



REPUBLIC OF GHANA

ENVIRONMENTAL PROTECTION AGENCY ACT, 1994 (ACT 490)

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THE FOUR HUNDRED AND NINETIETH

ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA ENTITLED

THE ENVIRONMENTAL PROTECTION AGENCY

ACT, 1994

AN ACT to provide for the establishment of an Environmental Protection Agency in place of the Environmental Protection Council and for related purposes.

DATE OF ASSENT: 30th December, 1994

BE IT ENACTED BY Parliament as follows—

PART I—ESTABLISHMENT OF THE ENVIRONMENTAL PROTECTION AGENCY

Section 1—Establishment of Agency.

(1) There is established by this Act a body to be known as the Environmental Protection Agency referred to in this Act as the "Agency."

(2) The Agency shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

(3) The Agency shall for the discharge of its functions have power to acquire and hold any movable or immovable property and to enter into any contract or other transaction.

Section 2—Functions of the Agency.

The functions of the Agency are—

- (a) to advise the Minister on the formulation of policies on all aspects of the environment and in particular make recommendations for the protection of the environment;
- (b) to co-ordinate the activities of bodies concerned with the technical or practical aspects of the environment and serve as a channel of communication between such bodies and the Ministry;
- (c) to co-ordinate the activities of such bodies as it considers appropriate for the purposes of controlling the generation, treatment, storage, transportation and disposal of industrial waste;
- (d) to secure in collaboration with such persons as it may determine the control and prevention of discharge of waste into the environment and the protection and improvement of the quality of the environment;
- (e) to collaborate with such foreign and international agencies as the Agency considers necessary for the purposes of this Act;
- (f) to issue environmental permits and pollution abatement notices for controlling the volume, types, constituents and effects of waste discharges, emissions, deposits or other source of pollutants and of substances which are hazardous or potentially dangerous to the quality of the environment or any segment of the environment;
- (g) to issue notice in the form of directives, procedures or warnings to such bodies as it may determine for the purpose of controlling the volume, intensity and quality of noise in the environment;
- (h) to prescribe standards and guidelines relating to the pollution of air, water, land and other forms of environmental pollution including the discharge of wastes and the control of toxic substances;
- (i) to ensure compliance with any laid down environmental impact assessment procedures in the planning and execution of development projects, including compliance in respect of existing projects;
- (j) to act in liaison and co-operation with government agencies, District Assemblies and other bodies and institutions to control pollution and generally protect the environment;
- (k) to conduct investigations into environmental issues and advise the Minister thereon;
- (l) to promote studies, research, surveys and analysis for the improvement and protection of the environment and the maintenance of sound ecological systems in Ghana;
- (m) to initiate and pursue formal and non-formal education programmes for the creation of public awareness of the environment and its importance to the economic and social life of the country;
- (n) to promote effective planning in the management of the environment;
- (o) to develop a comprehensive database on the environment and environmental protection for the information of the public;

(p) to conduct seminars and training programmes and gather and publish reports and information relating to the environment;

(q) to impose and collect environmental protection levies in accordance with this Act or regulations made under this Act;

(r) to co-ordinate with such international agencies as the Agency considers necessary for the purposes of this Act; and

(s) to perform any other functions conferred on it under this Act.

Section 3—Ministerial Directions.

The Minister may give to the Agency such directives of a general nature as to the policy to be followed by the Agency in the performance of its functions as appear to the Minister to be necessary in the public interest.

Section 4—Governing Body of Agency.

(1) The governing body of the Agency shall be a Board which shall be responsible for the discharge of the functions of the Agency.

(2) The Board shall consist of the following members appointed by the President in consultation with the Council of State —

(a) a chairman who shall be a person knowledgeable in environmental matters;

(b) the Executive Director of the Agency;

(c) a representative of the Council for Scientific and Industrial Research, not below the rank of Principal Research Officer;

(d) a representative of the Ghana Standards Board, not below the rank of Principal Scientific Officer;

(e) a representative, not below the rank of Director from the Ministries responsible for—

(i) Environment;

(ii) Local Government;

(iii) Finance;

(iv) Health; and

(v) Education;

(f) a representative of the Association of Ghana Industries; and

(g) three other persons at least one of whom shall be a woman.

(3) One of the members appointed under subsection (2)(g) of this section shall be a person knowledgeable in finance or commerce.

(4) The President shall in making the appointments under this section have regard to the knowledge, expertise and experience of the persons in matters relating to the environment.

Section 5—Tenure of Office of Members.

- (1) A member of the Board other than the Executive Director shall hold office for a period not exceeding three years and shall on the expiration of that period be eligible for re-appointment.
- (2) A member of the Board other than the Executive Director may at any time by letter addressed to the President resign his office.
- (3) A member who is absent from three consecutive meetings of the Board without sufficient cause shall cease to be a member.
- (4) The Chairman or a member of the Board may be removed from office by the President for inability to perform the function of his office, for stated misbehaviour or for any other just cause.
- (5) The Chairman of the Board shall through the Minister notify the President of vacancies that occur in the membership of the Board within one month of the occurrence of the vacancy.

Section 6—Allowances for Members.

The Chairman and the other members of the Board shall be paid such allowances as the Minister, in consultation with the Minister responsible for Finance, may determine.

Section 7—Meetings of the Board.

- (1) The Board shall meet for the despatch of business at such times and in such places as the Chairman may determine but shall meet at least once every three months.
- (2) The Chairman shall upon the request of not less than one-third of the membership convene a special meeting of the Board.
- (3) The quorum at a meeting of the Board shall consist of seven members and shall include the Executive Director or the person acting in that capacity.
- (4) Every meeting of the Board shall be presided over by the Chairman and in his absence by a member of the Board elected by the members present from among their number.
- (5) Questions before the Board shall be decided by a majority of the members present and voting.
- (6) The Chairman or the person presiding at a meeting of the board shall in the event of equality of votes have a second or casting vote.
- (7) The Board may co-opt any person to act as an adviser at its meetings but no co-opted person is entitled to vote at the meeting.
- (8) The validity of the proceedings of the Board shall not be affected by a vacancy among its members or by a defect in the appointment or qualification of a member.
- (9) Except as otherwise expressly provided for under this section, the Board shall determine and regulate the procedure for its meetings.

Section 8—Disclosure of Interest.

(1) A member of the Board who is directly or indirectly interested in any matter being considered or dealt with by the Board shall disclose the nature of his interest at a meeting of the Board and shall not take part in any deliberation or decision of the Board with respect to the matter.

(2) A member who fails to disclose his interest under subsection (2) of this section shall be removed from the Board.

Section 9—Committees of the Board.

The Board may for the discharge of the functions of the Agency appoint committees of the Board comprising members of the Board or non-members or both and assign to any such committee such functions of the Agency as the Board may determine.

Section 10—Hazardous Chemicals Committee.

(1) Without prejudice to section 9 of this Act there is established by this Act a committee of the Board to be known as the "Hazardous Chemicals Committee".

(2) The Hazardous Chemicals Committee shall consist of —

(a) the Executive Director who shall be the Chairman;

(b) one representative of the —

(i) Ghana Standards Board;

(ii) Ghana Atomic Energy Commission;

(iii) Ghana Cocoa Board;

(iv) Crops Services Department of the Ministry of Food and Agriculture;

(v) Veterinary Services Department of the Ministry of Food and Agriculture;

(vi) Council for Scientific and Industrial Research;

(c) three officers from the Agency; and

(d) three other persons being persons with specialised knowledge and experience in toxic chemical management.

(3) The functions of the Hazardous Chemicals Committee shall be to—

(a) monitor the use of hazardous chemicals by collecting information on the importation, exportation, manufacture, distribution, sale, use and disposal of such chemicals;

(b) advise the Board and the Executive Director on the regulation and management of hazardous chemicals; and

(c) perform such other functions relating to such chemicals as the Board or the Executive Director may determine.

Section 11—Regional and District Offices of the Agency.

(1) There shall be established in each regional capital of Ghana and in such districts as the Board may determine regional and district offices of the Agency.

(2) A regional or district office of the Agency shall be provided with such public officers as the Board in consultation with the Public Services Commission shall determine.

(3) A regional or district office of the Agency shall perform such functions of the Agency in the region or district as the Board shall direct.

PART II—ENFORCEMENT AND CONTROL

Section 12—Power of Agency to Request for Environmental Impact Assessment.

(1) The Agency may by notice in writing require any person responsible for any undertaking which in the opinion of the Agency has or is likely to have adverse effect on the environment to submit to the Agency in respect of the undertaking an environmental impact assessment containing such information within such period as shall be specified in the notice.

(2) Where the Agency issues a notice under sub-section (1) it shall inform any organ or department of government that has responsibility for the issue of any licence, permit, approval or consent in connection with any matter affecting the environment that the notice has been issued, and the organ or department shall not grant the licence, permit, approval or consent unless it has been notified by the Agency that the notice has been complied with.

Section 13—Enforcement Notice.

(1) Where it appears to the Agency that the activities of any undertaking poses a serious threat to the environment or to public health, the Agency may serve on the person responsible for the undertaking, an enforcement notice requiring him to take such steps as the Agency thinks necessary to prevent or stop the activities.

(2) An enforcement notice shall specify —

- (a) the offending activity;
- (b) the steps required to be taken; and
- (c) the time within which the steps shall be taken.

(3) The Agency may in an enforcement notice direct the immediate cessation of the offending activity where it considers that the circumstances so demand.

(4) Any person who acts contrary to an enforcement notice issued under this section commits an offence and shall be liable on summary conviction to a fine not exceeding ₪2 million and in default to imprisonment for a term not exceeding one year.

Section 14—Power of Minister Relating to Enforcement Notice.

(1) Where a person to whom a notice has been served under subsection (1) of section 13 fails to comply with the directives contained in the notice within the stipulated time or such further period as the Agency may grant, the Minister, may without prejudice to a prosecution under subsection (4) of section 13, take such steps as he considers appropriate to ensure compliance with the notice.

(2) Where authorized by the Minister acting by virtue of subsection (1), a police officer, an officer of the Agency or any public officer authorised by the Minister may use such force as may be necessary for the purpose of ensuring compliance with the enforcement notice.

(3) Any person who hinders or obstructs any person acting under this section commits an offence and shall be liable on summary conviction to a fine not exceeding ₦500,000 or to imprisonment for a term not exceeding six months.

(4) Any amount reasonably incurred by the Minister or any institution to prevent or stop the offending activities may be recovered from the person responsible as a civil debt, unless a court considers that the amount was incurred unnecessarily.

Section 15—Environment Protection Inspectors and their Powers.

(1) There shall be appointed by the Board officers designated as Environment Protection Inspectors referred to in this Act as "Inspectors".

(2) An Inspector or any person authorised by the Board may at any reasonable time enter any premises for the purpose of ensuring compliance with this or any other law pertaining to the protection of the environment and shall, if required to do so by the person in charge of the premises, produce his authority to the person.

(3) Any person who assaults or obstructs a duly authorized person acting in the execution of his duty under subsection (1) commits an offence and shall be liable on summary conviction to a fine not exceeding ₦500,000 or to imprisonment not exceeding six months or to both.

PART III—NATIONAL ENVIRONMENT FUND

Section 16—Establishment of Environment Fund.

(1) There is established by this Act a fund to be known as the National Environment Fund referred to in this Act as the "Fund".

(2) The sources of money for the Fund shall be—

- (a) grants from government for the protection or improvement of the environment;
- (b) levies collected by the Agency in the performance of its functions;
- (c) donations from the general public, institutions and organisations; and
- (d) gifts.

Section 17—Object of Fund.

Monies of the Fund shall be applied for —

- (a) environmental education of the general public;
- (b) research, studies and investigations relating to the functions of the Agency;
- (c) human resource and development; and
- (d) such other purposes as the Board in consultation with the Minister may determine.

Section 18—Management of the Fund.

(1) The Fund shall be managed and administered by the Board which shall for this purpose include the Controller and Accountant-General or his representative.

(2) All monies for the Fund shall be paid into a bank account for the purpose opened by the Board with the approval of the Controller and Accountant-General.

(3) The provisions under sections 25 and 26 of this Act on accounts and audit and annual report shall apply to the Fund.

Section 19—Functions of the Board in Relation to the Fund.

(1) The Board shall for the purpose of managing the Fund —

(a) formulate policies to generate money for the Fund;

(b) determine the allocation to be made towards the objects of the Fund;

(c) determine annual targets of the Fund.

(2) The Board may invest such part of the Fund as it considers appropriate in government securities or in such manner as may be approved by the Minister or in consultation with the Minister for Finance.

(3) All payments issued from the Fund shall be signed by the Chairman of the Board, the Executive Director and one other member of the Board.

PART IV—ADMINISTRATION AND GENERAL PROVISIONS

Section 20—Organisation of the Agency.

The Board may create such departments or divisions in the Agency as the Board may consider necessary for the efficient discharge of the functions of the Agency.

Section 21—Executive Director and his Functions.

(1) There shall be appointed by the President in accordance with the advice of the Board given in consultation with the Public Services Commission an Executive Director of the Agency who shall be the chief executive of the Agency.

(2) The Executive Director shall hold office on such terms and conditions as shall be specified in his letter of appointment.

(3) Subject to such general directives as the Board may give, the Executive Director shall be responsible for the direction of the work of the Agency and for the day to day administration of the Agency and shall ensure the implementation of the decisions of the Board.

(4) The Executive Director may delegate such of his duties as he may determine to any officer of the Agency but the Executive Director shall not be relieved from ultimate responsibility for the discharge of any delegated function.

(5) The Executive Director shall act as secretary to the Fund.

Section 22—Appointment of Other Staff.

(1) The Agency shall have such other officers and employees as may be necessary for the proper and effective performance of its functions under this Act.

(2) Other public officers may be transferred or seconded to the Agency.

(3) Appointment of officers of the Agency shall be made by the President in accordance with the advice of the Board given in consultation with the Public Services Commission and upon such terms and conditions as the appointing authority shall determine.

(4) The Agency may engage the services of such experts and consultants as the Board may determine.

Section 23—Delegation of Power of Appointment.

The President may in accordance with article 195(2) of the Constitution delegate his power of appointment of public officers under this Part.

Section 24—Expenses of the Agency.

Parliament shall annually provide to the Agency such sums of money as may be necessary for the efficient discharge of its functions under this Act.

Section 25—Accounts and Audit.

(1) The Board shall keep books of account and proper records in relation to them and the accounts and records of the Agency shall be in a form approved by the Auditor-General.

(2) The accounts of the Agency shall be audited by the Auditor-General within six months after the end of each financial year.

(3) The financial year of the Agency shall be the same as the financial year of the government.

(4) The Executive Director shall prepare budget estimates for each financial year and present the estimates to the Board for its approval not later than two months before the end of the financial year.

Section 26—Annual Report and Other Reports.

(1) The Board shall as soon as practicable after the expiration of each financial year but within six months after the end of the year, submit to the Minister an annual report covering the activities and the operations of the Agency for the year to which the report relates.

(2) The annual report submitted under subsection (1) shall include the report of the Auditor-General.

(3) The Minister shall within two months after the receipt of the annual report submit a report to Parliament with such statement as he may consider necessary.

(4) The Board shall also submit to the Minister such other report as the Minister may in writing require.

Section 27—Request for Information.

(1) The Executive Director or any officer of the Agency authorized by the Executive Director may request in writing from any person or request any person to attend at a time and place specified to give any information which the Executive Director considers reasonably necessary for the purposes of this Act.

(2) Any person who —

- (a) without reasonable excuse fails to provide information requested under subsection (1); or
 - (b) without reasonable excuse refuses or fails to attend as requested under subsection (1); or
 - (c) knowingly provides false information or any information which he has no reason to believe to be true; or
 - (d) obstructs any public officer in the lawful execution of any powers under this Act;
- commits an offence and is liable on conviction to a fine not exceeding €2 million or to imprisonment for one year or to both.

(3) Where an offence is committed under this Act or regulations made under it by a body of persons —

- (a) in the case of body corporate other than a partnership, every director or an officer of the body 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.

(4) No person shall be deemed to be guilty of an offence by virtue of subsection (3) of this section 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.

Section 28—Regulations.

(1) The Minister may on the advice of the Board by legislative instrument make regulations for the purpose of giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1) of this section, such regulation may provide for —

- (a) standards and code of practice relating to the protection, development and rehabilitation of the environment;
- (b) the category of undertakings, enterprise, constructions or developments in respect of which environmental impact assessment or environmental management plan is required by the Agency;
- (c) the type, quantity, conditions or concentration of substances that may be released into the environment;
- (d) the manufacture, importation, use, collection, storage, recycling, recovery or disposal of substances which may be hazardous to the environment;
- (e) the disposal of waste generally;
- (f) the protection of any particular species of fauna and flora;
- (g) matters in respect of which fees are payable and the amount payable; and
- (h) matters for which permits are required under this Act.

(3) Notwithstanding section 9 of the Statutory Instruments Act, 1959 (No. 52) regulations made under this section may impose a penalty not exceeding €2 million or imprisonment for a term not exceeding one year or both and in the case of a continuing offence an additional penalty not exceeding €200,000 in respect of each day on which the offence is continued.

Section 29—Interpretation.

In this Act unless the context otherwise requires —

"Board" means the governing body provided for under section 4(1) of this Act;

"Minister" means the Minister responsible for the environment;

"person responsible" in relation to any undertaking, enterprise, construction or development, includes any person at whose order or on whose behalf the undertaking, enterprise, construction or development is being done or will be done.

"premises" included any building, land, ship, aircraft, caravan but does not include a building or place used exclusively as a dwelling house.

Section 30—Dissolution, Repeal and Vesting.

(1) The Environmental Protection Council Decree, 1974 (NRCD 239) and the Environmental Protection Council (Amendment) Decree, 1976 (SMCD 58) are repealed by this Act and accordingly the Council established under that Decree dissolved.

(2) Notwithstanding the repeals under this section any instrument, any permit or order issued under the repealed enactment and in force at the commencement of this Act shall continue in force until altered or revoked under this Act.

(3) All rights, assets, properties, obligations, liabilities held for or on behalf of the dissolved Environmental Protection Council and all persons employed for or by the dissolved Council are by this section transferred to the Agency established under this Act.

Date of Gazette Notification: 30th December, 1994.