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DANGEROUS SUBSTANCES LAW (2017 Revision)

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DANGEROUS SUBSTANCES LAW,

(2017 Revision)

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DANGEROUS SUBSTANCES LAW

(2017 Revision)

1. This Law may be cited as the Dangerous Substances Law (2017 Revision). Short title

2. In this Law - Definitions

“Board” means the Board of Directors of the Utility Regulation and Competition Office established by the Utility Regulation and Competition Law, 2016;

“Chief Executive Officer” means the individual appointed as the Chief Executive Officer of the Office, pursuant to section 28(a) of the Utility Regulation and Competition Law, 2016; Law 49 of 2016

“Chief Fuels Inspector” means the public officer appointed in accordance with section 10 to have charge of the office of the Chief Fuels Inspector and includes any officer performing his duties as such;

“combustible liquids” has the meaning assigned by the Standard Fire Prevention Code;

“Committee” means the Fuel Standards Committee established under section 9A;

“compressed gas” has the meaning assigned by the Standard Fire Prevention Code;

“container” means anything in or by which dangerous substances are wholly or partly cased, covered, enclosed, contained, or packed whether such thing is empty or partially or completely full but does not include a vehicle other than a permitted vehicle;

“court” means the summary court;

“dangerous substances” include the following-

- (a) petroleum;
- (b) petroleum products;
- (c) flammable liquid gas;
- (d) hazardous production material;
- (e) flammable liquid;
- (f) combustible liquid;
- (g) compressed gas;
- (h) flammable gas;

- (i) highly volatile liquid; and
- (j) hazardous industrial gases;

“Emergency Response Team” means those persons who have been trained to respond to emergencies in the Islands involving dangerous substances;

“emergency services” means the police, fire and emergency ambulance services and such other services as may be prescribed by regulations made under the Information and Communications Technology Authority Law, 2002;

“flammable gas” has the meaning assigned by the Standard Fire Prevention Code;

“flammable liquid” has the meaning assigned by the Standard Fire Prevention Code;

“flammable liquid gas” has the meaning assigned by the Standard Fire Prevention Code;

“gallon” means an imperial gallon;

“handling”, in relation to a dangerous substance, includes the following-

- (a) manufacturing, processing or treating the dangerous substance;
- (b) supplying, receiving or dispensing the dangerous substance;
- (c) marking or labelling an article, container or package of the dangerous substance, or placard or putting up signs in relation to the dangerous substance;
- (d) packing, consigning or carrying the dangerous substance;
- (e) storing the dangerous substance;
- (f) possessing, or otherwise having custody or control of, the dangerous substance;
- (g) using the dangerous substance; and
- (h) disposing of the dangerous substance or rendering it harmless;

“hazardous industrial gases” means flammable gases used primarily for industrial or commercial purposes and includes acetylene, hydrogen and liquid oxygen;

“hazardous production materials” has the meaning assigned by the Standard Fire Prevention Code;

“highly volatile liquid” has the meaning assigned by the Standard Fire Prevention Code;

“importer” means the holder of an import permit;

“Marine Spill Response Team” means those persons who have been trained to respond to marine spills involving dangerous substances;

“Minister” means the Minister or member of Cabinet responsible for the operation of this Law;

“ministry” means the ministry of government responsible for the operation of this Law;

“natural gas” means all gaseous hydrocarbons;

“occupier”, in relation to regulated premises which is a private residential home, means a person who inhabits the home, otherwise than as a mere servant or for the mere purpose of the care, custody and charge of such home;

“Office” means the Utility Regulation and Competition Office established by the Utility Regulation and Competition Law, 2016;

“operating permit” means a permit issued under section 4;

“operator” –

- (a) in relation to regulated premises which is not a private residential home, means a person who has the charge, management or control of the premises;
- (b) in relation to a pipeline, means-
 - (i) the person who is to have or, once liquid is conveyed, has control over the conveyance of liquid in the pipeline;
 - (ii) until that person is known, where at a material time he is not yet known, the person who is to commission or, where commissioning has started, commissions the design and construction of the pipeline; or
 - (iii) when a pipeline is no longer, or is not for the time being used, the person last having control over the conveyance of liquid in it,and shall include, where applicable, the owner of the pipeline;
- (c) in relation to regulated premises which is a private residential home, means the occupier of the premises; and
- (d) in relation to a permitted vehicle, means the person who has the possession or use of the vehicle and who is either the registered sole or joint owner of the vehicle or is a person who has possession and use of the vehicle under a hire-purchase agreement or bill of sale or like instrument;

“permitted vehicle” includes a boat, truck, tanker or such other vehicle which is manufactured or modified to be used and which is used for the purpose of transporting dangerous substances;

“petroleum” includes crude liquid petroleum, natural gas and petroleum products;

“petroleum products” means substances produced directly or indirectly from crude petroleum and includes, any fuel, lubricant, bitumen, wax, industrial spirit and any wide-range substance;

“regulated premises”-

- (a) means any premises in which the following are stored-
 - (i) dangerous substances of an aggregate quantity of 250 gallons or more; or
 - (ii) in the case where the dangerous substance is compressed gas or compressed air, compressed gas or compressed air of an aggregate quantity of 250 liquid gallons or more stored at a pressure of 100 pounds per square inch or more at ambient temperature,and such premises may include any storage terminal, retail outlet, utility company, commercial bulk storage facility, hospital, factory and a private residential home; but
- (b) does not include any premises where only pressure, process or flow through tanks are stored;

“Standard Fire Prevention Code” means the Standard Fire Prevention Code adopted by the Fire Code, 1997;

“transportation” includes shipment, transshipment, landing, loading and movement by any means whatsoever including pipe-line; and

“wide-range substance” means a substance whose final boiling point at normal atmospheric pressure is more than 50° centigrade higher than its initial boiling point).

Importation of
dangerous substances

3. (1) A person shall not import more than the prescribed amount of dangerous substances in any one day or in an aggregate period of one week or more without a valid import permit issued by the Chief Fuels Inspector.

(2) An importer, on each importation of a dangerous substance for which an import permit is required under subsection (1), shall provide to the Chief Fuels Inspector a record of such importation within seven days of the date of the importation of the dangerous substance; and such record shall provide the name of the importer, the type and the quantum of the dangerous substance.

(3) The Chief Fuels Inspector shall issue an import permit subject to conditions, limitations and terms which are in accordance with the provisions of this Law and regulations.

(4) The Chief Fuels Inspector shall have such powers to amend or vary an import permit as are set out in regulations made under this section.

(5) An application for an import permit shall be made in writing in the prescribed manner and form and shall be accompanied by the prescribed fee.

(6) An applicant shall provide the Chief Fuels Inspector with any further information that the Chief Fuels Inspector requires in considering the application.

(7) The duration of an import permit shall be stated in the import permit; and an import permit may be for a fixed period not exceeding 3 years.

(8) An import permit may be renewed from time to time in accordance with regulations.

(9) A person who imports petroleum and petroleum products without an import permit at the date of the commencement of this Law shall apply for an import permit within one month of the date of the commencement of regulations made under this section.

(10) Regulations made by the Cabinet shall prescribe such matters as are necessary for carrying out the purpose and provisions of this section and such matters may include-

- (a) the grounds for cancellation of an import permit;
- (b) rights of appeal to the Board where an import permit is refused or cancelled;
- (c) the transferability of an import permit;
- (d) the renewal of an import permit and the fees and the procedure for such renewals;
- (e) surrender of an import permit; and
- (f) replacement of lost import permits.

(11) An importer who imports more than the prescribed amount of dangerous substance without an import permit commits an offence and is liable on summary conviction to a fine of \$50,000 or to imprisonment for a term of five years or to both; and if the offence is a continuing one, to a further fine of \$10,000 for every day or part of a day during which the offence continues after conviction.

(12) An importer who fails to comply with subsection (2) commits an offence and is liable on summary conviction to a fine of \$10,000.

4. (1) The operator of regulated premises shall not operate or occupy or cause such regulated premises to be operated or occupied without a valid operating permit.

Operating permits

(2) The operator of a permitted vehicle shall not operate or cause such vehicle to be operated without a valid operating permit.

(3) The Board shall issue an operating permit subject to the provisions of this Law and to such other conditions, limitations and terms as it considers appropriate.

(4) The Board shall have such powers to amend or vary an operating permit as are set out in regulations made under this section.

(5) An application for an operating permit shall be made in writing in such manner and in such form as the Board shall determine from time to time and shall be accompanied by the prescribed fee.

(6) An applicant shall provide the Board with any further information that the Board requires in considering his application.

(7) The duration of an operating permit shall be stated in the operating permit; and an operating permit may be for a fixed period not exceeding 3 years.

(8) An operating permit may be renewed from time to time in accordance with regulations.

(9) The operator of regulated premises which is in operation or is occupied without an operating permit and the operator of a permitted vehicle which is being operated without an operating permit at the date of the commencement of regulations made under this section shall apply for an operating permit within three months of the date of the commencement of regulations made under this section.

(10) Regulations made by the Cabinet shall prescribe such matters as are necessary for carrying out the purpose and provisions of this section and such matters may include -

- (a) the grounds for cancellation of a permit;
- (b) rights of appeal where a permit is refused or cancelled;
- (c) the transferability of an operating permit;
- (d) the renewal of an operating permit and the fees and the procedure for such renewals;
- (e) surrender of an operating permit; and
- (f) replacement of lost operating permits.

Repealed

5. *Repealed by section 4 of Law 52 of 2016.*

Functions of the Board

6. The Board shall be responsible for -

- (a) issuing operating permits for regulated premises and permitted vehicles that are subject to this Law and regulations under this Law;

- (b) hearing appeals against decisions made by the Committee and by the Chief Fuels Inspector in accordance with regulations made under this Law; and
- (c) carrying out such other functions as are specified in this Law or in regulations made under this Law.

7. (1) The Board may appoint a Fuels Advisory Committee to advise the Board on -

Fuels Advisory
Committee

- (a) matters relating to the operations of this Law;
- (b) matters relating to the functions of the Board under this Law;
- (c) public safety and the protection of the environment; and
- (d) any other matter which may reasonably be referred to it by the Board.

(2) The Fuels Advisory Committee shall comprise -

- (a) a non-executive member of the Office, who shall be chairperson;
- (b) the Chief Officer of the Ministry responsible for the Environment or the nominee of the Chief Officer;
- (c) the Chief Fire Officer or the nominee of the Chief Fire Officer;
- (d) one member appointed by the Board and who, in the opinion of the Board, has experience in any industry relating to dangerous substances;
- (e) the Chief Fuels Inspector; and
- (f) the Secretary to the Office, who shall be the secretary and a non-voting member.

(3) The member appointed by the Board under subsection (2)(d) shall be appointed for a term of three years and shall be eligible for re-appointment.

(4) The quorum of the Committee shall be a majority of the voting members of the Committee.

(5) Subject to this Law, the Committee shall have power to regulate its own practice and procedure and shall take all actions and reach its decisions by a majority of votes.

(6) If a member of the Committee has any pecuniary or other interest in any matter to be dealt with by the Committee the member shall disclose the fact to the Committee and shall not take part in any meeting at which the matter is considered or discussed.

8. *Repealed by section 6 of Law 52 of 2016.*

Repealed

9. *Repealed by section 7 of Law 52 of 2016.*

Repealed

9A. (1) There is established a Fuel Standards Committee to carry out the duties specified in this Law and the Committee shall consist of -

Fuel Standards
Committee

- (a) the Chief Fuels Inspector who shall be chairperson;
- (b) the Director of the Department of Environmental Health or his nominee;
- (c) the Director of Environment or his nominee;
- (d) the Director of the Water Authority or his nominee; and
- (e) *Repealed by section 8 of Law 52 of 2016.*

(2) The Chief Executive Officer shall appoint an individual to be secretary to the Committee, after consulting the chairperson of the Committee; and the secretary shall take minutes of meetings, carry out such other duties and perform such other functions as are assigned by the chairperson.

(3) The Committee may appoint or empanel sub-committees, whether from among members of the Committee or from among persons outside of the Committee or both, to study and make recommendations to the Committee on any aspect of the regulation of fuel quality and related issues referred by the Committee.

(4) Members of a sub-committee who are not members of the Committee are required to have-

- (a) relevant scientific or technical knowledge in the area of fuel quality standards; or
- (b) qualifications in chemistry, biology or environmental studies,

or both such knowledge and qualifications; and such members shall be paid allowances as the Board may determine.

(5) The payment of such allowances shall be paid out of the funds of the Office.

(6) The procedures of a sub-committee shall be determined by the chairperson of the Committee in accordance with this Law and regulations.

Functions of the
Committee

9B. The Committee shall carry out such duties as are specified in this Law and in regulations and such duties may include -

- (a) establishing the standards of certain types of fuel to be imported, distributed and used in the Islands;
- (b) publishing or causing to be published, in such medium as they determine, such standards and the testing methods to be used by importers and the Chief Fuels Inspector in the inspection of fuel in order to ensure compliance with the standards; and
- (c) providing quarterly, bi-annual, annual or such other periodic reports to the Minister on its operations.

Procedures at meetings
etc. of the Committee

9C. (1) The Committee shall meet at such times as may be necessary for the transaction of business and such meetings shall be held at such places and times and on such days as the Committee determines.

(2) The chairperson of the Committee shall preside at meetings of the Committee.

(3) The quorum of the Committee shall be three voting members of the Committee.

(4) Subject to this Law, the Committee shall have power to regulate its own practice and procedure and shall take all actions and reach its decisions by a majority of votes and, in addition to an original vote, the chairperson shall have a casting vote in any case in which the voting is equal.

(5) If a member of the Committee has any pecuniary or other interest in any matter to be dealt with by the Committee he shall disclose the fact to the Committee and shall not take part in any meeting at which the matter is considered or discussed.

(6) A member who fails to comply with subsection (5) commits an offence and is liable -

- (a) on summary conviction to a fine of \$20,000 and to imprisonment for two years or to both; or
- (b) on conviction on indictment to a fine of \$50,000 and to imprisonment for five years or to both,

unless he proves that he did not know that the matter in which he had an interest was the subject of consideration at that meeting.

(7) A disclosure under subsection (5) shall be recorded in the minutes of the meeting of the Committee.

(8) For the purposes of subsection (5), a member of the Committee shall be treated, as having a pecuniary interest in a matter if he is the director or employee or consultant of the importer who is the subject of the matter.

9D. (1) Where, after inspections are carried out in accordance with this Law, it is found by the Chief Fuels Inspector or by an inspector that an importer has been importing and distributing to operators fuel which does not accord with standards published under section 9B, the Chief Fuels Inspector shall require the importer to comply forthwith with any written direction not inconsistent with this Law which the Chief Fuels Inspector believes on reasonable grounds is necessary to ensure that the importation or distribution of such fuel is immediately discontinued.

Distributing fuel which does not accord with standards

(2) An importer who fails to comply with a direction under subsection (1) commits an offence and is liable to an administrative penalty; and the relevant import permit of such person may be suspended, or revoked in accordance with the procedure set out in this Law.

	(3) An importer who, more than once in any period of one year, imports and distributes fuel which is found by the Chief Fuels Inspector not to be in accordance with the standards set by the Fuel Committee commits an offence and is liable to an administrative penalty; and the relevant import permit of such person may be suspended, or cancelled in accordance with the procedure prescribed by this Law.
Chief Fuels Inspector	10. (1) There shall be a Chief Fuels Inspector and such other fuels inspectors as are necessary for the purposes of carrying out this Law and they shall be public officers. (2) The Chief Fuels Inspector has the responsibility for the enforcement of this Law. (3) The Chief Fuels Inspector shall be subject to supervision of the Board on those matters related to the issue of operating permits. (4) Any function of the Chief Fuels Inspector under this Law may be performed by a competent person authorised by the Chief Fuels Inspector for that purpose.
2013 Revision	(5) In carrying out his functions under this Law the Chief Fuels Inspector shall be guided by the Building Code Regulations, (2013 Revision), the Fire Code, 1997 and by such other legislation including international codes and standards as the ministry considers relevant.
Collection of fuel data by the Chief Fuels Inspector	10A. The Chief Fuels Inspector shall monitor changes in fuel prices in the Islands, and for such purposes, collect from importers, and compile, analyse and abstract, information on fuel prices and pricing methods and provide such information to the Minister.
Powers in other laws	10B. The powers vested in the Chief Fuels Inspector by section 10A shall apply notwithstanding that the subject matter in respect of which the powers are exercisable is the subject matter of any other Law or any agreement.
Exercise of function under section 10A	10C. Notwithstanding section 10(4), where the function under section 10A is to be performed by any public officer of the Ministry, that public officer shall only carry out such function if he is authorised in writing to do so by the Chief Fuels Inspector.
Methodology	10D. The methodology used in the collection, compilation, analysis and abstraction of information by the Chief Fuels Inspector under section 10A shall be approved by the Cabinet; and the Chief Fuels Inspector shall cause to be published in such medium as he determines a summary of such methodology.

10E. The Cabinet may make regulations in relation to the exercise of the functions of the Chief Fuels Inspector specified under section 10A and generally for matters connected thereto.

Regulations relating to section 10A

10F. (1) An importer shall, at the request of the Chief Fuels Inspector, provide to the Chief Fuels Inspector -

Importer to provide information required for fuel data

- (a) information on the price for all fuel imported and sold by the importer; and
- (b) the pricing methods utilised by the importer in the sale of fuel to operators and consumers,

for such date or periods as the Chief Fuels Inspector shall specify and the importer shall provide the information to the Chief Fuels Inspector on or by the date specified in the request.

(2) Information relating to subsection (1) may include -

- (a) first costs;
- (b) cost of freight;
- (c) insurance costs;
- (d) brokerage costs;
- (e) custom duties;
- (f) estimates of quantity and type of fuel in stock;
- (g) amount and type of fuel nominated to be imported in the next shipment; and
- (h) such other information as is prescribed.

10G. (1) An importer who-

Failure of importer to provide information

- (a) fails or refuses to provide the information requested by the Chief Fuels Inspector under subsection (1); or
- (b) being required to furnish information or to supply particulars under subsection (1), knowingly or recklessly makes any statement relating to the information or particulars which is false or misleading in any material particular or furnishes information or supplies particulars which are false or misleading in any material particular or who practises any other deception in furnishing the information or supplying the particulars,

commits an offence and is liable on summary conviction to a fine of \$250,000 or to imprisonment for a term of one year or to both; and if the offence is a continuing one, to an administrative penalty of \$10,000 for every day or part of a day during which the offence has continued.

(2) In addition to the penalty under subsection (1)-

- (a) the Government may bring civil proceedings against an importer for the purpose of obtaining a court order requiring the importer to provide all information requested under section 10F; and
- (b) the relevant import permit of the importer may be suspended, or cancelled in accordance with the procedure prescribed by this Law.

Access to public records 10H. Where the Chief Fuels Inspector is of the opinion that, in order to carry out his function under section 10A, he requires access to certain custom records of the Customs Department relating to the importation of fuel, he shall, in writing, after consultation with the Chief Officer, require the Collector of Customs to provide such copies of the customs records as are specified in the request; and the Collector of Customs shall cause the copies of the records to be provided to the Chief Fuels Inspector.

Immunity 10I. Neither the Collector of Customs nor any public officer of the Customs Department directed by the Collector of Customs to provide copies of records under section 10H, shall be liable in damages for anything done or omitted in the discharge or purported discharge of their duty to provide such records under section 10H, unless it is shown that the act or omission was in bad faith.

Confidentiality 10J. (1) Subject to subsection (2), individual data collected by the Chief Fuels Inspector under section 10F and 10H, whether they refer to natural or legal persons, are strictly confidential and shall be used exclusively for the purposes of section 10A.

(2) Information provided under section 10F and 10H shall not be disclosed by the Chief Fuels Inspector in identifiable form to any person other than the Chief Officer and the Ministers and members of the Cabinet.

Identification cards of inspectors 11. The Chief Fuels Inspector and the inspectors shall be issued by the Board with an identification card which the Chief Fuels Inspector and the inspectors shall produce, if practicable, on each occasion before they proceed to act pursuant to this Law.

Avoidance of pollution and safe conduct of activities 12. (1) The operator of any regulated premises-

- (a) shall take all reasonable precautions for the prevention of-
 - (i) tampering, theft or unauthorised access;
 - (ii) any fire or explosion;
 - (iii) any release or spillage; or
 - (iv) any damage to property or danger to the public incurred by an accident, involving dangerous substances in the ownership, control or possession of that person; and

- (b) shall not abandon, discard or otherwise neglect to dispose safely of any dangerous substances in the ownership, control or possession of that person.

(2) A person shall not without lawful authority or excuse (the burden of proving which is on that person) do anything in or near any premises on which dangerous substances are located which causes or is likely to cause an accident involving dangerous substances.

(3) A person who, in or at any regulated premises or in any permitted vehicle, carries out any work involving the installation, alteration, repair, maintenance or testing of equipment, piping, fittings or appliances shall take all reasonable precautions to ensure that the equipment, piping, fittings or appliances are safe for use or will not cause or contribute to a fire, explosion, release or spillage involving dangerous substances at those regulated premises or in that permitted vehicle.

(4) An operator who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$20,000 or to imprisonment for one year or to both.

(5) A person who contravenes subsections (2) or (3) commits an offence and is liable on summary conviction to a fine of \$20,000 or to imprisonment for one year or to both.

(6) It shall be a defence for an operator who is charged with an offence under this section to prove that-

- (a) he issued appropriate instructions and used all reasonable precautions to ensure compliance with subsection (1);
- (b) the offence was committed without his knowledge; and
- (c) he could not by the exercise of reasonable diligence have stopped the commission of the offence.

13. (1) An operator shall report any accidental release or spillage of dangerous substances of a prescribed amount to the emergency services in the Islands as soon as is practicable but no later than 24 hours after becoming aware of the release or spillage and such emergency services, as soon as possible after receiving such report, shall give details of the report to the Chief Fuels Inspector who shall take such action as is necessary in the circumstances.

Reporting of pollution
to Chief Fuels Inspector

(2) The report under subsection (1) shall include the following -

- (a) the amount and type of the dangerous substance that was released or spilled;
- (b) a description of the circumstances of the release or spillage;
- (c) the action being taken to mitigate injury to persons or harm to the environment; and

- (d) any measures being taken to prevent such a release or spillage in the future.

(3) Where any accidental release or spillage involving dangerous substances has occurred at regulated premises or from a permitted vehicle, the operator shall take all reasonable action to ensure that no person disturb, move or remove any wreckage or debris resulting from the release or spillage except with the permission and in accordance with any directions of the Chief Fuels Inspector.

(4) Nothing in subsection (3) shall prohibit a person from disturbing, moving or removing any wreckage or debris –

- (a) to rescue an injured person;
- (b) to recover the body of a person;
- (c) to extinguish any fire which results from the release or spillage;
- (d) to take any reasonable precautions to prevent injury or damage to persons or property in the vicinity of an explosion or fire; or
- (e) to reduce environmental damage.

(5) An operator who fails to make a report in accordance with this section commits an offence and is liable on summary conviction to a fine of \$20,000 or to imprisonment for a term of one year or to both.

Check of regulated
premises by the Chief
Fuels Inspector

14. (1) The Chief Fuels Inspector shall investigate complaints of violations of this Law and, on a regular basis, make routine checks of regulated premises to ensure compliance therewith and for that purpose he (or an inspector authorised by him) shall-

- (a) visit any regulated premises -
 - (i) in the case of a routine check, after giving at least 24 hours' notice in writing; or
 - (ii) in the case of investigating a complaint, without notice, at any time during the working hours of the particular regulated premises and inspect the regulated premises and any container, equipment, fittings, piping or appliance that he believes on reasonable grounds is or are being used or is or are likely to be used or has or have recently been used for or in connection with the supply, transfer, storage, transport, sale, handling or use of dangerous substances;
- (b) without payment, take or require the manager or occupier of any regulated premises to give to him samples of substances or articles that are or that he suspects to be dangerous substances or the ingredients of such dangerous substances for examination and testing;

- (c) seize any dangerous substances or any container containing such dangerous substances that he believes on reasonable grounds are or is being used or are or is likely to be used or have or has recently been used for or in connection with the supply, transfer, storage, transport, sale, handling or use of such dangerous substances where he believes on reasonable grounds that this Law has been contravened by means or in relation to those dangerous substances or that container and detain and remove to some suitable place any such dangerous substances or container so seized;
- (d) require the production of any relevant documents and inspect, examine and make copies of or extracts from them or remove them to make a copy or extract; and
- (e) take such photographs or audio or visual recordings as he considers necessary.

(2) The Chief Fuels Inspector may require the operator of regulated premises or any person employed in regulated premises to comply with any written direction not inconsistent with this Law which the Chief Fuels Inspector believes on reasonable grounds is necessary to ensure the safety of persons or property.

(3) A person who wilfully obstructs or delays the Chief Fuels Inspector in the exercise of his powers under this section commits an offence and is liable on summary conviction to a fine of \$20,000 or to imprisonment for a term of one year or to both.

15. (1) The Chief Fuels Inspector is authorised to take affidavits for any purpose relating or incidental to the exercise of his power, authority or discretion or the discharge of his functions.

General duties and
powers of the Chief
Fuels Inspector

(2) The Chief Fuels Inspector's duties and responsibilities also include –

- (a) drafting operating permits;
- (b) acting on behalf of the Board as its sole enforcement authority in discharge of its functions under this Law;
- (c) assessing and collecting fees for operating permits;
- (d) as a condition of an operating permit, at regular intervals during the period of such permit, inspecting those regulated premises which are storage terminals, utility companies commercial bulk storage facilities and retail outlets to assess-
 - (i) documented safety and environmental information relating to chemical hazard information, equipment design information, design codes and standards employed by regulated premises;

- (ii) emergency preparedness plans, co-ordination and drills;
 - (iii) standardised employee training programmes at regulated premises;
 - (iv) the implementation of safety and environmental management systems at regulated premises;
 - (v) formalised maintenance programmes with schedules and documented results of inspections or tests; and
 - (vi) the proper management of pipeline operations including proper marking, corrosion protection and release detection features;
- (da) as a condition of an operating permit, at regular intervals during the period of such permit, inspecting all regulated premises to-
- (i) assess the integrity of containers, pipelines and permitted vehicles;
 - (ii) assess the condition of secondary containment dikes, berms or impoundments;
 - (iii) assess spill reporting with root-cause investigation and corrective action;
 - (iv) test the reliability of release detection equipment and emergency controls systems;
 - (v) assess the safety of transporting fuel to and from the premises; and
 - (vi) assess the proper management of above and underground storage tanks including secondary containment, release detection and inventory control systems;
- (e) participating as a member of the Emergency Response and Marine Spill Response Teams;
- (f) overseeing the preparation of emergency plans for regulated premises other than private residential homes;
- (g) attending and reporting to the ministry on the effectiveness of emergency plan exercises and arranging for regular exercises at regulated premises other than private residential homes;
- (h) maintaining a register and location map of all permitted premises including above and below ground pipelines carrying dangerous substances;
- (i) being available as needed for all planning applications involving premises at which dangerous substances are handled or stored;
- (j) being available to provide expert advice to other government agencies on emergency preparedness plans and the safe handling storage, transportation and use of dangerous substances;
- (k) developing plans and budgets as may be required for the carrying out of the functions under this Law;

- (l) reporting periodically to the Board on the storage and handling of dangerous substances in the Islands with respect to progress made, significant lapses and future plans; and
- (m) any other responsibility or duty imposed on him by the Law or by regulations under this Law.

(3) The Board shall submit the reports of the Chief Fuels Inspector made to it under subsection 2(1) to the Chief Officer of the Ministry as soon as possible after receiving such reports.

16. (1) For the purposes of the enforcement of this Law the Chief Fuels Inspector may, where he is of the opinion that any steps are required to be taken by any operator to ensure compliance with this Law or of any regulations made hereunder, serve upon that person a notice, hereafter referred to as a “remedial notice”.

Remedial notices

(2) A remedial notice shall-

- (a) state the requirement of this Law or regulations to which it relates;
- (b) include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates; and any such directions may be framed so as to afford the person on whom the notice is served a choice between different ways of remedying the contravention or matter; and
- (c) state the time within which such steps shall be taken.

(3) Without prejudice to the generality of subsection (1), a remedial notice may require –

- (a) the cessation, immediate or otherwise, of any activity, operation or process;
- (b) the vacation, immediately or otherwise, of any regulated premises;
- (c) the alteration of any regulated premises or permitted vehicle; or
- (d) the introduction of such temporary measures as may be expedient pending the institution or completion of permanent measures.

17. (1) A person on whom a remedial notice is served may within a period of 14 days appeal by notice to the court; and on such an appeal the court may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the court may in the circumstances think fit.

Appeal against a remedial notice

(2) Where an appeal under this section is brought against a remedial notice within the period allowed under subsection(1) then-

- (a) in the case where the notice requires any action under section 16 (3) (c) or (d), the bringing of the appeal shall have the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal; and
- (b) in the case where the notice requires any action under section 16 (3) (a) or (b), the bringing of the appeal shall have the same effect as in paragraph (a) only where the appellant so applies and the court so directs.

Officers of the Police Service or Fire Brigade may assist Chief Fuels Inspector

18. Any constable or officer of the Fire Brigade may, where requested to do so by the Chief Fuels Inspector, assist him in the execution of any of his powers or functions.

Liability for accident at regulated premises

19. (1) Notwithstanding any other law to the contrary, where, with respect to and in consequence of any accident at regulated premises, a report is made by an authority appointed to hold a formal investigation under any law, or a coroner's inquest is held, and it appears from the report or from the proceedings at the inquest that this Law or any regulations made hereunder were not complied with at or before the time of the accident, summary proceedings against any person liable to be proceeded against in respect of such non-compliance may be commenced any time within six months after the making of the report or the conclusion of the inquest as the case may be.

(2) A copy of every report with respect to and in consequence of any accident in regulated premises which is made by an authority appointed to hold a formal investigation under any law shall be sent by that authority to the Chief Fuels Inspector.

Alterations at a regulated premises

20. (1) In any premises the whole or any part of which has been let to or is being used by an operator ("the lessee") as regulated premises –

- (a) where an agreement between the lessor and the lessee of the regulated premises prevents one or other from making alterations in the premises which are necessary to conform to any requirement or standard imposed by or under this Law or any regulations made hereunder, the court, upon the application of either party in an action joining the other, may, after a hearing, issue an order setting aside or modifying the agreement to permit the making of the necessary alterations; and
- (b) where alterations in the premises are necessary to conform to any requirement or standard imposed by this Law or any regulations made hereunder, the court, upon the application of the lessor or the lessee of the regulated premises in an action joining the other,

may, after a hearing, issue an order apportioning the expenses of any such alterations.

(2) Where an explosion, spillage or release required to be reported under section 14 has occurred the operator shall obtain the approval of the Chief Fuels Inspector before commencing reconstruction work or repairs on or to the regulated premises where it occurred.

(3) The operator shall not allow any further supply of dangerous substances in or at the regulated premises unless the Chief Fuels Inspector consents in writing.

21. (1) Where-

Engaging in activities
under this Law without
an operating permit

- (a) the operator of regulated premises operates or occupies or causes such regulated premises to be operated or occupied without a valid operating permit; or
- (b) the operator of a permitted vehicle operates or causes such vehicle to be operated without a valid operating permit,

he commits an offence and is liable on summary conviction, to a fine of \$50,000 or to imprisonment for a term of five years or to both and if the offence is a continuing one to a further fine not exceeding \$10,000 for every day or part of a day during which the offence has continued.

(2) The Court may also on application-

- (a) make an order for forfeiture of any equipment used for the commission of the offence; and
- (b) grant an order restraining the accused from continuing to engage in similar activities.

22. (1) A contravention of any regulation made under this Law is an offence against this Law and punishable either in accordance with the regulations or with this Law.

Further offences

(2) A person who for any purpose connected with this Law, makes a statement or representation which he knows is not correct or true commits an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of one year or to both.

(3) Where no punishment is specifically prescribed a person who contravenes this Law or a regulation made under this Law commits an offence and is liable on summary conviction to a fine of \$4,000 or to imprisonment for a term of six months or to both.

(4) Where an offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to-

- (a) a director, manager, secretary or other similar officer of the body corporate; or
- (b) any person who was purporting to act in any such capacity,

such person as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(5) In subsection (4) "director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(6) An operating permit is not required –

- (a) in relation to fuel carried by ships and aircraft for purposes of their own propulsion;
- (b) *repealed by section 16 of Law 19 of 2015;*
- (c) *repealed by section 16 of Law 19 of 2015;*
- (d) by customs officers and constables acting in the course of their duty;
- (e) by persons acting for the purpose of averting danger arising from fire, oil spillage or other hazard happening likely to or capable of causing damage to persons or property;
- (f) by mains engineers acting under the Electricity Law (2003 Revision) and persons under their control when so acting;
- (g) the Port Director acting under the Port Authority Law (1999 Revision) and persons under his control when so acting;
- (h) by oil spill responders acting in compliance with the National Oil Spill Contingency Plan; or
- (i) by any person specifically exempted by the Governor by order published in the Gazette.

2003 Revision

1999 Revision

Order for payment of compensation

23. (1) Where a person is convicted of an offence under this Law, the Court may make an order for the payment of compensation to any person for any damage caused by the offence.

(2) Any claim by a person for damages sustained by reason of the offence shall be deemed to have been satisfied to the extent of any amount which has been paid to him under an order for compensation, but the order shall not prejudice any right to a civil remedy for the recovery of damages beyond the amount of compensation paid under the order.

Administrative penalties

23A. Cabinet may make regulations providing for an administrative penalty system to apply to any offence under this Law and the regulations and for all matters that are necessary to be prescribed for giving effect to such system.

24. The Cabinet may make such regulations as are required for the effective Regulations
implementation of this Law including regulations dealing with -

- (a) safety standards and precautions in relation to the handling, storage and transportation of dangerous substances;
- (b) safeguards against pollution by dangerous substances;
- (c) procedures to be followed in the handling, storage and transportation of dangerous substances;
- (ca) safety standards and precautions in relation to pipelines and dangerous substances contained in pipelines;
- (d) further responsibilities, powers and administration of-
 - (i) the Chief Fuels Inspector and inspectors;
 - (ii) the Board; and
 - (iii) the Committee;;
- (e) the minimum standards for containers, permitted vehicles and underground pipes;
- (f) rates of compensation for damage to third parties or the general public arising from the handling, storage or transportation of dangerous substances;
- (g) the establishment, management and payment of compensation for way leaves;
- (h) a written guarantee to the Government or compulsory insurance cover to be taken out by persons engaged in the handling, storage or transportation of dangerous substances against claims for damages by third parties or the general public;
- (i) the establishment of a Compensation Assessment Tribunal for assessment of compensation claims arising from the handling, storage or transportation of dangerous substances;
- (j) provision for appeals against the decisions of the Compensation Assessment Tribunal;
- (k) enabling the Attorney General on behalf of the public to claim damages for pollution or other injury to public amenities arising from the handling, storage or transportation of dangerous substances;
- (ka) the licensing of contractors to perform installation, repair, maintenance and related work in or on regulated premises and permitted vehicles;
- (kb) matters related to the operation and control of regulated premises such as terminal facilities, bulk storage facilities and depots;
- (kc) matters relating to divestment, sale and transfer of ownership or shares of certain prescribed types of regulated premises including terminals, retail facilities and bulk depots;

- (kd) matters relating generally to permitted vehicles including the inspection of such vehicles by the Chief Fuels Inspector.
- (l) penalties for contravention of such regulations; and
- (m) any other matter required to be prescribed or for the better carrying out of the objects and purposes of this Law.

Costs under this Law

25. All costs, charges and expenses incurred in or in connection with the handling, transporting, storing, reconditioning, destroying or otherwise disposing of or dealing with any dangerous substances seized and detained under this Law are recoverable from the person convicted of an offence under this Law in relation to those goods or the person charged with an offence against this Law of which the person is found guilty or to which the person pleads guilty and in respect of which a conviction is not recorded.

Emergency powers of
the Chief Fuels
Inspector

26. (1) The Chief Fuels Inspector or a fuels inspector may, with the assistance of a police constable or officer of the Fire Brigade as the case may require, at any time, enter premises or a vehicle if he believes, on reasonable grounds, that the circumstances are of such seriousness and urgency as to require immediate entry to the premises or vehicle without notice or permission of the operator of the premises or vehicle.

(2) For the purposes of subsection (1), the Chief Fuels Inspector or a fuels inspector-

- (a) may direct the driver of the vehicle to move the vehicle to a place to which the public has access, provided that to do so would pose no risk or danger to any person;
- (b) may exercise powers of inspection under this Law in relation to the vehicle at the place; and
- (c) shall not detain the vehicle for longer than is reasonably necessary to exercise his powers under this Law.

(3) Where the Chief Fuels Inspector or the fuels inspector is of the opinion after entry under this section that measures are necessary to prevent, or avert danger of, the release or spillage of dangerous substances, he shall serve an emergency notice in writing on any person over the age of 18 who is in the premises or vehicle to immediately adopt any measures he considers necessary to prevent or avert danger of, the release or spillage of dangerous substances.

(4) A notice under subsection (3) shall specify the measures to be taken and shall be served personally by the Chief Fuels Inspector or by the fuels inspector who shall explain the matter to the persons concerned and superintend or assist in the carrying out of the measures specified.

(5) A person who fails or refuses to comply with a notice under subsection (3) or offers or threatens any resistance or obstruction to the Chief Fuels Inspector or the fuels inspector in the carrying out of his functions under this

section commits an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of one year or to both.

27. No action for damages may be brought against-

Immunity

- (a) the Chief Fuels Inspector;
- (b) any inspector;
- (c) any member of the public acting at the request of the Chief Fuels inspector or any inspector;
- (d) any constable or officer of the Fire Brigade acting under the direction of the Chief Fuels Inspector; and
- (e) the Crown,

in respect of death, injury or loss incurred by any person occasioned in the course of carrying out any duty under this Law relating to any fire or explosion or any release or spillage involving dangerous substances unless it can be established that there was negligence in carrying out such duty.

28. The Petroleum Handling and Storage Law (1996 Revision) is repealed.

Repeal

29. This Law shall operate without prejudice to-

Saving of existing laws

- (a) any powers conferred on the Chief Fire Officer or any officer by the Fire Brigade Law (2006 Revision); or
- (b) any powers conferred on the Director of Labour or any officer under the Labour Law (2011 Revision).

2006 Revision

2011 Revision

30. (1) Subject to subsection (2), the Chief Fuels Inspector, the fuel inspectors and any other public officer employed in the office of the Chief Fuels Inspector under this Law on the 7th February, 2017, shall become employees of the Office on terms and conditions of employment no less favourable than those that applied to the offices of those persons in their employment in the ministry except –

Transitional provisions-
transfer of public
officers to the Office

- (a) to the extent other terms and conditions are agreed between such employees and the Office; and
- (b) that disciplinary matters shall be dealt with in accordance with the Labour Law (2011 Revision) and the disciplinary rules and procedures of the Board and not under the Public Service Management Law (2017 Revision).

2011 Revision

(2) The remuneration, benefits and other budgetary expenses relating to the Chief Fuels Inspector, the fuel inspectors and any other public officer employed in the office of the Chief Fuels Inspector shall continue to be paid out

2017 Revision

of the revenue of the Islands until such date as shall be provided by Order made by Cabinet, but no later than 31 December, 2017.

Publication in consolidated and revised form authorised by the Cabinet this 22nd.day of May, 2017.

Clerk of Cabinet

(Price \$5.60)