

S.I. No. 126 of 1996.

ENVIRONMENTAL PROTECTION AGENCY (EXTENSION OF POWERS) ORDER, 1996

The Minister for the Environment, in exercise of the powers conferred on him by sections 7 of the Environmental Protection Agency Act, 1992 (No. 7 of 1992), and after a draft of the Order having been laid before each House of the Oireachtas and having been approved by resolution of each such House, hereby orders as follows:

1. . This Order may be cited as the Environmental Protection Agency (Extension of Powers) Order, 1996.

2. . This Order shall come into operation on the 27th day of May, 1996.

3. . (1) In this Order, any reference to a Schedule or article which is not otherwise identified is a reference to a Schedule or article of this Order.

(2) In this Order—

"the Act" means the Environmental Protection Agency Act, 1992;

"the Act of 1977" means the Local Government (Water Pollution) Act, 1977 (No. of 1977);

"the Act of 1987" means the Air Pollution Act, 1987 (No. 6 of 1987);

"the Act of 1990" means the Local Government (Water Pollution) (Amendment) Act, 1990 (No. 21 of 1990).

4. . The provisions of the Act of 1977, of that Act as amended by the Act of 1990, and of the Act of 1990, which are specified in the Table hereunder as modified by this Order shall apply to the Agency in lieu of the local authority or sanitary authority for the purposes of the prevention or limitation, or the remedying of the effects, as the case may be, of water pollution from an activity, other than an activity to which section 99 (2) of the Act applies, in respect of which a licence or revised licence under Part IV of the Act is in force.

TABLE

Local Government (Water Pollution) Act, 1977

Section Provision
22 32

The whole section. The whole section.

Local Government (Water Pollution) Act, 1977 as amended by the Local Government (Water Pollution) (Amendment) Act, 1990

Section Provision
3 10 11 12 16 23 28

The whole section. The whole section. The whole section. The whole section. Subsections (7), (8), (13), (14) and (15). The whole section. The whole section.

Local Government (Water Pollution) (Amendment) Act, 1990

Section Provision
26 27 28

The whole section. The whole section. The whole section.

5. . For the purposes of article 4, a function conferred on a local authority or sanitary authority, or anything required to be done in relation to a local authority or sanitary authority, as the case may be, under any of the provisions of the Act of 1977, of that Act as amended by the Act of 1990 and of the Act of 1990 which are specified in that article shall, as the case may be, be exercised by, or done in relation to, the Agency in lieu of the local authority or sanitary authority.

6. . (1) For the purposes of articles 4 and 5, for references to "local authority" or "sanitary authority" in any of the provisions therein referred to (other than section 10 (8) (f) of the Act of 1977), there shall be substituted the following—

"the Environmental Protection Agency, in the case of an activity in respect of which a licence or revised licence under Part IV of the Environmental Protection Agency Act, 1992, is in force and, in any other case, a local authority, or sanitary authority, as the case may be",

and cognate words shall be construed accordingly.

(2) For the purposes of articles 4 and 5, the provisions of the Act of 1977 and the Act of 1990 which are specified in the said articles shall apply as modified in the manner set out in the First Schedule.

7. . Section 14 of the Act of 1977 as modified by this Order shall apply to the Agency in addition to the local authority or sanitary authority for the purposes of the prevention or limitation, or the remedying of the effects, as the case may be, of water pollution from an activity, other than an activity to which section 99 (2) of the Act applies, in respect of which a licence or revised licence under Part IV of the Act is in force.

8. . For the purposes of article 7—

(a) anything required to be done in relation to the local authority or sanitary authority under section 14 of the Act of 1977 shall be done to the Agency in addition to the local authority or sanitary authority, as the case may be, and

(b) a prosecution for an offence under section 14 of the Act of 1977 may be taken by the local authority, sanitary authority or the Agency.

9. . For the purposes of articles 7 and 8, section 14 of the Act of 1977 shall apply as modified in the manner set out in the First Schedule.

10. The provisions of the Act of 1987 which are specified in the Table hereunder as modified by this Order shall apply (subject to any qualification included in the Table) to the Agency in lieu of the local authority for the purposes of the prevention or limitation, or the remedying of the effects, as the case may be, of air pollution from an activity, other than an activity to which section 99 (2) of the Act applies, in respect of which a licence or revised licence under Part IV of the Act is in force.

TABLE

Air Pollution Act, 1987

Section Provision or Qualification

7 11 12 13 14 15 16 24 26 28 28A 54

Subsection (1) for the purpose of the appointment of "authorised persons". The whole section. The whole section. Subsections (1), (3) and (4). The whole section. The whole section. Paragraphs (a) and (b) of subsection (1) and subsections (2), (3) and (4). The whole section. The whole section. The whole section. Subsections (4) and (6). Subsections (1), (2), (3) and (4).

11. For the purposes of article 10, a function conferred on a local authority or anything required to be done in relation to a local authority under any of the provisions of the Act of 1987 specified in that article, shall, as the case may be, be exercised by, or done in relation to, the Agency in lieu of the local authority.

12. (1) For the purposes of articles 10 and 11, for references to "local authority" in any of the provisions therein referred to (other than section 13 (1) (b) of the Act of 1987) there shall be substituted the following—

"the Environmental Protection Agency, in the case of an activity in respect of which a licence or revised licence under Part IV of the Environmental Protection Agency Act, 1992, is in force, and, in any other case, a local authority",

and cognate words shall be construed accordingly.

(2) For the purposes of articles 10 and 11, the provisions of the Act of 1987 which are specified in the said articles shall apply as modified in the manner set out in the Second Schedule.

13. Section 29 of the Act of 1987 shall apply to the Agency in addition to the local authority for the purposes of the prevention and limitation, or the remedying of the effects, as the case may be, of air pollution from an activity, other than an activity to which section 99 (2) of the Act applies, in respect of which a licence or revised licence under Part IV of the Act is in force.

14. For the purposes of article 13, anything required to be done in relation to a local authority under section 29 of the Act of 1987 shall be done in relation to the Agency in addition to the local authority.

15. For the purposes of articles 13 and 14, for the reference to "local authority" in section 29 of the Act of 1987 there shall be substituted the following—

"local authority, and in the case of an incident in connection with an activity in respect of which a licence or revised licence under Part IV of the Environmental Protection Agency Act, 1992 is in force, the Environmental Protection Agency,".

16. Any function conferred on a local authority or sanitary authority or anything which is required to be done in relation to a local authority or sanitary authority, as the case may be, under any of the provisions of the Act of 1977, that Act as amended by the Act of 1990, the Act of 1987 or the Act of 1990 which are specified in articles 4 and 10 shall not, as the case may be, be exercised by or done in relation to the local authority or sanitary authority in the case of an activity in respect of which a licence or revised licence under Part IV of the Act is in force, save with the consent of the Agency.

FIRST SCHEDULE

Modifications of the Local Government (Water Pollution) Acts, 1977 and 1990

The provisions of the Local Government (Water Pollution) Acts, 1977 and 1990 as modified for the purposes of articles 6 (2) and 9 are set out as follows—

Section 3 (5) (a) (i) of the Act of 1977

"(i) a discharge of a trade effluent or a sewage effluent which is made under and in accordance with a licence under section 4 or an emission made under and in accordance with a licence or revised licence under Part IV of the Environmental Protection Agency Act, 1992 1".

Section 11 (1A) of the Act of 1977

"(1A) An application may be brought under subsection (1) notwithstanding that, in the case of an activity in respect of which a licence or revised licence under Part IV of the Environmental Protection Agency Act, 1992 is in force, a prosecution under that Part of the Act or under section 3 or 4, or, in any other case, a prosecution under section 3 or 4 in respect of the relevant entry or discharge referred to in subsection (1), has not been brought."

Section 14 (1) of the Act of 1977

"14 (1) As soon as practicable after the occurrence of an accidental discharge, spillage or deposit of any polluting matter which enters or is likely to enter any waters or a sewer, the person responsible shall notify—

(a) the local authority in whose functional area the discharge, spillage or deposit occurs or, in the case of a sewer, the sanitary authority in which the sewer is vested or by which it is controlled. and

(b) in the case of an activity in respect of which a licence or revised licence under Part IV of the Environmental Protection Agency Act, 1992. is in force, the Environmental Protection Agency."

Section 14 (3) of the Act of 1977

"(3) A prosecution for an offence under this section may be taken by a local authority, a sanitary authority or the Environmental Protection Agency."

Section 16 (15) of the Act of 1977

"(15) A notice may be served under subsection (13) whether or not there has been a prosecution under Part IV of the Environmental Protection Agency Act, 1992 or under this section in the case of an activity in respect of which a licence or revised licence under that Part of that Act is in force or, in any other case, a prosecution under this section."

SECOND SCHEDULE

Modifications of the Air Pollution Act, 1987

The provisions of the Air Pollution Act, 1987 as modified for the purposes of article 12 (2) are set out as follows—

Section 13 (1) (b)

"(b) Where a local authority are of opinion that an emission from any premises, other than an activity in respect of which a licence or revised licence under Part IV of the Environmental Protection Agency Act, 1992. is in force, may cause air pollution affecting any part of their functional area, the local authority may, notwithstanding that the emission is from a premises which is outside the functional area of the local authority concerned, initiate summary proceedings for an offence under this Act in relation to the emission concerned,".

Section 26 (4)

"(4) A notice under this section

(a) may be served whether or not there has been a prosecution for an offence under Part IV of the Environmental Protection Agency Act, 1992 or this Act in the case of an emission from an activity in respect of which a licence or revised licence under that Part of that Act is in force or, in any other case, a prosecution for an offence under this Act in relation to the emission concerned:

(b) shall not prejudice the initiation of a prosecution under Part IV of the Environmental Protection Agency Act, 1992 or this Act in the case of an activity in respect of which a licence

or revised licence under that Part of that Act is in force or, in any other case, a prosecution under this Act relating to the emission concerned."

Section 28 (2) (b)

"(b) requiring any person to do, or not to do, or cease from doing, as the case may be, anything which the Court considers necessary and specifies in the order to ensure that the emission concerned is terminated or restricted or, as the case may be, complies with, in the case of an activity in respect of which a licence or revised licence under Part IV of the Environmental Protection Agency Act, 1992, is in force that licence or revised licence and, in any other case, any relevant licence under this Act;"

Section 28A (6)

"(6) An application under subsection (1) may be made whether or not there has been, in the case of an activity in respect of which a licence or revised licence under Part IV of the Environmental Protection Agency Act, 1992 is in force, a prosecution for an offence under that Part of that Act or under this Act, and, in any other case, a prosecution for an offence under this Act, in relation to the emission concerned."

GIVEN under the Official Seal of the Minister for the Environment.

Dated this 16th day of May 1996.

BRENDAN HOWLIN,

Minister for the Environment.

EXPLANATORY NOTE.

The Environmental Protection Agency (Extension of Powers) Order, 1996 which comes into effect on 27 May, 1996 provides for the following:

(1) The application of specified sections of the Local Government (Water Pollution) Acts, 1977 and 1990 and of the Air Pollution Act, 1987 to the Agency.

(2) Any function of local or sanitary authority or anything which is required to be done in relation to a local or sanitary authority, under any of the specified sections, shall be exercised by, or done to, the Agency in lieu of the local or sanitary authority.

(3) A general prohibition on local authorities or sanitary authorities from exercising any of the above functions in relation to activities licensed by the Agency.

(4) The notification of accidental discharges or emissions, spillages or other "incidents" to the Agency, in addition to the local or sanitary authority.

(5) The amendment, where necessary, of the specified sections of the Water Pollution Acts and the Air Pollution Act as set out in the First and Second Schedules.

The powers being extended to the Agency include

— application to the High Court for an Order requiring the prohibition, termination or reduction of a discharge or emission, and in the event of non-compliance, the Agency may undertake the actions specified in the Court Order and recover its costs from the offender,

— the service of notices specifying the measures, and the periods within which they shall be undertaken, necessary to prevent air or water pollution,

— prosecution of offences under general prohibitions on air and water pollution i.e. from emissions or circumstances not dealt with in the integrated licence,

— entry, inspection, monitoring, the gathering of information and prosecutions for the purposes of the proposed extended powers,

— the recovery of the Agency's costs of taking proceedings and the payment of fines to the Agency in certain circumstances.