



## BERMUDA

### WATER RESOURCES AMENDMENT ACT 2024

2024 : 25

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WHEREAS it is expedient to amend the Water Resources Act 1975 to provide a more robust enforcement regime to protect public water and sea water from pollution; and make related amendments;

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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:

### **Citation**

1 This Act, which amends the Water Resources Act 1975 ("the principal Act"), may be cited as the Water Resources Amendment Act 2024.

### **Amends section 1**

2 (1) Section 1 of the principal Act is amended as follows.

(2) In subsection (1)—

(a) insert each of the following definitions in the appropriate alphabetical position—

"discharge" means any release however caused and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying, and cognate expressions are to be construed accordingly;

"enforcement notice" means an enforcement notice served under section 29;

"fill", in relation to ground, means artificially deposited soil or rock;

"ground", in relation to land, means any soil, rock or fill through which seepage of any substance into public water or sea water may occur;

"groundwater" means water present or stored below the surface of the ground, including in its natural strata, whether not apparent on the surface of the ground;

"pollution" means the presence of any contaminant in public water, sea water or any ground—

(a) at a concentration exceeding the maximum prescribed concentration; or

(b) that directly or indirectly—

(i) endangers or is likely to endanger the health, safety or welfare of humans;

(ii) causes or is likely to cause injury or damage to any flora, fauna, ecosystem or property,

and cognate expressions shall be construed accordingly;

"pollution stop order" means a stop order served under section 33E;

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“sea water” means the water in or coming in from the ocean, except where occurring as groundwater;

“sewage” means—

- (a) faeces or urine of humans or animals;
- (b) drainage and other waste from a toilet;
- (c) drainage or other waste from any form of sewage treatment system or sewerage holding tank;
- (d) drainage and other waste from spaces containing living animals; or
- (e) other waste waters when mixed with faeces or urine, or when mixed with any drainage referred to in paragraphs (b), (c) or (d);

“vessel” has the meaning given in section 33A(2);

“waste” includes sewage;”;

- (b) in the definition of “Environmental Engineer” delete “the Ministry of the Environment” and substitute “the Ministry responsible for environmental protection”;
- (c) delete the definition of “existing water right”;
- (d) in the definition of “pond” after “excavation” insert “, including a marsh,”;
- (e) in the definition of “public water”—
  - (i) in paragraphs (a) and (b) delete “underground water” and substitute “groundwater”; and
  - (ii) at the end of paragraph (b), delete the comma and substitute a semicolon; and thereafter insert—
    - “(c) water in a pond where the addition of water to the pond will occasion the seepage of water from the pond into groundwater,”;
- (f) delete the definitions of “the specified purposes” and “underground water”;
- (g) in the definition of “water right”, delete “and, subject to section 9, includes an existing water right”;
- (h) delete the definition of “well” and substitute—

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- “well” includes any well, borehole, adit, tunnel, gallery or other excavation constructed or used—
  - (a) for the abstraction of public water;
  - (b) for the introduction of fluids directly into public water or ground; “; and
- (i) delete the definition of “works” and substitute—
  - “works” include reservoirs, wells, pumping installations, pipelines, filters, sedimentation tanks or other works constructed for or in connection with—
    - (a) the abstraction or storage of public water;
    - (b) the filtration or purification of water;
    - (c) the use of public water for any purpose;
    - (d) the introduction of fluids directly into public water or any ground, whether by means of a well or pipe or otherwise; or
    - (e) the introduction of fluids directly into sea water by means of a marine outfall.”.
- (3) After subsection (2) insert—
  - “(3) For the purposes of this Act—
    - (a) whether any substance or matter has polluted or is capable of polluting public water, sea water or any ground may be determined in accordance with regulations made under section 39(1)(k); and
    - (b) whether any public water, sea water or ground is deemed polluted and the extent of such pollution may be determined in accordance with regulations made under section 39(1)(ka).”.

### **Amends Part II subheading**

3 In the subheading to Part II of the principal Act (immediately above section 3) after “CONSTRUCT”, insert “WORKS,”.

### **Amends section 4**

4 In section 4 of the principal Act—

- (a) repeal and replace subsection (1) as follows—

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“(1) It is an offence for a person to abstract, use or store any public water except in accordance with a water right granted under this Act.”; and

(b) in subsection (2)—

(i) in the opening words delete “, on or after 1 March 1976”; and

(ii) delete paragraph (a) and substitute—

“(a) construct works;”.

### **Repeals Part III**

5 (1) After section 6 of the principal Act, repeal the heading “PART III RECORDING OF EXISTING WATER RIGHTS” and sections 7, 8, 9 and 10.

(2) As a consequence to the amendment in subsection (1) delete, in sections 15 and 16 of the principal Act, the words “(including any right referred to in Part III)”.

### **Amends section 11**

6 In section 11(5)(e) of the principal Act, after “to be constructed”, insert “and whether such works are for the introduction of fluids directly into public water, sea water or ground”.

### **Amends section 14**

7 In section 14 of the principal Act, after paragraph (c), insert—

“(ca) the conservation and protection of critical habitats and other ecological resources;”.

### **Amends Part VII subheading**

8 In the subheading to PART VII of the principal Act (immediately after section 25) insert after “MISCELLANEOUS POWERS”, “(WORKS AND WATER RIGHTS)”.

### **Amends section 26**

9 In section 26(1)(b) of the principal Act after “Bermuda”, insert “and, without prejudice to Part VIII, the protection of such water from pollution”.

### **Amends section 27**

10 In section 27 of the principal Act—

(a) repeal and replace subsection (1) as follows—

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“(1) A public officer authorized for the purposes of this section by the Minister shall, on producing evidence of his authority, be entitled at all reasonable hours to enter upon any land—

- (a) to inspect any works constructed or under construction thereon;
- (b) without prejudice to section 33C, for the purposes of ascertaining whether there is, or has been, on or in connection with such land any contravention of this Act;
- (c) to install, maintain, read or test any meter installed for the purposes of this Act.”;

(b) in subsection (2), delete paragraph (c) and substitute—

“(c) take a sample of any water or ground or of any effluent or other substance which may appear to him as being capable of affecting the quality of public water, sea water or ground, whether by reason of pollution or otherwise, and to subject the sample to any process or test.”; and

(c) repeal subsection (3) and insert—

“(3) A public officer authorized for the purposes of this section by the Minister shall, on producing evidence of his authority, be entitled at all reasonable hours to enter upon any land to make such investigations and surveys as the Minister may consider necessary in the interests of the conservation and best use of water in Bermuda and, without prejudice to section 33C, the protection of such water from pollution.

(3A) A public officer acting in the execution of the powers vested in him under subsection (3) may establish and maintain on such land, works for the purpose of obtaining and recording information and statistics as to the hydrological and hydrogeological conditions of Bermuda and the level of any pollution.

(3B) Compensation shall be payable for all damage done and for any land occupied for the construction of works carried out under subsection (3A); and, in the absence of agreement, the amount of such compensation shall be determined by the Supreme Court on the application of the owner or occupier or of the Minister.”.

### **Amends section 28**

11 In section 28 of the principal Act after “health”, insert “, the environment”.

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### **Amends section 29**

12 In section 29 of the principal Act—

- (a) in subsection (1)(b), delete “or existing water right”;
- (b) in subsection (2), delete paragraph (b) and substitute—

“(b) to enter any public water or sea water either directly or indirectly (including by way of discharge into any ground) any pollutant or waste;”; and

- (c) after subsection (6) insert—

“(7) A person on whom a pollution stop order is served under section 33E shall not also be served an enforcement notice under subsection (2)(b) in respect of the same contravention.”.

### **Deletes headings**

13 (1) After section 30 of the principal Act, delete the heading “PART VIII” and subheading “APPEALS”.

(2) After section 32 of the principal Act, delete the subheading “PENALTIES AND SUPPLEMENTARY”.

### **Amends section 33**

14 In section 33(1) of the principal Act, delete “or existing water right”.

### **Inserts Part VIII**

15 After section 33 of the principal Act insert—

**“PART VIII  
PROTECTING AGAINST POLLUTION GENERALLY; POWERS AND  
APPEALS**

#### **Application and interpretation of Part**

33A (1) This Part applies for the purposes of protecting public water, sea water and ground from pollution irrespective of any works or water right and without prejudice to Parts V, VII or to section 34 of this Act or any other enactment relating to pollution.

(2) In this Part, unless the context otherwise requires—

“authorized officer” means—

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- (a) a police officer (including a member of the Royal Bermuda Regiment coast guard unit);
- (b) a public officer authorized for the purposes of section 27 or such other public officer appointed by the Minister in writing to be an authorized officer under this Part;
- (c) such other person so authorized by the Minister in writing;

“owner”, in relation to a vessel that is being used by others when the owner is not on board, includes the person in charge of the vessel or, if no person is in charge, all persons using it;

“plant” includes a “controlled plant” as defined under section 2 of (as read with the First Schedule to) the Clean Air Act 1991;

“premises” includes any building, plant, facility, commercial enterprise, structure or thing situated on land;

“vessel” means any boat other than a vessel to which the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2015 applies.

### **Minister may require the keeping and furnishing of records**

33B (1) The Minister may make regulations requiring any person—

- (a) entitled to the possession of any land or who is the owner or occupier of any premises and to which any of the activities listed in subsection (2) apply; or
- (b) who is the owner of any vessel to which the activities listed in subsection (2)(c) or (d) apply,

to keep records or carry out such reports as may be so prescribed in respect of such activities and to furnish such records or reports to an authorized officer.

(2) The activities referred to in subsection (1) include—

- (a) the storage and disposal of fuel, oil and hazardous chemicals by any plant, facility or commercial enterprise;
- (b) the protection against, monitoring, abatement and remediation of any fuel, oil or hazardous chemical spill by any plant, facility or commercial enterprise;
- (c) the disposal of waste directly into sea water;
- (d) such other activity, in relation to which pollution may arise, as the Minister may determine by order.



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(3) The negative resolution procedure shall apply to an order made under subsection (2)(d).

(4) Any person who fails to comply with any regulations made under this section, unless he proves that he had a reasonable excuse for such failure, commits an offence:

Punishment on summary conviction; the penalties specified in section 37.

### **Power to inspect and take samples**

33C (1) Where an authorized officer has reasonable cause to suspect that an offence has been committed under this Part, section 34 or any regulations made under section 39(1)(h), (ha), (i) or (kb), he shall, at all reasonable hours upon producing evidence of his authority, be entitled to—

- (a) enter on any land, premises or vessel; and
- (b) in the case of a vessel, stop such vessel and for so long as may be necessary for the purposes of this section, prevent it from being moved,

to ascertain whether there has been on or in connection with such land, premises or vessel any such contravention.

(2) An authorized officer, acting in the execution of the powers vested in him by subsection (1), shall be entitled to—

- (a) inspect such land, premises or vessel and take such measurements, photographs and recordings as he considers necessary;
- (b) take samples of any water, effluent, ground or other substance or article which may appear to him as polluting or being capable of polluting public water, sea water or ground; and to subject the sample to any process or test;
- (c) in the case of a vessel, subject the vessel (including any holding tank) to such tests as he considers necessary; and
- (d) inspect any records that may be required to be kept under this Act.

(3) An authorized officer acting in the execution of the powers vested in him by subsection (1) may establish and maintain on such land, premises or vessel, works for the purpose of obtaining and recording information and statistics as to the hydrological and hydrogeological conditions of Bermuda and the level of any pollution.

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(4) Compensation shall be payable for all damage done and for any land occupied for the construction of works carried out under subsection (3); and, in the absence of agreement, the amount of such compensation shall be determined by the Supreme Court on the application of the owner or occupier or of the Minister.

(5) Any person wilfully obstructing an authorized officer in the exercise of his powers under this section commits an offence:

Punishment on summary conviction: the penalties specified in section 37.

### **Directions**

33D (1) An authorized officer acting in the execution of powers vested in him under section 33C may issue directions in writing to any person entitled to the possession of any land or who is the owner or occupier of any premises or vessel, to take such steps and within such time as may be specified to prevent the polluting or fouling of any public water, sea water or ground.

(2) Where an authorized officer gives directions under subsection (1), that officer may, at the request of the person to whom directions are given, vary such directions or extend any period for the taking of any steps specified in such directions.

(3) Any person who fails to comply with any directions issued to him under this section commits an offence:

Punishment on summary conviction: the penalties specified in section 37.

### **Pollution stop orders**

33E (1) If it appears to the Minister—

- (a) that a person has failed to comply with directions given under section 33D;
- (b) that a person has or is committing an offence under section 34 or under any regulations made under section 39(1)(h),(ha) or (i); or
- (c) that any land, premises or vessel or any enterprise operating thereon, owned or operated by a person, is a source of any pollution or fouling,

the Minister may, subject to subsection (6), serve an order under this section (hereinafter called a "pollution stop order") on that person.

(2) Any act or state of affairs described in subsection (1) shall, for the purposes of this section, be referred to as a "contravention" and every pollution

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stop order shall specify the contravention which is the subject-matter of the pollution stop order.

(3) A pollution stop order shall—

- (a) state the reasons for the making of the order;
- (b) require the person on whom the order is served to stop the contravention specified in the order.

(4) In any case to which subsection (1)(a) applies, a pollution stop order may, regardless of whether any penalty has been issued under section 33D(3), require the person on whom the order is served to comply with the directions given.

(5) Any person who fails to comply with a pollution stop order served on him commits an offence:

Punishment on summary conviction: the penalties specified in section 37.

(6) A person on whom an enforcement notice has been served under section 29(2)(b) shall not also be served a pollution stop order under this section in respect of the same contravention.

### **Enforcement of pollution stop order**

33F (1) If it appears to the Minister that a person on whom a pollution stop order was served has failed to comply with that order, the Minister may (subject to subsection (5)), make application to the Supreme Court under this section for the enforcement of that order.

(2) If satisfied that a pollution stop order has been lawfully made and has not been complied with the Court may, regardless of whether any penalty has been issued under section 33D(3) or 33E(5) in respect of the same contravention, make an enforcement order allowing an authorized officer to—

- (a) enter upon any land, premises or vessel;
- (b) take any steps required under the pollution stop order that have not been taken;
- (c) seize and hold any article or equipment used in contravention of the pollution stop order,

for the purposes of carrying out the pollution stop order.

(3) Any article or equipment seized under subsection (2)(c) shall be disposed of in such manner as the Court may direct in the enforcement order.

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(4) The Minister may recover by action any expenses incurred by the Government on account of anything done pursuant to an enforcement order under this section.

(5) Where any prosecution of a person for an offence under section 33E(5) has commenced, the Minister shall not take proceedings against the person under this section unless or until such prosecution is concluded.

### **Abatement and remediation**

33G (1) The Minister may by notice in writing require any person who commits an offence under section 34 to take steps in accordance with prescribed standards to abate or remediate such pollution or fouling.

(2) Without prejudice to the generality of subsection (1), a notice may require forthwith or within such time as may be specified—

- (a) the removal from any public water, sea water or ground (including by way of excavation) any pollutant;
- (b) the removal of any public water or ground (including by way of excavation) affected by pollution for the purposes of remediation and where possible the re-introduction to the site of such treated water or ground;
- (c) the treatment of any public water or ground impacted by pollution;
- (d) the subsequent monitoring of any remaining public water or ground;
- (e) the taking of such other steps as the Minister considers necessary to abate or remediate any pollution.

(3) If any steps directed to be taken under subsection (1) have not been taken within such time as may be specified, the Minister may enter upon any land, premises or vessel to take those steps and may recover by action from the person entitled to possession of any land or the owner or occupier of any premises or vessel to which the contravention relates, any expenses reasonably incurred by the Minister in that behalf.

(4) Any person wilfully obstructing the Minister in the exercise of his powers under this section commits an offence:

Punishment on summary conviction: the penalties specified in section 37.

### **Appeals**

33H (1) Any person aggrieved by—

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- (a) any direction issued under section 33D;
- (b) a pollution stop order served under section 33E; or
- (c) a notice served under section 33G,

may appeal to a court of summary jurisdiction on a point of law within 21 days of such direction, order or notice being issued or served.

(2) On an appeal made under subsection (1), the court may—

- (a) if satisfied that the direction, pollution stop order or notice is unlawful, quash the direction, order, or notice;
- (b) if satisfied that the direction, pollution stop order or notice is inequitable and it would be appropriate to do so, vary the direction, order or notice accordingly; or
- (c) in any other case dismiss the appeal,

and make such order as to costs as the court thinks just.

(3) On an appeal made under this section, a direction, pollution stop order or notice—

- (a) which is expressed to take effect forthwith, shall not be suspended but shall continue in operation until the court hearing the appeal orders otherwise; or
- (b) in any other case, shall be suspended pending the final determination or withdrawal of the appeal.

(4) Where, under subsection (2), a direction, pollution stop order or notice is varied or the appeal is dismissed, the court may, if it thinks fit, direct that the direction, order or notice shall not take effect or come into force until such date, not being later than 28 days from the determination of the appeal, as the court thinks fit.

(5) Any person aggrieved by a decision of the court under this section may appeal against that decision to the Supreme Court.

### **Duty to report polluting event**

33I (1) If any fuel, oil, waste or hazardous chemicals are discharged directly or indirectly into any public water, sea water or ground such discharge shall be reported to the Minister as soon as reasonably practicable by—

- (a) where such discharge occurs in relation to any works, the person constructing such works or the person enjoying the benefit of such works;

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- (b) where such discharge occurs in respect of a water right, the person who owns the water right; or
- (c) where such discharge occurs in respect of any premises or vessel, the owner or operator of those premises or vessel.

(2) If a person fails to make a report as required by this section he shall be guilty of an offence:

Punishment on summary conviction: the penalties specified in section 37.

### **Minister may take immediate action**

33J (1) Notwithstanding section 33G, if having regard to the public interest the Minister is satisfied that any pollution of public water, sea water or ground requires the taking of immediate action to protect against significant injury to human, animal or plant health and that, in his opinion it is expedient to do so, the Minister may enter upon any land, premises or vessel and take such steps as may be necessary for those purposes.

(2) Any person wilfully obstructing the Minister in the exercise of his powers under this section commits an offence:

Punishment on summary conviction: the penalties specified in section 37.

(3) The Minister may recover by action from the owner of any land, premises or vessel that is the source of such pollution the expenses reasonably incurred by him under subsection (1).

### **Minister may prescribe guidelines**

33K (1) The Minister may prescribe guidelines for the purposes of this Part and such guidelines may relate to—

- (a) the segregation, storage and disposal of fuel, oil, waste and any other chemicals that may cause pollution or be hazardous to life, health, the environment or property;
- (b) fuel, oil, waste and hazardous chemical spill prevention practices, spill plans, equipment, notification and monitoring requirements;
- (c) fuel, oil, waste and hazardous chemical spill abatement, remediation, monitoring and reporting requirements.

(2) In determining whether a person has committed an offence under section 34, or any regulations made under section 39(1)(h), (ha), (i) or (kb) a court may consider whether such person followed any relevant guidelines as may be so prescribed.

**PART IX  
PENALTIES AND SUPPLEMENTARY”.**

**Amends section 34**

16 In section 34(3) of the principal Act after “sea water” insert “or ground”.

**Amends section 37**

17 In section 37 of the principal Act repeal and replace subsections (1) and (2) as follows—

“(1) Where a person commits an offence under sections 4, 22(2), 27(4), 33C(5), 33E(5), 33G(4), 33I(2), 33J(2), 34(1) or 36:

Punishment on summary conviction: a fine not exceeding \$20,000.

(2) Where a person commits an offence under sections 25(1), 26(2), 30(2), 33B(4), 33D(3) or 35(2):

Punishment on summary conviction: a fine not exceeding \$10,000.”.

**Amends section 39**

18 (1) Section 39 of the principal Act is amended as follows.

(2) In subsection (1)—

(a) in paragraph (g)—

(i) after “section 26”, insert “or section 33B”; and

(ii) after “Bermuda”, insert “or the protection of such water from pollution”;

(b) delete paragraph (h) and substitute—

“(h) controlling the discharge of matter or substances which are capable of polluting public water, sea water or ground and imposing measures (including the insertion of dye tablets into sewage holding tanks) and penalties on persons for failing to comply with such regulations;

(ha) providing for matters related to the reporting of any entry or discharge of any pollutant or waste into public water, sea water or into any ground and any monitoring requirements, and imposing penalties on persons for failing to comply with such regulations;”;

(c) delete paragraph (k) and substitute—

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- “(k) prescribing concentration thresholds and other standards, assessments, or tests for determining when a matter or substance is to be treated as polluting or capable of polluting for the purposes of any provision of this Act and the extent of any pollution;
- (ka) prescribing, for the protection of human and environmental health, any concentration thresholds or other standards, assessments or tests for determining when public water, sea water or any ground is deemed polluted and the extent of that pollution for the purposes of any provision of this Act;
- (kb) prescribing standards, measures and means relating to the abatement and remediation (including by way of excavation) of any pollution and for imposing any penalties on persons failing to comply;
- (kc) providing, with respect to pollution of any ground, for any standards, measures and means relating to abatement and remediation to be varied depending on—
  - (i) the proximity of such ground to any groundwater, pond, coastline, critical habitat or other ecological resources; or
  - (iii) whether such ground is used or zoned for residential or commercial purposes;”.

(3) In subsection (3), delete “\$5,000” and substitute “\$20,000”.

### **Consequential amendment; Defence Act 1965**

19 (1) In consequence of the definition of “authorized officer” under new section 33A(2), as inserted by section 15 of this Act, the Defence Act 1965 is amended as follows.

(2) In section 5F(1)(a)(i), after “regulation” insert “and protection”.

### **Savings and transitional provisions**

20 (1) Any matter which is being dealt with by the Authority immediately before the commencement date shall continue to be dealt with by the Authority until the matter is determined under the principal Act as if the amendments made by this Act had not been enacted.

(2) For the avoidance of doubt—

- (a) nothing in the principal Act as amended by this Act shall be deemed to require any person who, before the commencement date, constructed or extended works falling within paragraphs (d) and (e) of the definition of



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“works” (as amended by section 2(2) of this Act) to apply for a water right in respect of such construction or extension; and

(b) nothing in this Act shall affect any existing water rights registered in accordance with and continuing as water rights under the principal Act.

(3) In this section the “commencement date” means the day on which this Act comes into operation.

### **Commencement**

21 This Act shall come into operation on such day as the Minister responsible for environmental protection may appoint by notice published in the Gazette.

[Assent Date: 30 September 2024]