

L.N. 213 of 2001

**ENVIRONMENT PROTECTION ACT, 2001
(ACT NO. XX OF 2001)**

**Pollution Caused by Certain Dangerous Substances Discharged
Into the Aquatic Environment Regulations, 2001**

BY virtue of the powers conferred by articles 3, 9, 11 and 28 of the Environment Protection Act, 2001, the Minister for the Environment has made the following regulations:-

1. (1) The title of these regulations is the Pollution Caused by Certain Dangerous Substances Discharged into the Aquatic Environment Regulations, 2001.

(2) These regulations shall come into force on such date as the Minister responsible for the environment may by notice in the Gazette appoint, and different dates may be so appointed for the different provisions and different purposes of these regulations.

(3) A notice under sub-regulation (2) of this regulation may make such transitional provisions as appear to the Minister to be necessary or expedient in connection with the provisions thereby brought into force.

2. (1) For the purpose of these regulations and unless the context otherwise requires:-

“competent authority” means the Department for Environment Protection under the guidance of the Director for Environment Protection and such other body or person as the Minister responsible for the environment may by order in the Gazette prescribe and different bodies or persons may be designated as a competent authority for different provisions and different purposes of these regulations;

“discharge” means the introduction into the waters referred to in sub-regulation (2) hereof of any substances in List I or List II of the Annex, with the exception of -

- (a) discharges of dredgings,
- (b) operational discharges from ships in territorial waters,
- (c) dumping from ships in territorial waters;

“fresh-water limit” means the place in the watercourse where, at low tide and in

a period of low fresh-water flow, there is an appreciable increase in salinity due to the presence of sea water;

“inland surface water” means all static or flowing fresh surface water;

“internal coastal water” means waters on the land-ward side of the base line from which the breadth of territorial waters is measured, extending, in the case of watercourses, up to the fresh-water limit;

“pollution” means the discharge by man, directly or indirectly, of substances or energy into the aquatic environment, the results of which are such as to cause hazards to human health, harm to living resources and to aquatic ecosystems, damage to amenities or interference with other legitimate uses of water.

(2) Subject to regulation 9, these regulations shall apply to:

- (a) inland surface water;
- (b) territorial waters;
- (c) internal coastal waters; and
- (d) ground water.

3. (1) The competent authority shall take the necessary measures to eliminate pollution of the waters referred to in sub-regulation (2) of regulation 2 by the dangerous substances in the families and groups of substances in List I of the Annex.

(2) The competent authority shall take the necessary measures to reduce pollution of the said waters by the dangerous substances in the families and groups of substances in List II of the Annex, in accordance with these regulations.

4. (1) Any person who discharges into the waters referred to in sub-regulation (2) of regulation 2 any substances within List I shall require prior authorization by the competent authority.

(2) The licence issued by the competent authority shall lay down emission standards with regard to discharges of any such substance into the waters referred to in sub-regulation (2) of regulation 2 and, where this is necessary for the implementation of these regulations, to discharges of any such substance into sewers:

Provided that in the case of existing discharge of any such substance into the waters referred to in sub-regulation (2) of regulation 2, the person effecting such

discharge shall comply with the conditions laid down in the licence within the period stipulated therein. Such period shall not exceed the limits laid down in accordance with regulation 7.

(3) A licence by the competent authority may be granted for a limited period only, provided that it may be renewed, taking into account any changes in the limit values referred to in regulation 7.

5. (1) The competent authority shall apply a system of zero-emission to discharges into ground water of substances within List I.

(2) The provisions of these regulations relating to the substances belonging to the families and groups of substances in List II, hereinafter called "substances within List II", shall apply to ground water.

(3) Sub-regulations (1) and (2) hereof shall neither apply to domestic effluents nor to discharges injected into deep, saline and unusable strata.

6. (1) The competent authority shall in granting the licence pursuant to regulation 4, lay down emission standards to determine:

(a) the maximum concentration of a substance permissible in a discharge. In the case of dilution, the limit value provided for in paragraph (a) of sub-regulation (1) of regulation 7 shall be divided by the dilution factor;

(b) the maximum quantity of a substance permissible in a discharge during one specified period of time or more. This quantity may, if necessary, also be expressed as a unit of weight of the pollutant per unit of the characteristic element of the polluting activity (such as the unit of weight per unit of raw material or per product unit).

(2) The competent authority may, in each licence it grants, where necessary, impose more stringent emission standards than those resulting from the application of the limit values laid down pursuant to regulation 7, taking into account in particular the toxicity, persistence, and bioaccumulation of the substance concerned in the environment into which it is discharged.

(3) The competent authority shall refuse to grant a licence if the person who is effecting the discharges declares that he is unable to comply with the required emission standards, or if this situation is evident to the competent authority.

(4) If the emission standards are not complied with, the competent authority shall take all appropriate steps to ensure that the conditions of licence are fulfilled and, if necessary, that the discharge is prohibited.

7. (1) The competent authority shall lay down the limit values which the emission standards may not exceed for the various dangerous substances included in the families

and groups of substances within List I. These limit values shall be determined by:

(a) the maximum concentration of a substance permissible in a discharge, and

(b) where appropriate, the maximum quantity of such a substance expressed as a unit of weight of the pollutant per unit of the characteristic element of the polluting activity (such as the unit of weight per unit of raw material or per product unit). Where appropriate, limit values applicable to industrial effluents shall be established according to sector and type of product. The limit values applicable to the substances within List I shall be laid down mainly on the basis of -

(i) toxicity,

(ii) persistence,

(iii) bioaccumulation,

taking into account the best technical means available.

(2) The competent authority shall lay down quality objectives for the substances within List I. These objectives shall be laid down principally on the basis of the toxicity, persistence and bioaccumulation of the said substances in living organisms and in sediment, as indicated by the latest conclusive scientific data, taking into account the difference in characteristics between salt-water and fresh water.

8. (1) In order to reduce pollution of the waters referred to in sub-regulation (2) of regulation 2 by the substances within List II, the competent authority shall establish programmes, which upon implementation, shall apply the methods referred to in sub-regulations (2) and (3).

(2) The competent authority shall require that any person who discharges into the waters referred to in sub-regulation (2) of regulation 2 any of the substances within List II shall be in possession of a licence by the competent authority in which emission standards shall be laid down. Such standards shall be based on the quality objective, which shall be fixed as provided for in sub-regulation (3).

(3) The programmes referred to in sub-regulation (1) may also include specific provisions governing the composition and use of substances or groups of substances and products, and shall take into account the latest economically feasible technical developments.

(4) The programmes shall set deadlines for their implementation.

9. The competent authority shall take all appropriate steps to implement measures adopted by it, pursuant to these regulations, in such a way as not to increase the pollution of waters to which sub-regulation (2) of regulation 2 does not apply. The competent

authority shall, in addition, prohibit all acts which intentionally or unintentionally circumvent the provisions of these regulations.

10. The application of the measures taken pursuant to these regulations shall on no account lead, either directly or indirectly, to increased pollution of the waters referred to in sub-regulation (2) of regulation 2.

11. The competent authority shall draw up an inventory of the discharges into the waters referred to in sub-regulation (2) of regulation 2 which may contain substances within List I to which emission standards are applicable.

12. Any person shall be guilty of an offence under these regulations if:

(a) he fails to comply with any provision of these regulations or with any order lawfully given in terms of any provision of these regulations; or

(b) he contravenes any restriction, prohibition or requirement imposed by or under these regulations; or

(c) he acts in contravention of any of the provisions of these regulations; or

(d) he conspires or attempts, or aids, or abets, any other person by whatever means, including advertising, counselling or procurement to contravene the provisions of these regulations or to fail to comply with any such provisions, including any order lawfully given in terms of any of the provision of these regulations, or to contravene any restriction, prohibition or requirement imposed by or under the said regulations.

13. Any person who commits an offence against these regulations shall, on conviction, be liable:

(a) on a first conviction to a fine (*multa*) of not less than five hundred liri but not exceeding one thousand liri;

(b) on a second or subsequent convictions, to a fine (*multa*) of not less than one thousand liri, but not exceeding two thousand liri or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment:

Provided that whenever any person is found guilty of committing an offence under these regulations by means of a vehicle, the owner of the said vehicle, where applicable, is held liable in the same manner and degree.

Provided further that the court shall order any person who has been found guilty of committing an offence against these regulations to pay for the expenses incurred by the public entities and/or other persons acting on their behalf involved

in the implementation of these regulations and restitution of the environment as a result of the said offence, the revocation of the permit issued by the Police and the confiscation of the *corpus delicti*.

14. (1) The provisions of article 23 and subarticle (1) of article 30 of the Criminal Code shall, *mutatis mutandis*, apply to proceedings, in respect of offences against these regulations, so however that the disqualification from holding or obtain a licence, permit or authority shall in no case be for less than one year.

(2) Notwithstanding the provisions of article 370 of the Criminal Code, proceedings for an offence against these regulations shall be taken before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the case may be, and shall be in accordance with the provisions of the Criminal Code regulating the procedure before the said courts as courts of criminal judicature.

(3) Notwithstanding the provisions of the Criminal Code, the Attorney General shall always have a right of appeal to the Court of Criminal Appeal from any judgement given by the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) in respect of proceedings for any offence against these regulations.

15. The Annex to these regulations is being published in the English language with the English text of these regulations.

ANNEX

List I of families and groups of substances

List I contains certain individual substances which belong to the following families and groups of substances, selected mainly on the basis of their toxicity, persistence and bioaccumulation, with the exception of those which are biologically harmless or which are rapidly converted into substances which are biologically harmless:

1. organohalogen compounds and substances which may form such compounds in the aquatic environment.
2. organophosphorus compounds.
3. organotin compounds.
4. substances in respect of which it has been proved that they possess carcinogenic properties in or via the aquatic environment.
5. mercury and its compounds.
6. cadmium and its compounds.
7. persistent mineral oils and hydrocarbons of petroleum origin.
8. persistent synthetic substances which may float, remain in suspension or sink and which may interfere with any use of the waters.

List II of families and groups of substances

List II contains:

(a) substances belonging to the families and groups of substances in List I for which the limit values referred to in regulation 7 of these regulations have not been determined;

(b) certain individual substances and categories of substances belonging to the families and groups of substances listed below;

and which have a deleterious effect on the aquatic environment, which can, however, be confined to a given area and which depend on the characteristics and location of the water into which they are discharged.

Families and groups of substances referred to in the second indent

The following metalloids and metals and their compounds:

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|-------------|---------------|---------------|---------------|
| 1. zinc | 6. selenium | 11. tin | 16. vanadium |
| 2. copper | 7. arsenic | 12. barium | 17. cobalt |
| 3. nickel | 8. antimony | 13. beryllium | 18. thallium |
| 4. chromium | 9. molybdenum | 14. boron | 19. tellurium |
| 5. lead | 10. titanium | 15. uranium | 20. silver |

2. Biocides and their derivatives not appearing in List I.

3. Substances which have a deleterious effect on the taste and/or smell of the products for human consumption derived from the aquatic environment, and compounds liable to give rise to such substances in water.

4. Toxic or persistent organic compounds of silicon, and substances which may give rise to such compounds in water, excluding those which are biologically harmless or are rapidly converted in water into harmless substances.

5. Inorganic compounds of phosphorus and elemental phosphorus.

6. Non persistent mineral oils and hydrocarbons of petroleum origin.

7. Cyanides, fluorides.

8. Substances which have an adverse effect on the oxygen balance, particularly:

ammonia and nitrites.

Statement on Article 8

The provisions of these regulations shall *mutatis mutandis* apply to the discharge of waste water into the open sea by means of pipelines.