

**A BILL**

**entitled**

**CLEAN AIR AMENDMENT ACT 2024**

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

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

**Citation**

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

**Amends section 2**

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

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“approved air contaminant measurement methodologies and processes” means the methodologies and processes as prescribed;

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

“D/T limits” means the dilution of an odour sample with odourless air to the point where the odour cannot be distinguished from odourless air by the majority of at least three trained inspectors;

“nuisance odour” means an offensive odour being detected by trained inspectors at dilution levels that are more diluted than the D/T limits as prescribed;

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

### **Amends section 6**

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

“(ba) subject to the considered installation of abatement equipment for the purposes of preventing offensive odours meeting the definition of nuisance odours as prescribed in the regulations;

(bb) subject to a condition that, in installing the controlled plant, the operator shall use the best available technologies that are available to that industry for preventing or, where that is not practicable, reducing nuisance odours from the controlled plant;”.

### **Amends section 8**

4 Section 8 of the principal Act is amended by inserting the following after subsection (2)—

“(3) A person who proposes to operate a controlled plant under paragraph 2 of the First Schedule shall, as directed by the Authority, be required to make an application to the Authority in the prescribed form.”.

### **Amends section 9**

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

“(ba) subject to the intended installation of operations and abatement equipment used for the purposes of preventing offensive odours

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meeting the definition of nuisance odours as prescribed in the regulations;

- (bb) subject to a condition that, in operating the controlled plant, the operator shall use the best available technologies that are available to that industry for preventing or, where that is not practicable, reducing nuisance odours from the controlled plant;”.

### **Amends section 11**

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

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

“(vi) the approved air contaminant measurement methodologies and processes;”;

- (b) in paragraph (ha) by deleting “offensive odour”;

- (c) by inserting after paragraph (ha) the following paragraphs—

“(hb) prescribing, after consultation with the Chief Fire Officer, the techniques to minimize offensive odour;

(hc) prescribing, after consultation with the Chief Fire Officer, offensive odour detection protocols;

(hd) prescribing, after consultation with the Chief Fire Officer, offensive odour consideration criteria;

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

### **Amends section 12**

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

- (a) in paragraph (a)(iv) by deleting “offensive odours” and inserting “nuisance odours”;

- (b) by inserting after paragraph (b)(ii) the following paragraph—

“(c) that a nuisance odour—

(i) is or can reasonably be expected to be, injurious to public health or welfare; or

(ii) unreasonably interferes with the enjoyment of life or use of the property, considering the character and degree of injury to, or interference with, the health, general welfare, property or use of property of the people affected and the location of the pollution source and character of the area or neighbourhood affected.”.

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### Inserts sections 12A to 12D

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

#### **“Air Quality Action Plan request**

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

(2) The plan in subsection (1) shall—

- (a) contain the information as required in the Fourth Schedule;
- (b) describe the measures intended to ensure compliance with the maximum concentration of an air contaminant as prescribed by regulations within the shortest possible time;
- (c) include measures so as to be within the maximum limits;
- (d) provide any further information as the Minister may require.

(3) The inspector shall send the notice to the person granted an operating license under section 9 by registered mail or electronic mail, and the notice shall indicate—

- (a) the period, not longer than 3 years, which the Air Quality Action Plan is to cover;
- (b) the date, not later than 90 days, or such extended time as agreed between the inspector and the licensee of the controlled plant, by which the Air Quality Action Plan is to be sent to the inspector;
- (c) the form and content required;
- (d) any other guidance or instruction concerning the content and process.

#### **Air Quality Action Plan consultations**

12B The Minister shall hold, for each Air Quality Action Plan received before the stipulated deadline at least one public consultation, whether alone or together with a consultation in respect of other proposals.

#### **Air Quality Action Plan review and approval**

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

(2) The Minister may approve the Air Quality Action Plan if he considers that the final draft plan uses the best available technologies to meet the purposes of the Act.

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### **Publication of Air Quality Action Plan**

12D The Minister shall publish by notice in the Gazette an Air Quality Action Plan approved under section 12C for the period during which the Plan applies.

### **Amends section 13**

9 Section 13 of the principal Act is amended—

(a) by inserting after subsection (1)(d), the following paragraph—

“(e) that an Air Quality Action Plan approved under section 12C has not been followed;

(b) in subsection (2), by inserting after the words “or (d)” the words “or (e)”.

### **Amends section 26**

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

### **Amends First Schedule**

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

(a) by renumbering the opening paragraph as paragraph 1;

(b) by inserting the following after paragraph 1—

“2 Notwithstanding the provisions of paragraph 1, the definition of a controlled plant for a facility for spray painting vehicles or machinery under subparagraph (gc) includes inflatable structures and open air spray painting operations that are performed on a retail sale or service basis or by a commercial enterprise.”.

### **Amends Third Schedule**

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

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

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

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

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

### **Inserts Fourth Schedule**

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

**“FOURTH SCHEDULE**

(Section 12A)

**INFORMATION TO BE INCLUDED IN THE  
AIR QUALITY ACTION PLAN**

- 1 Overview of the issues identified, impacts, complaints, causes and mitigation measures implemented prior to the considered need for an Air Quality Action Plan.
- 2 Monitoring data from the vicinity of the controlled plant and verified and validated complainant in relation to the air contaminants, time-periods and averaging as provided in the Regulations.
- 3 Modelling data of the emissions from the controlled plant and inferred concentrations of air contaminants in the ambient air with comparison to the Regulations.
- 4 Assessment of the equipment, components and consumables that are considered to be causing the exceedances of air contaminants over the limits provided in the Regulations.
- 5 Assessment of the remediation and mitigation options available to reduce the causes of exceedances of air contaminants in the ambient air. Options to include all options discussed with the inspector, Minister or at any public meetings.
- 6 Cost-effectiveness assessment of the above remediation and mitigation options to address air contaminant exceedances relative to the concentrations provided in the Regulations. Cost-effectiveness to include capital and operational costs, including consumables used, additional wastes generated and their subsequent disposal.
- 7 Assessment of non-air quality impacts by the controlled plant to the local environment, including socio-economic impact, noise, odour, waste management, etc.
- 8 Prioritisation of all mitigation and remediation options provided and timescales for their proposed implementation. This should also include all regulatory requirements to implement the proposed changes (ie. Department of Planning, Clean Air Rules - amending a controlled plant, etc.).”

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### **Transitional provisions**

14 (1) A construction permit granted under section 6 or an operating licence granted under section 9 shall not be invalidated by the coming into operation of this Act.

(2) The holder of a construction permit in subsection (1) shall, within a six-month period from the commencement of this Act, submit documentation showing compliance with sections 6(3)(ba) and 6(3)(bb) under this Act.

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

(4) A person carrying on an activity specified in paragraph 2 of the First Schedule immediately before the commencement of this Act shall submit an application to the Authority to carry on such activity under this Act during the period of 60 days beginning with the commencement of this Act.

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

### **Commencement**

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

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### **EXPLANATORY MEMORANDUM**

This Bill amends the Clean Air Act 1991 (the “principal Act”) to provide pollution reduction measures that address areas affected by poor air quality and nuisance odours caused by controlled plants; to update criminal penalties for contravention; and to provide for connected purposes.

Clause 1 provides a citation for the Bill.

Clause 2 sets out the definitions to be added to section 2 of the principal Act. Important definitions include:

- “best available technologies” which means the available techniques which are economically and technically viable for preventing or minimising emissions and impacts including nuisance odour on the environment.
- “nuisance odour” means an offensive odour being detected by trained inspectors at dilution levels that are more diluted than the D/T limits as prescribed.

Clause 3 amends section 6 of the principal Act to add criteria to the issuance of a construction permit. The Authority may issue a construction permit subject to two further criteria: firstly, to the considered installation of abatement equipment for the purposes of preventing nuisance odour meeting the requirements of nuisance odour requirements as prescribed in the regulations, and second, to a condition that the best available technologies available to that industry for preventing or reducing nuisance odours from the controlled plant are used.

Clause 4 amends section 8 of the principal Act to insert a new subsection (3) that requires a person who operates inflatable structures and open air spray painting operations that are performed on a retail sale or service basis or by a commercial enterprise as a controlled plant to, as directed by the Authority, make an application to the Authority.

Clause 5 amends section 9 of the principal Act to add criteria to the issuance of an operating licence. The Authority may grant an operating licence subject to operations and abatement equipment for the purposes of preventing offensive odours as prescribed in the regulations, and to make the granting of a licence subject to the operator using the best available technologies for preventing or reducing nuisance odours from the controlled plant.

Clause 6 amends the regulation-making power in section 11 of the principal Act to provide for regulations to be made with respect to air pollution standards and to the content of the Air Quality Action Plan. With respect to offensive odours, the Minister may make regulations with respect to the techniques to minimize offensive odour, offensive odour detection protocols and offensive odour consideration criteria.

Clause 7 amends section 12 of the principal Act to provide that an emission control order can be issued where a nuisance odour is or can reasonably be expected to be

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injurious to public health or welfare, or, the nuisance odour unreasonably interferes with the enjoyment of life or use of a property.

Clause 8 inserts new sections 12A to 12D to the principal Act which provide the procedure for the request, consultation, review, approval and publication of an Air Quality Action Plan as approved by the Minister.

Clause 9 amends section 13 of the principal Act to provide that a stop order can be granted where an approved Air Quality Action Plan has not been followed.

Clause 10 amends section 26 to provide that a person is liable upon conviction of an offence against the principal Act to imprisonment for a term not exceeding 6 months or a fine that is increased from \$5,000 to \$25,000 or both imprisonment and a fine.

Clause 11 provides for amendments to the First Schedule to the principal Act to include inflatable structures and open air spray painting operations that are performed on a retail sale or service basis or by a commercial enterprise to be considered as controlled plants for the purposes of the Act.

Clause 12 provides for amendments to the Third Schedule to the principal Act to provide for the cancellation, suspension and variation of licences based on the ground that a licensee has not followed an Air Quality Action Plan approved by the Minister under section 11C.

Clause 13 inserts a new Fourth Schedule into the principal Act with respect to information to be included in an Air Quality Action Plan.

Clause 14 provides for transitional provisions.

Clause 15 provides for commencement by Notice in the Gazette.