methodologies and processes” means the prescribed methodologies and processes for determining and measuring air contaminants as prescribed in regulations;

“best available technologies” means the techniques which are the most economically and technically viable for preventing or minimising the emissions of air contaminants and nuisance odours on the environment;

“D/T limits” means the prescribed limits at which an odour sample which is diluted with odourless air cannot be distinguished from the odourless air;

“nuisance” means a statutory nuisance as set out in the Fifth Schedule;

“nuisance odour” means an offensive odour that—

- (a) is detected by trained inspectors at dilution levels that are more diluted than the D/T limits as prescribed; and
- (b) is or can be reasonably expected to be injurious to public health or welfare; or
- (c) unreasonably interferes with the enjoyment of life or use of the property, considering the character and degree of injury to, or interference with, the health, general welfare, property or use of the property affected, and the location of the odour source and character of the area or neighbourhood affected;

“Air Quality Action Plan” or “Plan” means an Air Quality Action Plan approved by the Minister under section 12C;

“trained inspector” means an inspector authorised in writing by the Minister as having been trained in the detection of nuisance odours;”.

Amends section 5

3 Section 5(2) of the principal Act is amended by inserting after paragraph (d)—

CLEAN AIR AMENDMENT ACT 2024

“(da) the considered installation of abatement equipment for the purposes of preventing nuisance odours; and”.

Amends section 6

4 Section 6(3) of the principal Act is amended by inserting the following after paragraph (b)—

- “(ba) subject to such requirements as it may think fit regarding the installation of abatement equipment for the purposes of preventing or minimizing nuisance odours; or
- (bb) subject to a condition that, in installing the controlled plant, the operator shall use the best available technologies for that industry or, where that is not practicable, reducing nuisance odours from the controlled plant; or”.

Amends section 9

5 Section 9(2) of the principal Act is amended by inserting after paragraph (b) the following paragraphs—

- “(ba) subject to such requirements as it may think fit regarding the operation of any abatement equipment installed for the purposes of preventing or minimizing nuisance odours as prescribed;
- (bb) subject to a condition that, in operating the controlled plant, the operator shall use the best available technologies that are available to that industry for preventing or, where that is not practicable, reducing nuisance odours from the controlled plant;”.

Amends section 11

6 Section 11(1) of the principal Act is amended—

(a) by inserting after paragraph (f)(v) the following paragraph—

“(fa) prescribing approved air contaminant measurement methodologies and processes and D/T limits;”;

(b) by inserting after paragraph (ha) the following paragraphs—

“(hb) without prejudice to paragraph (ha), prescribing the techniques, protocols and criteria to prevent, minimize and detect nuisance odour;

(hc) prescribing the form of an Air Quality Action Plan;”.

CLEAN AIR AMENDMENT ACT 2024

Amends section 12

7 Section 12(1) of the principal Act is amended—

(a) in subparagraph (b)(ii) by deleting the comma at the end of that subparagraph and substituting “or” and inserting thereafter—

“(c) that a nuisance odour as determined by a trained inspector is being emitted into the air from a controlled plant, structure or thing, ”.

(b) in the continuing provision by inserting after “air contaminant” the words “or nuisance odour”.

Inserts sections 12A to 12D

8 The principal Act is amended by inserting after section 12 the following new sections—

“Notice to submit Air Quality Action Plan

12A (1) An inspector may issue a notice requiring a person who has received an emission control order under section 12 to submit to the Minister an Air Quality Action Plan.

(2) The Plan shall—

(a) subject to subsection (3), contain the information as required in the Fourth Schedule;

(b) describe the measures intended to ensure, within the shortest possible time, compliance with the maximum concentration of an air contaminant as prescribed;

(c) describe the measures intended to ensure, within the shortest possible time, compliance with any nuisance odour requirements as prescribed;

(d) provide the period, not longer than 3 years, which the Plan is to cover;

(e) provide any further information as the Minister may require.

(3) The Minister shall determine before the issuance of any notice, and the inspector shall advise, in the notice issued in subsection (1), whether air dispersion modelling in paragraph (3) of the Fourth Schedule is required to be continued in the said Plan.

(4) The inspector shall send the notice issued in subsection (1) by registered mail or electronic mail, and the notice shall—

CLEAN AIR AMENDMENT ACT 2024

- (a) request the period, not longer than 3 years, which the Plan is to cover;
- (b) request the date, not later than 90 days, (or such extended time as agreed between the inspector and the person who owns or operates the controlled plant), by which the Plan is to be sent to the inspector;
- (c) indicate the prescribed form and content required of the Plan;
- (d) provide any other guidance or instruction concerning the Plan and next steps.

Air Quality Action Plan consultations

12B The Minister shall hold, for each Plan received by the deadline agreed in section 12A(4)(b) at least one public consultation, and such consultation may be held in respect of one Plan alone or in conjunction with other Plans.

Air Quality Action Plan review and approval

12C (1) A person required to submit an Plan under section 12A(1) shall prepare for the review and approval of the Minister a final draft Plan that takes into consideration public comments and proposals received during consultation, and implements comments of the Minister, if any.

- (2) The Minister may approve the final Plan where he is satisfied that—
 - (a) sections 12A to 12C(1) have been complied with; and
 - (b) the final Plan assesses the best available technologies to meet the purposes of the Act.

Publication of Air Quality Action Plan

12D If the Minister approves a Plan under section 12C, he shall publish such Plan by notice in the Gazette. ”.

Amends section 13

9 Section 13 of the principal Act is amended—

- (a) by inserting after subsection (1)(c), the following paragraph—
 - “(ca) that an Air Quality Action Plan approved under section 12C has not been followed; or
- (b) in subsection (2), by inserting after the words “or (d)” the words “or (e)”.

CLEAN AIR AMENDMENT ACT 2024

Inserts sections 16A to 16G

10 The principal Act is amended by inserting after section 16 the following sections—

“Statutory nuisances

16A Without prejudice to Part IV and the First Schedule to the Public Health Act 1949, the matters specified in the Fifth Schedule of this Act are, for the purposes of the Act, statutory nuisances.

Duty to prevent nuisance

16B Every person licenced to operate a controlled plant (“licensee”), shall have a duty—

- (a) to prevent a nuisance from arising at or being caused by that controlled plant; and
- (b) to abate any nuisance caused by or in existence at that controlled plant.

Order of Minister requiring abatement of nuisance

16C (1) The Minister, if satisfied of the existence of a nuisance, may make an order requiring the abatement of that nuisance and cause the order to be served on the licensee.

(2) An order made under subsection (1) may include—

- (a) a requirement that the licensee abate the nuisance within a reasonable time to be specified in the order; and
- (b) a requirement that any work which the Minister considers to be reasonably required to abate the nuisance or to prevent a recurrence of the nuisance be completed.

Complaint to court of summary jurisdiction

16D (1) Where—

- (a) a licensee on whom an order has been served by the Minister under section 16C, fails to comply with any of the requirements of such order within the time specified in the order; or
- (b) the nuisance, although abated since the service of the order of the Minister is, in the opinion of the Minister, likely to recur,

the Minister may cause a complaint about the nuisance to be made to a court of summary jurisdiction and the court may issue a summons requiring the licensee so served to appear before it.

CLEAN AIR AMENDMENT ACT 2024

(2) If the court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur, the court may make an order against the licensee who was summoned to appear before it—

- (a) requiring compliance with all or any of the requirements of the order of the Minister or the abatement of the nuisance by other means within a time specified in the order of the court and directing the execution of any works necessary for that purpose; or
- (b) prohibiting the recurrence of the nuisance and directing the execution of any works necessary to prevent recurrence; or
- (c) both requiring abatement and prohibiting the recurrence of the nuisance.

(3) Without prejudice to anything in subsection (2), the court—

- (a) may include in an order made under subsection (2) the imposition of a fine not exceeding \$20,000 on the person against whom it makes such order; and
- (b) may give directions as to the payment of all costs incurred up to the conclusion of the hearing or the making of the order under subsection (2) for the abatement or prevention of the recurrence of the nuisance.

(4) Before the court makes any order, it may, if it thinks fit, adjourn the hearing or further hearing of the summons until an inspection, investigation or analysis in respect of the alleged nuisance has been made by some person competent to do so, and the court may direct the payment of any costs incurred in making such inspection, investigation or analysis in like manner as though they were costs payable under subsection (3).

Punishment where order not complied with

16E (1) Where a licensee who fails to comply with an order, or any requirement in such order, made by a court of summary jurisdiction under section 16D, unless he satisfies the court that he has used all due diligence to abate the nuisance or otherwise to comply with the order, commits a continuing offence and shall be liable on summary conviction to a fine not exceeding \$5,000 for every day during which the offence continues.

(2) Where a licensee fails to comply with an order made by a court of summary jurisdiction under section 16D, an inspector or any other person authorized by the Minister may enter the premises where the order relates as provided in section 18, and may abate the nuisance and do whatever is

necessary for the due execution of the order, and the Minister may recover in the manner provided in section 16G the expenses incurred from the person on whom the order was made.

Nuisances caused by two or more licensees of controlled plants

16F (1) Where any nuisance appears to be wholly or partly caused by the acts or defaults of two or more licensees of controlled plants, the Minister may take proceedings against any one or any two or more licensees and any one or more licensees—

- (a) may be ordered to abate the nuisance, so far as it appears to the court to be caused by his or their acts or defaults; or
- (b) may be prohibited from continuing any acts or defaults which contribute to the nuisance; or
- (c) may be fined or otherwise dealt with where the acts or defaults of any one of such persons would not separately have caused a nuisance;

and the costs arising from such proceedings may be apportioned in such manner as appears to the court to be fair and reasonable.

(2) Where any of the licensees whose act or default has caused or partly caused a nuisance proceeded against, they shall, without prejudice to any other remedy, be entitled to recover from any other licensees who were not so proceeded against, and by whose act or default the nuisance was caused or partly caused, a proportionate part of the costs of and incidental to such proceedings and of the costs of abating such nuisance and of any fine and costs ordered to be paid in such proceedings.

Costs and expenses

16G (1) All reasonable costs and expenses incurred—

- (a) in serving an order of the Minister under section 16C; or
- (b) in making a complaint or obtaining an order from the court of summary jurisdiction under section 16D; or
- (c) in carrying out such order of the court under section 16D(2),

shall be deemed to be money paid for the use of and at the request of the licensee on whom the order is made or, if no order is made by a court under section 16D(2) but a nuisance is proved to have existed when the order of the Minister was served, then the costs and expenses incurred shall be deemed to be money paid for the use of and at the request of the licensee.

CLEAN AIR AMENDMENT ACT 2024

(2) Any costs and expenses incurred may be recovered, and the court shall have power to apportion such costs and expenses in such manner as appears just.

(3) Where—

- (a) in accordance with section 16E(2) the Minister has himself abated a nuisance or done what is necessary to prevent a recurrence; and
- (b) the licensee on whom an order under section 16C was served, does not pay the expenses incurred within six months after the completion of the abatement or other works,

the Minister may recover such expenses reasonably incurred as a civil debt.”.

Amends section 17

11 Section 17 of the principal Act is amended by inserting after subsection (1) the following subsection—

“(1A) An appeal lies to the Court against an order, determination or other decision of the court of summary jurisdiction under section 16D.

Amends section 26

12 Section 26(2) of the principal Act is amended by deleting “\$5,000” and substituting “\$20,000”.

Amends First Schedule

13 The First Schedule to the principal Act is amended as follows—

- (a) by renumbering the opening paragraph as paragraph 1;
- (b) by inserting after subparagraph (d) the following subparagraph—

“(da) a facility for the treatment or disposal of manure; ”;

- (c) by inserting the following after paragraph 1—

“2 Without prejudice to paragraph 1(ga), a facility for spray painting vehicles or machinery includes inflatable structures and open air spray painting operations that are performed on a retail sale or service basis or by way of commercial enterprise.”.

CLEAN AIR AMENDMENT ACT 2024

Amends Third Schedule

14 The Third Schedule to the principal Act is amended in Part B - Licences as follows—

(a) by inserting after paragraph 1(b)(ii) the following subparagraph—

“(iia) that the licensee did not comply with the Air Quality Action Plan approved under section 12C;

(b) by inserting after paragraph 2(b)(i) the following subparagraph—

“(ia) that the licensee did not comply with the Air Quality Action Plan approved under section 12C;

Inserts Fourth and Fifth Schedules

15 The principal Act is amended by inserting after the Third Schedule, the following Schedules—

“FOURTH SCHEDULE

(Section 12A(2)(a))

INFORMATION TO BE INCLUDED IN THE AIR QUALITY ACTION PLAN

The following information is to be provided:

1 An overview of the issues identified, impacts, complaints, causes and mitigation measures implemented prior to the considered need for an Air Quality Action Plan.

2 Any monitoring data from the vicinity of the controlled plant and verified and validated complaints in relation to the air contaminants, time-periods and averaging as provided under regulations.

3 Any modelling data of the emissions from the controlled plant and inferred concentrations of air contaminants in the ambient air with comparison to that provided under regulations.

4 An assessment of the equipment, components and consumables that are considered to be causing the exceedances of air contaminants over the limits provided in regulations.

CLEAN AIR AMENDMENT ACT 2024

5 An assessment of the best available technologies and any remediation and mitigation options available to reduce the causes of exceedances of air contaminants in the ambient air. Need to refer to all options discussed with the inspector, Minister or at any public meetings.

6 Provide a cost-effectiveness assessment of the above remediation and mitigation options to address air contaminant exceedances relative to the concentrations provided in regulations. Cost-effectiveness to include capital and operational costs, including consumables used, additional wastes generated and their subsequent disposal.

7 An assessment of any non-air quality impact of the controlled plant to the local environment, including socio-economic impact, noise, odour, waste management, etc.

8 A prioritisation of all mitigation and remediation options provided and timescales for their proposed implementation. This should also include all regulatory requirements to implement the proposed changes (ie. Department of Planning, Clean Air Rules - amending a controlled plant, etc.).

FIFTH SCHEDULE

(Section 16A)

STATUTORY NUISANCES

1 Smoke emitted from a controlled plant so as to be prejudicial to health or causing a nuisance;

2 Any dust or soot arising from a controlled plant and being prejudicial to health or causing a nuisance;

3 Any accumulation or deposit derived from a controlled plant which is prejudicial to health or causing a nuisance.”.

Transitional provisions

16 (1) Subject to subsections (2) and (3), an existing construction permit or an existing operating licence granted under sections 6 or 9 of the principal Act shall not be invalidated by the coming into operation of this Act.

(2) The holder of an existing operating licence in subsection (1) shall, within a six-month period from the commencement of this Act, submit documentation to the Minister showing compliance with sections 9(2)(ba) and 9(2)(bb) of the principal Act as inserted under this Act.

CLEAN AIR AMENDMENT ACT 2024

(3) Where prior to the commencement of this Act, a person was carrying on an activity specified in paragraph 1(da) or paragraph 2 of the First Schedule to the principal Act (as amended by this Act), he shall, within 60 days from the commencement of this Act, submit the requisite application to the Authority under the principal Act to continue to carry on such activities.

(4) After consultation with the inspector, the Minister may, by order subject to the negative resolution procedure, extend the time period provided in subsection (2) or (3) for a further period of 30 days to enable compliance.

(5) The Minister may, by regulations subject to the negative resolution procedure, make such further transitional provisions as he considers necessary or expedient as a consequence of this Act.

Commencement

17 This Act shall come into operation on such date as the Minister may appoint by notice published in the Gazette.

[Assent Date: 28 December 2024]