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**First Draft of Regulations
Consultancy – Drafting of Environmental Protection
Compliance and Enforcement Regulations**

“Private and Confidential”

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REGULATIONS
MADE UNDER
THE ENVIRONMENTAL PROTECTION ACT No. 11 of 1996

These regulations are made by me, in exercise of the powers conferred upon me, by section 68(1) of the Environmental Protection Act, Act No.11 of 1996.

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PART I – PRELIMINARY

Citation. 1. These Regulations may be cited as the Environmental Protection (Compliance and Enforcement) Regulations, 201...] and shall come into force on

Interpretation. 2. In these Regulations unless the context otherwise requires -

“Act” means the Environmental Protection Act, Act No. 11 of 1996;

“Agency” means the Environmental Protection Agency established under section 3 of the Act;

“Analyst” means a person or a member of a class of persons designated as an analyst under regulation 5;

“compliance” means state of conformity with the Act, these Regulations and specific environmental regulations;

“inspector” means the person appointed by the Agency in accordance with regulation 5 and includes the officers appointed and exercising powers under the Acts listed in Schedule 1;

“Inspection Report” means the report in writing prepared pursuant to the provisions of regulation 19;

“monitoring” means the continuous or periodic assessment of the actual and potential impact of any activity governed by the Act, these regulations, specific environmental regulations as well as permits, licences, authorisations, standards, codes of practice, [**prescribed process**] and other instruments issued and or granted under the Act;

“**non-compliance**” means failure to conform with the Act, these Regulations, specific environmental regulations as well as permits, licences, authorisations, standards, codes of practice, [**prescribed process**] and other instruments issued and or granted under the Act;

“specific environmental regulations” means the regulations identified in regulation 4 of these Regulations.

PART II – OBJECTIVES AND APPLICATION

Objectives.

3. The objectives of these Regulations are to -
 - (a) monitor, verify and ensure compliance with the provisions of the Act, these Regulations, specific environmental regulations as well as permits, licences, authorisations, standards, codes of practice, [**prescribed processes**] and other instruments issued and or granted under the Act; and
 - (b) enforce the provisions of the Act, these Regulations, specific environmental regulations as well as permits, licences, authorisations, standards, codes of practice, [**prescribed processes**] and other instruments issued and or granted under the Act.

Application.

4. These Regulations shall apply to the compliance with and enforcement of -
 - (a) The Species Protection Regulations 1999;
 - (b) The Environmental Protection (Air Pollution) Regulations

2000;

- (c) The Environmental Protection (Authorisation) Regulations 2000;
- (d) The Environmental Protection (Hazardous Wastes Management) Regulations 2000;
- (e) The Environmental Protection (Noise Management) Regulations 2000;
- (f) The Environmental Protection (Water Quality) Regulations 2000;
- (g) The Environmental Protection (Wildlife Management and Conservation) Regulations 2013;
- (h) The Environmental Protection (Litter Enforcement) Regulations 2013;
- (i) Permits, licences, authorisations, standards, codes of practice and other instruments issued and or granted under the Act; and
- (j) Such specific environmental regulations, codes of practice, guidelines, standards or other instrument enacted under the provisions of the Act.

PART III - INSPECTORS and ANALYSTS

- | | | | |
|--|----|-----|---|
| Designation/Appoint
ment of Inspectors
and Analysts | 5. | (1) | The Agency may appoint as many [Inspectors] as necessary with the prescribed qualifications and experience to carry out the functions assigned to them under the Act, these regulations and specific environmental regulations. |
| | | (2) | The Agency shall appoint as many Analysts as necessary with the prescribed qualifications and experience to carry out the functions assigned to them under the Act, these Regulations and specific environmental regulations. |
| Proof of Designation | 6. | (1) | Each person appointed shall under section [...] shall be issued with a certificate of authority, which shall be produced upon demand by any person affected by the exercise of any powers under the Act, these Regulations or specific environmental regulations by the Inspector or Analyst. |
| Register of
Inspectors | 7. | (1) | The Agency shall establish and maintain a register of Inspectors and Analysts for the purposes of these Regulations (in this section referred to as the ‘register of Inspectors and Analysts’). |
| | | (2) | The register of Inspectors and Analysts shall be maintained in such form (including electronic form) as the Agency considers appropriate. |
| | | (3) | The register of Inspectors and Analysts shall contain the name and contact details of each Inspector and such other information as may be determined from time to time by the Agency. |

**Functions of
Inspectors**

8. Inspectors may perform the following functions:
- (a) carry out inspections to detect and verify compliance with the Act, these Regulations and specific environmental regulations;
 - (b) monitor compliance with the Act, these Regulations, specific environmental regulations as well as permits, licences, authorisations, standards, codes of practice, [prescribed processes] and other instruments issued and or granted under the Act
 - (c) monitor compliance with the conditions of permits, licences, authorisations and other instruments issued and or granted under the Act or specific environmental regulations;
 - (d) monitor the activities of the holders of permits, licences, authorisations and other instruments issued and or granted under the Act or specific environmental regulations;
 - (e) monitor the pattern of use of environmental resources;
 - (f) conduct investigations with regard to violations of the Act, these Regulations, specific environmental regulations as well as permits, licences, authorisations, standards, codes of practice, [prescribed processes] and other instruments issued and or granted under the Act;
 - (g) design and conduct training programmes for stakeholders within Guyana;

- (h) provide information, guidance and advice regarding the compliance with the Act, these Regulations, specific environmental regulations as well as permits, licences, authorisations, standards, codes of practice, [prescribed process] and other instruments issued and or granted under the Act;
- (i) promote compliance with the Act, these Regulations, specific environmental regulations as well as permits, licences, authorisations, standards, codes of practice, [prescribed processes] and other instruments issued and or granted under the Act;
- (j) promote environmental awareness among stakeholders within the Guyana;
- (k) encourage understanding of the environment in Guyana;
- (l) support public relations activities regarding the environment in Guyana;
- (m) publish reports on environmental matters generally;
- (n) support the development of systems and standards to audit, plan and monitor compliance with the Act, these Regulations, specific environmental regulations as well as permits, licences, authorisations, standards, codes of practice, [prescribed processes] and other instruments issued and or granted under the Act;

- (o) Co-ordinate and liaise with stakeholders on matters compliance and enforcement activities with specific regulatory agencies and officers under Schedule 1;
- (p) prepare reports with regard to activities conducted pursuant to these Regulations;
- (q) discharge functions in a fair, predictable, consistent and impartial manner; and
- (r) perform such other functions as may be required under the Act, these Regulations, **specific** environmental regulations, or as directed by the Agency.

Functions of analysts

9. (1) An analyst shall be responsible for analysing or examining any sample submitted to him or her for analysis or examination in accordance with the provisions of the Act, the Regulations or specific environmental regulations.
- (2) An analyst exercising functions by virtue of the provisions of subsection (1) shall prepare a written report indicating the results of the analysis or examination.
- (3) A Report prepared pursuant to the provisions of subsection shall be submitted to the Agency.

PART IV – INSPECTIONS

- Exercise of Powers** 10. An Inspector, may exercise the powers conferred under these Regulations -
- (a) as part of a scheme of routine inspections;
 - (b) on the initiative of the Agency or the Inspector;
 - (c) as a result of statements, reports and information provided by the holders of permits, licences, authorisations and other instruments issued and or granted under the Act;
 - (d) upon information by any person who reasonably believes that that an breach/offence under the Act, these Regulations or specific environmental regulations is being or has been committed;
 - (e) where there are reasonable grounds to believe that [**a breach/an offence**] of the conditions of any permits, licences, authorisations, standards, codes of practice and other instruments issued and or granted under the Act has occurred, is occurring or is likely to occur; and
 - (f) On any other [**notice**] of any incident or occurrence causing or [**threatening serious or material environmental harm**].

**Powers in Relation
to Premises of the
Act.**

11. In addition to the powers conferred under the Act, these Regulations and specific environmental regulation, an Inspector, in exercising his or her functions under these Regulations may -
- (a) at any reasonable time to enter premises, except for a dwelling house, which he or she has reason to believe it is necessary for him or her to enter to determine compliance or non compliance with the Act, these Regulations, specific environmental regulations as well as permits, licences, authorisations, standards, codes of practice, [prescribed processes] and other instruments issued and or granted under the Act;
 - (b) on entering any premises by virtue of paragraph (a) to take with him -
 - (i) any person duly authorised by the Agency; and
 - (ii) any equipment or materials required for the purpose for which the power of entry is being exercised;
 - (c) make such examination and investigation as may in any circumstances be necessary and to direct that those premises or any part of them, or anything should be left undisturbed for so long as is reasonably necessary for such examination or investigation;
 - (d) take such measurements and photographs and make such recording as he or she considers it necessary for the purpose of any examination or investigation under subsection (c);

- (e) take samples of any articles or substances found in or on any premises which he or she has power to enter, and of the air, water or land in, on, or in the vicinity of the premises;
- (f) in the case of any article or substances found in or on any premises which he or she has power to enter, being an article or substance which appears to him or her [**to have caused or to be likely to cause damage to the environment, to cause it to be dismantled or subjected to any process or test**];
- (g) in the case of any such article or substance mentioned in paragraph (f), to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely –
 - (i) to examine it and do to it anything which he has power to do under paragraph (f);
 - (ii) to ensure that it is not tampered with before his examination of it is completed;
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under this Act or any other proceedings relating to an environmental authorisation, an enforcement notice or a prohibition notice;
- (h) require any person whom he or she has reasonable cause to believe to be able to give any information relevant to any examination or investigation under paragraph (c) to answer such questions as the Inspector thinks fit to ask and to sign a declaration of the truth of his answers;

- (i) require the production, or where the information is recorded in computerised form the furnishing of extracts from, any records which it is necessary for him or her to see for the purpose of an examination or investigation under paragraph (c) and to inspect, and take copies, of any entry in the records;
- (j) require any person to afford him or her such facilities and assistance within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on him by this section.

Dwelling-House

- 12. (1) An Inspector may not enter a dwelling-house except with the consent of the occupant of the dwelling-place or under the authority of a warrant issued under subsection (2).
- (2) Where on the written application of an Inspector made on oath, a Magistrate is satisfied that there is reasonable ground to believe that -
 - (a) entry to the dwelling-place is necessary for any purpose relating to the administration of the Act, these Regulations or specific environmental regulations, and
 - (b) entry to the dwelling-place has been refused or that there are reasonable grounds for believing that entry will be refused,

the Magistrate may issue to the Inspector, unconditionally or subject to conditions, a warrant in the prescribed form authorising that Inspector to enter that dwelling-house on one occasion within 14 days of the issue of the warrant.

- (3) In executing the warrant, on entry into the dwelling-house, the Inspector may exercise any or all the powers conferred by virtue of regulation 11.

**Powers in Relation
to individuals**

13. In addition to the powers conferred under the Act, these Regulations and specific environmental regulation, an Inspector, in exercising his or her functions under these Regulations may -

- (1) **[Stop, question, search or detain]** any person which is reasonably suspected of committing **[a breach/an offence]** under the Act, these Regulations or specific environmental regulations.
- (2) In exercise of the powers under subsection (1) the **Inspector** shall identify himself or herself to the person;
- (3) Nothing in this section shall be construed as to require any person to answer any question tending to incriminate himself or herself.

**Power to stop, enter
and search vehicles,
vessels and aircraft**

14. In addition to the powers conferred under the Act, these Regulations and specific environmental regulation, an Inspector, in exercising his or her functions under these Regulations may -

- (1) Stop, detain, enter, inspect and search without warrant any vehicle in which the **Inspector** has reasonable grounds to believe that [a **breach/an offence**] against the Act, these Regulations, or **specific** environmental regulations, is being or is about to be committed.
- (2) In exercise of the powers under subsection (1) the **Inspector** may inspect -
 - (a) take or make copies of, or extract from, any document found in or that vehicle; and
 - (b) take any samples or measurements in or on that vehicle.

Seizure

15. In addition to the powers conferred under the Act, these Regulations and specific environmental regulation, an Inspector, in exercising his or her functions under these Regulations may -
 - (1) seize any article or substance which reasonably appears to provide proof of a breach or non-compliance of any provisions of the Act, these Regulation or specific environmental regulations.
 - (2) In carrying out the powers conferred under subsection 1 -
 - (a) the Inspector shall inform the person from whom the article or substance was seized of the reason for the seizure;

- (b) shall give the person a receipt for such article or substance;
- (c) may remove the article or substance or may detain it in the place where it is seized; and
- (d) Notify the Agency within **[14 days]** of the seizure of any article or substance.

Power to co-opt assistance

16. An Inspector exercising powers under these Regulations may request the presence and assistance of any law enforcement personnel as the Inspector considers necessary to carry out the powers conferred by these Regulations.

Directions to
Inspectors and
Analysts

17. (1) The Agency may, from time to time, issue directions to Inspectors and Analysts with regard to -
- (a) the manner in which an inspection under these Regulations is to be carried out;
 - (b) the period or periods to be specified in an compliance notice during which remedial works are to be carried out;
 - (c) a code of conduct for Inspectors and Analysts; and
 - (d) any other matters the Agency considers relevant for the purposes of these Regulations.
- (2) An Inspector shall comply with a direction issued under subsection (1).

Immunity of
Inspectors and
analyst.

18. (1) No suit, prosecution or other legal proceeding may be brought against an Inspector or an Analyst in their personal capacity for anything done in good faith under the Act, these regulations, guidelines and standards made thereunder.
- (2) An Inspector or Analyst exercising his or her powers under these Regulations shall not be liable in any civil or criminal proceedings for anything done in the performance thereof if the court is satisfied that the act was done in good faith and that there were reasonable grounds for so doing.

Inspection Reports

19. (1) Where an Inspector exercises a power conferred by these Regulations or specific environmental regulations, the Inspector shall prepare an Inspection Report in relation thereto.
- (2) An Inspection Report prepared pursuant to subsection (1) shall be submitted to the Agency and shall contain -
- (a) the specific reason for the inspection;
 - (b) participants in the inspection;
 - (c) a chronological list of all actions taken during the inspection;
 - (d) an inventory of the evidence obtained during the inspection;
 - (e) observations made during the inspection;

- (f) the results of sample analyses related to the inspection;
and
 - (g) any additional information that the Inspector considers relevant to the inspection.
- (3) An Inspector may, in the Inspection report recommend -
 - (a) that no further action be taken;
 - (b) actions required to ensure compliance;
 - (c) where he or she suspects that an offence against the Act, these Regulations or specific Environmental Regulations has been committed, that a prosecution be instituted; and
 - (d) such other actions as the Inspector in the circumstances deems appropriate.
- (4) The Agency shall within [.....] months of the completion of the inspection -
 - (a) provide a copy of the report to the person who is the subject matter of the report;
 - (b) make the Inspection Report available for examination by the public.

PART V- ENFORCEMENT

- No Further Action** 20. (1) Upon receipt, consideration and assessment of the Inspection Report, the Agency may determine that no further action is required.
- (2) No further action will be required where it is determined that -
- (a) complaint is frivolous, vexatious and an abuse of process;
- (b) there is insufficient information to prove the non-compliance;
- (c) the basis of the non-compliance has been resolved prior to the submission of the Inspection Report.
- Additional Information** 21. Upon receipt, consideration and assessment of the Inspection Report, the Agency may determine that additional information is required, in which instance the Agency, the provision of Part III of these Regulations shall be applicable to obtaining the additional information.
- [Compliance] notice** 22. Upon receipt, consideration and assessment of the Inspection Report, should the Agency have reasonable grounds for believing that any person, is failing to comply with the Act, these regulations, **specific** environmental regulations, permits, licences, authorisations, standards, codes of practice, **[prescribed process]** or other instruments issued and or granted under the Act, the **Agency** may cause a compliance notice to be served on that person -

- (a) stating the Agency's grounds for believing that the Act, these regulations, specific environmental regulations, permits, licences, authorisations, standards, codes of practice, [prescribed process] or other instruments issued and or granted under the Act is not being complied with;
- (b) specifying the measures which the **Agency** deems that the person shall take in order to remedy the failures referred to in subsection (a);
- (c) requiring the person to implement those measures; and
- (d) measures which are at least equivalent to them, within the time period specified in the notice.

Enforcement Notice 23. The Agency, may Upon receipt, consideration and assessment of the Inspection Report, issue an enforcement notice in accordance with the provisions of section 26 of the Act.

**Prohibition Notice
Section 27** 24. Where based on an assessment of the Inspection Report, the Agency is of the view that the activity is such as to pose a serious threat to natural resources or the environment, the Agency, **[may/shall]** serve on the person a prohibition notice in accordance with the provisions of section 27 of the Act.

Cease Work Orders 25. Without prejudice to the powers conferred under section 27(3) of the Act, the Agency may where it appears to it absolutely necessary to do so for **[the maintenance of the environment]** order that all work shall cease on a premises, either generally or by any particular person or persons and thereupon work shall be discontinued accordingly.

Appeal

26. A person who feels aggrieved by any decision or action taken by an Inspector or the Agency by virtue of these Regulations may, appeal against such decision or action to the Environmental Appeals Tribunal established under Part VIII of the Act.

PART VI - ADMINISTRATIVE PENALTIES**Prosecution and
Orders of Court**

27. (1) Without prejudice to the provisions of section 50 of the Act, prosecutions in respect of offences under these Regulations shall be brought by the Agency, an Inspector, or by any other person duly authorised by the Director of Public Prosecutions in a court of summary jurisdiction.
- (2) A court that convicts a person of an offence under these Regulations, In addition to the powers conferred under section 43 of the Act, the Court, and to any other penalty imposed by law, may make an order prohibiting the continuation or repetition by the person of the act or omission for which the person was convicted.

**Compounding of
Offence**

28. (1) Without prejudice to the powers contained under section 46 of the Act, an Inspector where he or she is satisfied that a person has committed an offence under the Act, these Regulations or specific environmental regulation compound the offence by accepting from such person a sum of money not exceeding seven hundred and fifty thousand dollars.

- (2) The powers conferred under this section shall be exercised when a person admits that he or she has committed the offence under the Act, these Regulations or specific environmental regulations.

**Imposition of
administrative
penalties generally**

29. (1) Without prejudice to the specific enforcement provisions contained in the Act or specific environmental regulations, the Agency may at its discretion but subject to subsections (2) and (3) of this section, impose administrative fines for enforcement purposes, pursuant to the Acts and these Regulations, particularly but not limited to instances where specific enforcement sanctions have not been provided for in the Act or specific environmental Regulations.

**Agency
considerations**

- (2) In imposing administrative fines as sanctions, the Agency shall be guided generally by the following factors and considerations
- - (a) the severity of the non-compliance and the need to impose such fine or the amount thereof as would act as deterrent both to the non-compliant person and other persons;
 - (b) the need to be non-discriminatory and transparent in the imposition of sanctions generally and particularly but not limited to sanctions on different persons for similar offences committed in identical circumstances;
 - (c) the prevalence of the non-compliance and the likelihood of repetition by the non-compliant person and other persons;

- (d) the duration of the non-compliance;
- (e) the circumstances of the non-compliance and in particular but not limited to a consideration of whether or not the non-compliance was deliberately or recklessly or negligently committed by the non-compliant person;
- (f) the record of previous similar non-compliance by the non-compliant person;
- (g) the record of previous non-compliances generally by the non-compliant person;
- (h) the attitude and conduct of the non-compliant person prior to and leading up to the act of non-compliance and consequent upon the non-compliance;
- (i) the danger to life and property consequent upon the non-compliance;
- (j) any gain (financial or otherwise) made by the non-compliant person directly or indirectly consequent upon the non-compliance;
- (k) the degree of harm caused or increased cost incurred other stakeholders;
- (l) the extent to which any non-compliance was caused by a third party or any relevant circumstances beyond the control of the non-compliant person;

- (m) the absence, ineffectiveness or repeated failure of internal mechanisms or procedures intended to prevent non-compliance by the non-compliant person;
 - (n) possible mitigating circumstances such as but not limited to -
 - (i) whether or not the non-compliance was of a minor nature and the consequences and effect thereof were equally minor in nature,
 - (ii) whether the non-compliant person took immediate steps to remedy the non-compliance soon after knowing of the non-compliance; and
 - (o) such other factors as the Agency may in specific circumstances consider relevant and necessary.
- (3) The Agency shall be guided in determining the specific administrative fine amount payable by a non-compliant person by the factors and considerations specified in subsection (2) of this Section.

PART VII - MISCELLANEOUS

False or Misleading Statements

30. Every person who -
- (a) furnishes to an Inspector performing any function in relation to these Regulations, a document that to the knowledge of the first-mentioned person contains information which is false or misleading in any particular;
 - (b) negligently or knowingly makes a false or misleading statement, orally or in writing, to an Inspector performing any function in relation to these Regulations;
 - (c) knowingly utters, produces, or makes use of any such declaration or statement or any document containing any false declaration or statement;

commits an offence and shall be liable on summary conviction [to the penalties prescribed under **[paragraph Of the Fifth Schedule]**].

Obstructing Inspectors

31. Every person who assaults, resists, obstructs or hinders an Inspector in the execution of his or her powers under these Regulations shall be guilty of an offence and shall be liable on summary conviction to the penalties prescribed under **[paragraph Of the Fifth Schedule]**.

Impersonating Inspector

32. Any person who impersonates an Inspector or analysts shall be guilty of an offence and shall be liable to the penalties prescribed under **[paragraph Of the Fifth Schedule]**.

**Offences by
Inspectors**

33. Any Inspector who -

(a) seizes any thing for any reasons other than those prescribed by these the Act, Regulations or the Act;

**Breach of
confidentiality**

(b) discloses any information acquired in the course of exercising the Inspector's powers under the Act, these Regulations and specific environmental regulations except where required to so by the Inspector's supervisor or by any court;

(c) accepts any monetary or other benefit from a person affected by the exercise of the powers conferred by virtue of these regulations.

commits an offence and shall on summary conviction be liable penalties prescribed under **[paragraph Of the Fifth Schedule]**.

General Penalty

34. A person who contravenes any of the provisions of these Regulations commits an offence and is liable on Summary conviction to penalties prescribed under **[paragraph Of the Fifth Schedule]**.

**Amendment of
Schedule 1**

35. The Minister may by order amend the First Schedule

Made this ... day of 201[]

Signed

Minister of Natural Resources and the Environment

Schedule 1

Regulatory Acts

No.7 of 2011	The Animal Health Act
Cap 82:01	The Customs Act
Cap 15:01	The Defence Act
No.12 of 2002	The Fisheries Act
No.6 of 2009	The Forest Act
No.31 of 1997	The Guyana Energy Authority Act
No.11 of 1984	The Guyana National Bureau of Standards Act
No. 15 of 1999	The Guyana Lands and Surveys Commission Act
No.20 of 1989	The Mining Act
No. 13 of 2000	The Pesticides and Toxic Chemicals Act
No.9 of 2011	The Plant Protection Act
Cap 16:01	The Police Act
No.14 of 2011	The Protected Areas Act
No.8 of 2011	The Seeds Act