

THE PETROLEUM (QUALITY CONTROL) ACT

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SCHEDULE

THE PETROLEUM (QUALITY CONTROL) ACT

Acts
10 of 1990,
8 of 1996,
17 of 2001.

[17th May, 1990.]

1. This Act may be cited as the Petroleum (Quality Control) Act. Short title.

2. In this Act— Interpreta-
tion.

“diesel oil” means automotive diesel oil which—

- (a) is intended primarily for use in compression ignition engines;
- (b) has a flash point of over 140°F;
- (c) has, on distillation, a maximum boiling point below 725°F; and
- (d) meets such specifications as the Minister may, on the recommendation of the Petroleum Corporation of Jamaica, by order, prescribe;

“domestic kerosene” means kerosene which—

- (a) is intended for household lighting and cooking;
- (b) has a final boiling point which does not exceed 572°F;
- (c) has a minimum flash point of 100°F; and
- (d) meets such specifications as the Minister may, on the recommendation of the Petroleum Corporation of Jamaica, by order, prescribe;

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“inspector” and “analyst” mean a person designated as such pursuant to section 16;

“kerosene” means domestic kerosene and Turbo Jet Al Fuel;

“licence”—

(a) in relation to a licensed retailer means a licence to sell petroleum by retail pursuant to the relevant Act;

(b) in relation to a haulage contractor means a licence granted under this Act;

“licensed haulage contractor” means a person who is licensed under this Act to transport petroleum in bulk within the Island;

“licensed retailer” means a person licensed to deal in or sell petroleum by retail pursuant to the relevant Act and registered as such under this Act;

“motor gasoline” means gasoline, other than aviation gasoline, which—

(a) is intended for use primarily in spark ignition engines;

(b) has, on distillation, a final boiling point not greater than 437°F; and

(c) meets such specifications as the Minister may, on the recommendation of the Petroleum Corporation of Jamaica, by order, prescribe;

“petroleum” has the same meaning as in the relevant Act;

“prescribed vehicle” means a tank waggon or any other motor vehicle intended, adapted or used for the transportation of petroleum in bulk;

“relevant Act” means the Petroleum and Oil Fuel (Landing and Storage) Act;

“Turbo Jet A1 Fuel” means kerosene which—

- (a) is intended for use in aircraft turbine engines; and
- (b) has a minimum flash point of 100°F; and
- (c) meets the specifications for the time being applied by the Petroleum Corporation of Jamaica as its standards for Aviation Fuel Quality Requirements.

3.—(1) For the purposes of this Act, petroleum is contaminated if a sample of any category of petroleum to which this subsection applies displays characteristics which are inconsistent with the prescribed characteristics for that category of petroleum.

Contami-
nated
petroleum.

(2) Subsection (1) applies to the following categories of petroleum, motor gasoline, diesel oil, kerosene (whether domestic kerosene or Turbo Jet A1 Fuel) and such other categories of petroleum as may be prescribed.

(3) The Minister may make regulations—

- (a) for determining what deficiency in any of the normal constituents of any category of petroleum in a sample, or how the presence therein of any reagent, substance or colour; and

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- (b) for determining the circumstances in which and the extent to which a discrepancy between the actual contents of a prescribed vehicle and the particulars set out in the despatch note issued by the operator of a refinery or wharf in respect of petroleum delivered to that vehicle,

raises a presumption, until the contrary is proved, that petroleum is contaminated.

(4) Any licensed retailer or licensed haulage contractor who knows or has reason to suspect that any contaminated petroleum is in his possession or under his control shall forthwith make a report at the nearest police station or notify an inspector.

(5) Any person employed by a licensed retailer or licensed haulage contractor who knows or has reason to suspect that contaminated petroleum is on the premises, or in a prescribed vehicle, of his employer shall forthwith inform his employer and shall make a report at the nearest police station or notify an inspector.

(6) Any person who fails to perform any duty cast on him by subsection (4) or (5) shall be guilty of an offence and shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two hundred thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

17/2001
S. 2.

4.—(1) Subject to the provisions of this Act, no person shall sell petroleum by retail unless he—

Restrictions on retailing and transportation of petroleum. 17/2001 S. 3(a).

- (a) is a licensed retailer;
- (b) has insured his premises in respect of fire with an insurance company approved by the Minister after consultation with the Superintendent of Insurance; and
- (c) has public liability insurance.

(2) Subject to the provisions of this Act, no person shall engage in the business of transporting petroleum in bulk within the Island unless he is a licensed haulage contractor and is registered as such under this Act.

(3) Subject to the provisions of this Act, no person shall operate a prescribed vehicle as the driver thereof unless—

17/2001 S. 3(b).

- (a) he is a licensed haulage contractor and is registered as a driver under this Act; or
- (b) as respects any such vehicle—
 - (i) he is authorized by a licensed haulage contractor to drive the vehicle and is registered as a driver under this Act; and
 - (ii) the licensed haulage contractor has secured life insurance coverage on the life of that driver.

(4) A licensed haulage contractor shall not employ, authorize or permit any person to drive a prescribed vehicle unless that person is registered as a driver under this Act and the licensed haulage contractor has secured life insurance coverage in respect of that person.

17/2001 S. 3(c).

17/2001
S. 3(d).

(4A) Each haulage contractor shall, in addition to securing life insurance in respect of each driver employed to him, obtain insurance coverage, in an amount not less than the prescribed amount, with respect to damage of any kind to premises, injury to any person or otherwise which may occur during the conveyance of petroleum.

17/2001
S. 3(d).

(4B) In subsection (4A) the prescribed amount means not less than twenty million dollars in connection with any one incident or such other amount as the Minister may prescribe by order, subject to affirmative resolution.

17/2001
S. 3(e)(i).

(5) Every person who contravenes subsection (1), (2), (3), (4) or (4A) shall be guilty of an offence and shall be liable—

(a) on conviction on indictment in a Circuit Court, to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment;

(b) on summary conviction in a Resident Magistrate's Court, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

17/2001
S. 3(e)(ii).

Licensing
of haulage
contractors.

17/2001
S. 4.

5.—(1) Every application for a licence to operate as a haulage contractor shall be made to the Minister in such form and manner as may be prescribed by regulations or approved by the Minister and shall be accompanied by the prescribed fee.

(2) A licence under this section shall be granted for such period and subject to such conditions as may be specified therein.

(3) Where the Minister decides not to grant a licence under this section he shall notify the applicant in writing

of the decision and of the right of appeal conferred by section 13.

6.—(1) Where—

- (a) it appears to the Minister that a licensed haulage contractor has contravened any condition of his licence or the provisions of any rules made under section 18 (1) (a) of the relevant Act or of any regulations made under this Act; or
- (b) a licensed haulage contractor has not complied with the provisions of section 4 (2), (3), (4), and (4A); or
- (c) a licensed haulage contractor has been convicted of an offence under section 14 or 15,

Revocation
or suspen-
sion of
licence.

17/2001
S. 5(b).

the Minister may, by notice in writing, require that haulage contractor to show cause within such time as may be specified in the notice (not being less than fourteen days) why the licence should not be revoked or suspended.

(2) Where—

- (a) the licensed haulage contractor fails to show cause as required by subsection (1); or
- (b) the cause shown by him is inadequate in the opinion of the Minister,

the Minister may, by notice in writing to that haulage contractor, suspend the licence for such period as the Minister may consider necessary or, as the case may be, revoke the licence from such date as may be specified in the notice.

(3) The suspension or revocation of a licence under this section shall not in any way affect the liability of a haulage contractor in respect of any contravention of

section 14 or 15.

Registration
of licensed
retailers,
licensed
haulage
contractors
and drivers.

7.—(1) The Minister shall cause to be kept in such form as he may determine, a register to be known as the Register of Licensed Retailers, Licensed Haulage Contractors and Drivers.

(2) There shall be entered in the Register, the names and such other particulars as may be prescribed of every person whose registration has been approved pursuant to section 9.

Application
for registra-
tion.
17/2001
S. 6(a).

8. An application for registration under this Act shall be made to the Minister in such manner and contain such particulars and be accompanied by the prescribed fee and such documents, as may be prescribed.

Approval
of applica-
tion for
registra-
tion.

9.—(1) The Minister shall approve an application for registration if he is satisfied—

- (a) that the provisions of section 8 have been complied with;
- (b) that the applicant is a fit and proper person to be so registered; and
- (c) that, in the case of an application for registration as a licensed retailer or a licensed haulage contractor, the applicant is the holder of a valid licence issued under the relevant Act or under section 5 of this Act, as the case may be.

(2) Upon approval of an application for registration pursuant to this section the Minister shall furnish the applicant with a certificate of registration in the prescribed form.

(3) If the Minister is not satisfied as to any of the matters specified in subsection (1) he shall refuse to register the applicant and shall notify him in writing accordingly and inform him of the right of appeal conferred by section 13.

10.—(1) If any person registered under this Act—

(a) is convicted of an offence under this Act; or

(b) upon enquiry by the Minister has been found to have procured his registration under this Act on the ground of any misleading, false or fraudulent representation,

Cancellation or suspension of registration and removal from Register.

the Minister may, if he thinks fit, cancel the registration of that person or suspend the registration for such period as the Minister may determine.

(2) Where pursuant to subsection (1), the Minister cancels or suspends the registration of any person the Minister shall direct that—

(a) in the case of cancellation, the name and particulars of such person be removed from the Register; or

(b) in the case of suspension, that an appropriate entry be made in the Register.

(3) Where the Minister cancels the registration of any person he may fix a time before which that person shall not be eligible to apply for re-registration under this Act.

11. Where the Minister has exercised any of the powers conferred by section 10 in respect of any person he shall, within fourteen days, notify that person in writing of his decision and shall inform such person of the rights conferred by section 13. Notices.

Suspension of directions or orders of the Minister.

12. The Minister may, upon application made in the prescribed manner and within the prescribed time, direct that any direction or order given or made under section 10 shall be suspended until the expiration of the period within which the person affected by the direction or order may lodge an appeal under section 13 or if an appeal has been lodged within that period, until the appeal has been heard.

Appeals.

13.—(1) Any person aggrieved by a decision of the Minister to refuse to grant a licence under this Act or to suspend or revoke such licence may, within fifteen days after the date of notification of that decision, appeal to the Tribunal appointed under subsection (2) (hereinafter referred to as “the Tribunal”).

Schedule.

(2) The Minister shall appoint a Tribunal for the purpose of determining appeals and the provisions of the Schedule shall have effect as to the constitution of the Tribunal and otherwise in relation thereto.

(3) Nothing in this section shall be construed as requiring the Tribunal to hold any hearing.

(4) The Tribunal may, upon being satisfied that owing to absence from the Island, sickness or other reasonable cause, the person aggrieved was prevented from appealing within the period specified in subsection (1) may extend the period as may be reasonable in the circumstances.

(5) On determination of an appeal under this section, the Tribunal may make such order as it thinks fit.

Offences in relation to contaminated petroleum.

14.—(1) Any person who knowingly sells or offers for sale contaminated petroleum shall be guilty of an offence and shall be liable—

- (a) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment;

- (b) on conviction on indictment in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment. 17/2001 S. 7(a).

(2) Any person who knowingly delivers contaminated petroleum to a licensed retailer or to any other person for distribution (whether by sale or otherwise) shall be guilty of an offence and shall be liable—

- (a) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment;
- (b) on conviction on indictment in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment. 17/2001 S. 7(b).

(3) In proceedings under this section the defendant shall be deemed to have known that petroleum is contaminated if he could with ordinary care have ascertained the fact.

(4) Where any person is convicted of an offence under this section on a second occasion then—

- (a) any licence granted to that person under this Act or under the relevant Act and any registration of that person under this Act, shall, by virtue of that conviction, be automatically revoked; and
- (b) that person shall not be eligible to be granted a licence under this Act or the relevant Act or to be registered under this Act for a period of ten years next following the date of conviction.

Offence
of possession
of contaminated
petroleum.

17/2001
S. 8.

15.—(1) A licensed retailer, licensed haulage contractor or a person registered as a driver under this Act who has in his possession any contaminated petroleum shall, subject to subsection (2), be guilty of an offence and shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years.

(2) It shall be a defence to a person charged under subsection (1) to prove that—

- (a) he did not know or had no reason to suspect that the petroleum was contaminated; or
- (b) he knew of or had reason to suspect the contamination and made a report thereof pursuant to section 3 (4) or (5).

Designation
of
inspectors.

16.—(1) The Minister may designate qualified persons as analysts and as inspectors or for such other purpose as appears to him to be necessary or expedient for the purposes of this Act.

(2) An inspector shall be furnished with a certificate of appointment in the prescribed form and on entering any place or vehicle pursuant to subsection (1) of section 17 shall, if required to do so, produce the certificate to the person in charge of the place or vehicle.

(3) The designation of any person as an inspector pursuant to subsection (1) shall be published in the *Gazette*.

Powers
and
duties of
inspectors.

17.—(1) An inspector may at any time—

- (a) enter any place where he reasonably believes that petroleum is kept for sale or any vehicle which he reasonably believes to be used for the purpose of transporting petroleum in bulk and may—

- (i) examine such petroleum and take samples thereof, in such amount as may be prescribed, free of charge; and
 - (ii) examine such place or vehicle or anything which he reasonably believes to be used or capable of being used for the keeping or transporting of such petroleum;
- (b) open and examine any container that he reasonably believes contains petroleum for the purpose of sale or distribution or for the purpose of transportation in bulk;
- (c) seize and detain—
- (i) any petroleum in relation to which he reasonably believes any provision of the relevant Act or of this Act or any regulations made under either such Act has been contravened; and
 - (ii) any article or substance which he reasonably believes is likely to be used for the purpose of contaminating the petroleum;
- (d) prohibit the sale, distribution or transportation of any petroleum which appears to him to be contaminated;
- (e) give to the owner or person in charge of a place or vehicle entered pursuant to this subsection or to the owner or person in possession of any petroleum which he reasonably believes to be contaminated such directions as he considers necessary or expedient for preventing the sale or distribution of that petroleum;
- (f) exercise any such further powers, subject to such conditions or restrictions, as may be prescribed.

(2) Any petroleum seized under this Act shall be stored or kept in the vehicle or the place where it was seized or may, on his directions, be removed in that vehicle to any other place which he considers satisfactory for the purpose.

(3) An inspector may release any petroleum or article seized by him or remove the prohibition on sale, distribution or transportation of any petroleum imposed by him under this Act if he is satisfied that all the provisions of this Act and the relevant Act in relation thereto have been complied with.

(4) The owner or person in charge of the place or vehicle entered by an inspector pursuant to subsection (1) and every person found therein shall give the inspector all reasonable assistance in their power and shall furnish him with such information as he may reasonably require.

**Powers of
Minister
in case
of failure
to com-
ply with
directions.**

18.—(1) If any person to whom directions are given under section 17 fails to comply with any requirement of the directions then, without prejudice to any proceedings which may be taken against him in respect of an offence under this Act, the Minister may—

- (a) in the case of a place or vehicle entered pursuant to section 17, authorize in writing any person to take, on behalf of the person in default, such steps as the Minister considers necessary for securing compliance with that requirement; or
- (b) in the case of any petroleum which he reasonably believes to be contaminated, authorize an inspector to take or cause to be taken such steps as may be necessary to prevent the sale or distribution of such petroleum.

(2) The amount of any expenses reasonably incurred by authority of the Minister under subsection (1) shall be paid by the Minister and may be recovered without limit of amount in a Resident Magistrate's Court as a debt due to the Government from the person in default.

19. The Minister may make regulations for carrying into effect the provisions of this Act and, in particular but without prejudice to the generality of the foregoing, may make regulations—

Regulations.

- (a) with respect to the method of examination and testing of petroleum for contamination, including methods to be used in connection with the storage or transportation of petroleum and for the prevention of contamination;
- (b) with respect to the powers and duties of inspectors, analysts and other officers designated under this Act, the taking of samples, the seizure, detention and disposal of petroleum and any article referred to in section 17;
- (c) prescribing fees and forms in respect of any registration or licence under this Act; ^{17/2001} S. 9.
- (d) prescribing, controlling or approving the methods which may be used to prevent or mitigate the contamination of petroleum;
- (e) with respect to the licensing or registration of persons for the purposes of this Act;
- (f) prescribing the manner in which any enquiry under section 10 (1) (b) may be made;
- (g) prescribing anything required by this Act to be prescribed.

Offences.

20.—(1) Any person who—

(a) assaults or obstructs an inspector, analyst or any other officer acting in the execution of his duty under this Act;

(b) contravenes the provisions of subsection (4) of section 17 or any regulations made under this Act,

shall be guilty of an offence and shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two hundred thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

17.2001
S. 10(a).

(2) [*Deleted by Act 17 of 2001.*]

SCHEDULE

(Section 13)

The Tribunal

- | | |
|---|--|
| <p>1. The Tribunal shall, subject to paragraph 2, consist of three members appointed by the Minister, one of whom shall be appointed to be Chairman.</p> | <p>Constitution of Tribunal.</p> |
| <p>2. For the hearing of any appeal under this Act the Tribunal may consist of one member sitting alone if the appellant agrees.</p> | <p>Power of one member to sit alone.</p> |
| <p>3. The members of the Tribunal shall, subject to the provisions of this Schedule, hold office for such period not exceeding two years as the Minister may determine and shall be eligible for reappointment.</p> | <p>Tenure of office.</p> |
| <p>4. The Minister may appoint any person to act in the place of the Chairman or any other member of the Tribunal in the case of the absence or inability to act of the Chairman or other member.</p> | <p>Acting appointments.</p> |
| <p>5.—(1) Any member of the Tribunal other than the Chairman may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the Chairman, and from the date of the receipt by the Minister of such instrument that member shall cease to be a member of the Tribunal.</p> <p>(2) The Chairman may at any time resign his office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of receipt by the Minister of that instrument.</p> | <p>Resignations.</p> |
| <p>6. The Minister may at any time revoke the appointment of any member of the Tribunal if he thinks it expedient so to do.</p> | <p>Revocation of appointments.</p> |
| <p>7. If any vacancy occurs in the membership of the Tribunal such vacancy shall be filled by the appointment of another member.</p> | <p>Filling of vacancies.</p> |
| <p>8. The names of all members of the Tribunal as first constituted and every change in the membership thereof shall be published in the <i>Gazette</i>.</p> | <p>Publication of membership.</p> |
| <p>9. There shall be paid to the Chairman and other members of the Tribunal, in respect of each appeal, such remuneration, whether by way of honorarium, salary or fees, and such allowances as the Minister may determine.</p> | <p>Remuneration of members.</p> |

*PETROLEUM (QUALITY CONTROL)***Voting.**

10. Subject to paragraph 2, the decision of the Tribunal shall be by a majority of votes of the members, and in addition to an original vote, the Chairman shall have a casting vote in any case in which the voting is equal.

Power to regulate proceedings.

11. Subject to the provisions of this Act, the Tribunal shall regulate its own proceedings.

Office of Chairman or member of Tribunal not public office.

12. The office of Chairman or member of the Tribunal shall not be a public office for the purposes of Chapter V of the Constitution of Jamaica.