



IMO
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**REGULATIONS TO INCORPORATE THE 1996 LONDON
PROTOCOL ON THE PREVENTION OF MARINE POLLUTION
BY DUMPING OF WASTES AND OTHER MATTER INTO THE
LAWS OF ANTIGUA AND BARBUDA**

**A Legislation Drafting Project submitted in partial fulfillment of the
requirements for the award of the Degree of Master of Laws (LL.M.)
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ABBREVIATION LIST

“**ADOMS**” means Antigua and Barbuda Department of Marine Services and Maritime Affairs

“**Caricom**” means Caribbean Community

“**Convention**” means

“**IMO**” means the International Maritime Organisation

“**LC/LP**” means the London Convention/ London Protocol

“**NCM**” means National Co-ordinating Mechanism

“**OECS**” means Organisation of Eastern Caribbean States

“**Protocol**” means the 1996 Protocol to the 1972 Convention (“The Convention”) on the Prevention of Marine Pollution by Dumping of Wastes and other Matter

“**SDG 14**” means Sustainable Development Goal

“**TCAP**” means Technical Cooperation and Assistance Programme

“**UNCLOS**” means the United Nations Convention of the Law of the Sea 1982

TABLE OF NATIONAL LEGISLATION

- The Dumping at Sea Act 1975 (Cap. 141) (“1975 Act”)
- Environmental Protection and Management Act, 2015 (“2015 Act”)
- The Ratification of Treaties Act (CAP 364)

EXPLANATORY NOTE

INTRODUCTION

The aim of this legislative drafting project is to set out the objectives and goals of the 1996 Protocol to the 1972 Convention (“The Convention”) on the Prevention of Marine Pollution by Dumping of Wastes and other Matter¹ (The Protocol)². Further, the necessity and the corresponding benefits will be established alongside the measures to be taken to effectively implement the Protocol into the laws of Antigua and Barbuda. The overall objective of the Protocol advances the provisions of the United Nations Convention on Law of the Sea (UNCLOS) which mandates that “States shall take all measures necessary to ensure that activities within its jurisdiction and control are conducted as not to cause damage by pollution to their States and their environment...”³ The Convention and by way of the Protocol advance this anti-dumping mission by;

- a) Promoting the effective control of all sources of marine pollution and
- b) Taking all practicable steps to prevent pollution of the sea by dumping of wastes and other matter that is liable to create hazards to human health, harm living resources and marine life, damage amenities or to interfere with other legitimate uses of the sea.⁴

The international legal framework to prohibit dumping is necessary for the protection and preservation of the marine environment, and the implementation of the London Anti-Dumping regime is therefore critical for Antigua and Barbuda to harmonise its laws and regulations accordingly.

I. THE EMERGENCE OF ANTI-DUMPING MEASURES AT SEA

For centuries, the seas and the oceans were used as dumping grounds for waste and other matter by individuals, institutions, maritime powers, with no regard to the impact on the environment. This was

¹ London Protocol came in to force on 24 March 2006

² London Protocol came in to force on 24 March 2006

³ Article 194 (2) United Nations Convention Law of the Sea

⁴ London Convention Article 1

standard practice which international, regional, and local state cooperation was needed to regulate dumping in order to protect and preserve the marine environment.

Legal frameworks were developed which would have particular and especial relevance for the Caribbean. Most Caribbean island states have a great dependence on its economies and its living and natural resources. A number of small island and coastal states have been abundantly endowed with sandy beaches which blend in to blue, turquoise waters filled with vast and diverse living organisms. On-going and un-checked dumping would surely contribute not only to the visible demise of the respective economies, but also the annihilation of natural resources, and effectively cause illness and the displacement of its indigenous people.

The need to regulate practices that bring devastating effect to the environment is undeniable. International, regional, and local state cooperation is necessary to regulate dumping in order to protect and preserve the marine environment. The lack of maritime regulatory measures became very evident after the Torrey Canyon incident in 1967. This disastrous event heightened awareness and triggered immediate responses to minimize and correct the adverse effects to the marine environment and the economy due to unregulated shipping. A course correction became vitally important to address oil pollution, and unregulated dumping by the international competent organisation⁵, i.e., the IMO. A series of anti-pollution and anti-dumping packages were drafted and made for state, regional, and international agreement, ratification, and implementation.

UNCLOS is considered ‘...a comprehensive constitution of the oceans...’⁶ It has decidedly declared, through its provisions, the principal body of rights and obligations of contracting party states and consequentially, all states in customary international law as it relates to ocean management / governance. The 1972 United Nations Stockholm Conference on the Human Environment⁷, along

⁵ Article 197 United Nations Convention on the Law of the Sea 1982

⁶ V Lowe, ‘Was it worth the effort?’ (2012) 27 *TJMCL* 875–81

⁷ The United Nations Conference on the Human Environment (also known as the Stockholm Conference) was an international conference convened under United Nations auspices held in Stockholm, Sweden from June 5-16, 1972. It was the UN's first major conference on international environmental issues, and marked a turning point in the development of international environmental politics.

with Articles 210⁸ and 216⁹ UNCLOS have also influenced the environmental legislative making process. Albeit, the Convention precedes UNCLOS, both international instruments work together in compelling States to protect and preserve the marine environment.¹⁰

The Secretary-General of the IMO echoed to the Contracting Parties of the London Convention that States which are not parties to the London Convention were bound by the requirements pursuant to Article 210(6) (UNCLOS)¹¹.

“Through that article [Article 210] States parties to UNCLOS are legally bound to adopt laws and regulations and take other measures to prevent, reduce and control pollution by dumping, which must be no less effective than the global rules and standards.¹² The London Convention 1972, which has been ratified or acceded to by 74 countries, is the global instrument containing rules and standards on the prevention of marine pollution from dumping at sea.”¹³

Antigua and Barbuda as a party to UNCLOS is thereby required to uphold its obligation through the effective implementation of the London Anti-Dumping regime.

THE LONDON DUMPING REGIME

The London Convention “is a major global convention which establishes a global legal framework to protect the marine environment and has been in force since 1975.¹⁴ It currently has eighty-seven State

⁸ United Nations Convention on the Law of the Sea Provision –*Pollution by Dumping. State shall adopt laws and regulations to prevent, reduce, and control pollution of the marine environment by dumping;* paragraphs (1-6)

⁹ UNCLOS Provision - Enforcement with respect to pollution by dumping by way of competent international organisations or diplomatic conference for the prevention, reduction and control of pollution of the marine environment shall be enforced by the coastal state; flag state, and any state.

¹⁰ United Nations Convention on the Law of the Sea 1982 Article 192

¹¹B.Cicin-Sain , D. Vanderzwaag, M. Balgos, Routledge Handbook of National and Regional Ocean Policies (2015 Routledge)

¹² United Nations Convention on the Law of the Sea 1982 Article 210 (6)

¹³ On 16 June 1995 - Letter from the Secretary – General of the IMO addressed to the States Parties to the 1982 United Nations Convention on the Law of the Sea which are not yet States Parties to the 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter London Convention issued by the Division for Ocean Affairs of the United Nation Office of Legal Affairs (United Nations Division for Ocean Affairs and the Law of the Sea/ Office of Legal Affairs, 1999: 55.

¹⁴ D. Attard, IMLI Manual On Maritime Environmental Law Volume III Marine Environmental Law and Maritime Security Law 2016 Oxford pp. 80

Parties.¹⁵ The identification of the meaning of dumping in UNCLOS¹⁶ maintains the same definition in the Convention/ Protocol, which is

1. any deliberate disposal at sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;
2. any deliberate disposal at sea of vessels, aircraft, platforms or other manmade structures at sea.

Dumping does not include --

1. the disposal at sea of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or structure;
2. the disposal of wastes or other matter directly arising from, or related to the exploration, exploitation and associated off-shore processing of sea-bed mineral resources are not governed by the London Convention.¹⁷

THE OBJECTIVE OF THE LONDON CONVENTION

The London Convention's objective is for Contracting Parties to individually and collectively promote the effective control of all sources of pollution of the marine environment.¹⁸ All practicable steps to prevent the pollution of the sea by dumping of wastes and other matter liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea are undertaken under the London Convention. The London Convention rules require that a national authority be designated to control dumping behavior, in order to deter harm to its citizens and marine living resources within its own territory.¹⁹ This creates an obligation to ensure marine dumping behaviour will not cause any possible harm and if it does, it is also the States'

Commented [BB1]: Evidence (footnote)

¹⁵ International Maritime Organization, 'London Convention and Protocol'

<<http://www.imo.org/OurWork/Environment/LCLP/Pages/default.aspx>> accessed February 2018

¹⁶ United Convention on the Law of the Sea 1982 Article 1(5)

¹⁷ London Convention Article III (1) and (4)

¹⁸ London Convention Article I

¹⁹ Y.C. Chang, *Ocean Governance*, SpringBriefs 2012 p. 46, 47

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responsibility to tackle or control the pollution before it causes further damage. It is the Contracting Party's obligation to report the information, criteria, measures and requirements it adopts to the IMO and other parties.²⁰

Under the London Convention, national governance instruments must be submitted to the IMO and / or to other relevant institutions, to other Contracting Parties on an annual or regular basis, which encourages the accountability of the Contracting Party. The reports are reviewed on an annual basis by the consultative meeting of the parties²¹. The IMO and other Contracting Parties conduct the monitoring process. Externally, the Contracting Party is responsible to the IMO and other Contracting Parties. If the Contracting Parties fail in their responsibilities, the consultative meeting may develop or adopt procedures for determining exceptional and emergency situations²². During consultative meetings additional actions are considered that may be required, accordingly.²³

The London Convention contains a 'black list'²⁴ of materials inclusive of radioactive wastes never to be dumped into the ocean and a 'grey list' of items inclusive of low-level radioactive wastes to be dumped in appropriate locations once proper governmental permits obtained.²⁵ A 'grey list'²⁶ was created to delineate substances requiring a prior special permit except in emergency situations.²⁷ Contracting Parties are required to document, through record-keeping, the nature and quantity of permissible dumping in addition to location, time, and method. The on-going monitoring of the condition of the seas to ensure compliance is prescribed for the Contracting Parties and international organisations.²⁸ The obligations set out in the London Convention are applicable to all vessels and aircraft with the exception of those entitled to sovereign immunity once their actions do not contravene the purpose of the London Convention.²⁹ Regional cooperation begets regional agreements by the

²⁰ IMO, 'Strategic Plan for the London Protocol and London Convention', May 2017, [Article VI \(4\)](#)

²¹ D. Attard, The IMLI Manual on International Maritime Law, Volume III Marine Environmental Law and Maritime Security Law (2016 Oxford) p 80, [Article XIV 4 of the 1972 London Convention](#).

²² United Nations Convention on Law of the Sea 1982 Article 194, 195, [Article XIV 4 \(e\) of the 1972 London Convention](#).

²³ London Convention Article I, [Article XIV 5 of the 1972 London Convention](#).

²⁴ Annex I London Convention

²⁵ Annex I London Convention

²⁶ Annex II London Convention (arsenic; lead; copper; zinc; organosilicon compounds; cyanides; fluorides; pesticides; beryllium; chromium; nickel; Vanadium; etcâ

²⁷ Article IV (1)(b) London Convention

²⁸ Article IV (1)(c) and (d)

²⁹ Article X (4)

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Contracting Parties with common interests to protect the marine environment and prevent pollution from dumping is encouraged.³⁰

Approximately 20 years passed before the Convention would come under review and give rise to the adoption of the Protocol). The London Convention was subsequently criticized for allowing a substantial amount of dumping and thus required that the provisions be confined so that no radioactive materials whatsoever could be dumped and so that the dumping of other hazardous material would be simply prohibited.

The Protocol is a ‘free-standing treaty’³¹ created as an “international response to decades of dumping into the ocean, dredging and incineration at sea.”³² The Protocol does not require the ratification or implementation of the London Convention, nor is it a supplementary treaty. LC/P also known as the London Convention Regime³³ overall provide greater protection of the marine environment and its living resources. The functions and the objectives of both instruments concretise the IMO and the respective Contracting Parties’ obligations as set out in UNCLOS by creating and implementing measures to prevent, reduce and control pollution of the marine environment.³⁴

Commented [BB2]: Your footnote does not concur with this expectation. What do you mean free-standing treaty?

THE LONDON PROTOCOL

The Protocol³⁵ formally modernized the principles that were conceived under the London Convention. The Protocol echoes the ethos of the 1972 London³⁶. The Protocol’s primary aim is to regulate dumping in the High Seas by protecting areas of the marine environment in a more restrictive manner than the London Convention. Contracting Parties are called to individually and collectively protect and preserve the marine environment from all sources of pollution and take effective measures, according to their scientific, technical and economic capabilities, to prevent reduce and where

³⁰ Article VIII

³¹ The Protocol is not a supplement to the London Convention. See IMO, ‘Strategic Plan for the London Protocol and London Convention’, May 2017

³² IMO, ‘Strategic Plan for the London Protocol and London Convention’, May 2017

³³ The IMLI Manual on International Maritime Law, Volume III Marine Environmental Law and Maritime Security Law p 80

³⁴ United Nations Convention on Law of the Sea 1982, Article 194, 195

³⁵ London Convention Article VIII

³⁶ [Y.C. Chang, Ocean Governance, Springer](#) The London Protocol came in to force on 24 March 2006 [Briefs in Geography, DOI: 10.1007/978-94-007-2762-5_2, The Author\(s\) 2012 p. 46, 47](#)

practicable eliminate pollution caused by dumping or incineration at sea any wastes or other matter.³⁷

Contracting Parties are obligated to individually and collectively protect and preserve the marine environment from all sources of pollution and take effective measures, according to their scientific, technical and economic capabilities, to prevent, reduce and where practicable eliminate pollution caused by dumping or incineration at sea of wastes or other matter. Where appropriate, they shall harmonize their policies in this regard.³⁸ Once the Contracting Party is in accordance with international law, it may take even more stringent measures as suitable to prevent, reduce, or where practicable eliminate pollution.

Conditions for Dumping

The effective prevention of pollution is guided by the clarification of what is and what is not permitted for dumping.³⁹ Assessment guidelines have been drafted to generate economic benefits through the identification of resources in order to prevent the dumping of waste and to ensure its reduction, reuse or recycle before the waste can be considered for dumping at sea. The assessment is also completed before permits are granted to protect the marine environment in multiple ways. Additionally, wastes are dumped under conditions that mitigate risks and prevent pollution. The effects of dumping can be corrected through monitoring if necessary.

The deliberate disposal of waste and the corresponding enforcement and regulatory measures are designated by the Protocol within a geographical area as being extended to the internal waters of the Contracting State. Contracting States have been granted the discretion to implement the provision of the Protocol or other effective and efficient permitting regulatory measures to control deliberate dumping and incineration within its internal waters.

APPLICABILITY

The Protocol applies to all:

1. Vessels and aircraft registered in its territory or flying its flag;

³⁷ London Protocol Article I

³⁸ Article 2 London Protocol

³⁹ Ibid Routledge pp. 72

2. Vessels and aircraft loading in its territory the wastes or other matter which are to be dumped or incinerated at sea; and
3. Vessels, aircraft and platforms or other man-made structures believed to be engaged in dumping or incineration at sea in areas within which it is entitled to exercise jurisdiction in accordance with international law.⁴⁰

This Protocol does not apply to those vessels and aircraft entitled to sovereign immunity under international law, however, the adoption of appropriate measures will be executed in a manner consistent with the object and purpose of this Protocol.

The Parameters of the Protocol

The Protocol grants the Contracting States the discretion to implement the provisions other effective and efficient regulatory measures to control deliberate dumping and incineration within its internal waters. The geographical scope extends to the internal waters of the Contracting state and additional zones it may consider controlling the deliberate disposal of wastes or other matter in marine internal waters.⁴¹

Permission to Dump

Permits can be granted once assessments have been undertaken which “evaluate options and describe the potential effects of dumping.”⁴² Activities involving incineration at sea and the dumping of industrial wastes is completely prohibited. With the inclusion of the precautionary approach and the polluter pays principle, “the burden has shifted from dumping unless it is proven harmful toward no dumping unless it can be shown that there are no alternatives.”⁴³

The permitting authority with the competence to grant permits is appointed by the Contracting State to govern the permit process, keep records of the permitted activities and monitor the sea. The Authorities’ overall duty is to implement and ensure compliance with the provisions of the Protocol within its State. The Protocol requires authorities having the authority to first conduct an assessment of the potential effects of dumping on human health, the environment and economics amongst other

⁴⁰ London Protocol Article 10

⁴¹ London Protocol Article 12

⁴² Routledge pp. 72

⁴³ Routledge pp. 72

factors, and issue or deny a permit based on its findings.⁴⁴ Where there is non-compliance, the Contracting State is required to take the appropriate punitive measures.⁴⁵

Annex 1 lists the excepted wastes that are authorized by permit, and labelled as the “reverse list”, replacing the previous Convention lists. The environmental norms introduced in the Protocol include the "precautionary approach, and the polluter pays principle" which are both general obligations. There is also a complete prohibition of the incineration of wastes at sea. Additional prohibitions include the export of wastes for the purpose of dumping or incineration at sea is also prohibited. The inclusion of extended compliance procedures and technical assistance provisions have been, and there is a transitional period allowing new Contracting Parties to phase in compliance with the Protocol over five years, once certain conditions are met.

The Protocol now features a TCAP to assist Contracting Parties in dealing with their wastes. The London Protocol is of paramount importance in illustrating the progress and commitment of the IMO toward “a more environmentally conscious focus on sustainable development and a sense of shared responsibility for the common areas of the planet.”⁴⁶

All dumping is prohibited under the Protocol with the exception of the reverse list which includes;

1. Dredged material;
2. Sewage sludge;
3. Fish waste, or material resulting from industrial fish processing operations;
4. Vessels and platforms or other man-made structures at sea;
5. Inert, inorganic geological material;
6. Organic material of natural origin; and
7. Bulking items primarily comprising iron, steel concrete and similar harmless materials, for which the concern is physical impact, and limited to those circumstances where such wastes are generated at locations, such as small islands with isolated communities, having no practicable access to disposal options other than dumping

The Dispute Settlement Mechanism⁴⁷

⁴⁴ London Protocol Annex 2(12) and (13)

⁴⁵ London Protocol Article 10(2)

⁴⁶ Routledge pp. 72

⁴⁷ London Protocol Annex 3

The Protocol introduces an Arbitral Procedure for the settlement of disputes. A request for arbitration is made by the Contracting Party.⁴⁸ A tribunal can consist of more than one arbitrator through a nomination process.⁴⁹ A counter-claim can also be heard and determined once it arises directly from the subject matter of the dispute.⁵⁰ The State Parties are responsible for their respective costs for the preparation of the case and the remuneration of the tribunal.⁵¹ A Contracting Party who has an interest in the legal nature and may be affected by the outcome may intervene, at its own expense into the arbitration procedure once the tribunal grants consent.⁵² The intervening Party obtains the limited right to present evidence, briefs, and oral arguments upon the matter.

The Parties to the dispute must facilitate the work of the tribunal in alignment with their legislation and use all means at their disposal to provide the tribunal with all necessary documents and information to enable the tribunal to enter their territory to hear witnesses or experts and visit the relevant scene.⁵³ An award by the tribunal shall be rendered within five months from the time it is established or can be extended not to exceed five months. The decision is final and binding and must be complied with by all the parties.⁵⁴

AMENDMENTS TO THE LONDON PROTOCOL⁵⁵

As of the 9th February 2016, the Protocol has undergone several amendments since coming in to force. Amendments are adopted through the tacit acceptance procedure and enter in to force 100 days after being adopted.⁵⁶ In 2013, the amendment to regulate the placement of matter for ocean fertilization and other marine geoengineering engineering activities was adopted.⁵⁷ 2009 brought about an amendment to Article 6 concerning the export of wastes for dumping purposes. Its aim was to enable

⁴⁸ London Protocol Article 1(2) Annex 3

⁴⁹ London Protocol Article 3 Annex 3

⁵⁰ London Protocol Article 4 Annex 3

⁵¹ London Protocol Article 5 Annex 3

⁵² London Protocol Article 6 Annex 3

⁵³ London Protocol Article 8 Annex 3

⁵⁴ London Protocol Article 9 Annex 3

⁵⁵List of Amendments to the London Protocol,

<http://www.imo.org/en/OurWork/Environment/LCLP/Documents/List%20of%20amendments%20to%20the%20London%20Protocol.pdf> > accessed 24th January 2018

⁵⁶ Gold Edgar, *Gard Handbook on Protection of the Marine Environment*, 3rd Edition, Gard AS, Arendal, Norway 1997, 201.

⁵⁷ By resolution LP.4(8), (circular LC-LP.1/Circ.61). There were no instruments of acceptance deposited. Adopted on 18th October 2013

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Parties to share transboundary sub-seabed geological formations for sequestration projects.⁵⁸ The 2006 Amendment includes CO2 sequestration in sub-seabed geological formations in Annex 1 to the London Protocol.⁵⁹

The Protocol has introduced a major change to the approach of how to regulate the use of the sea as a depository for waste materials and it is much more restrictive than the Convention. It encourages States to adopt “regional and national instruments which aim to protect the marine environment and to take account of specific circumstances and needs of those regions and States”⁶⁰, more importantly, “having due regard to the public interest.”⁶¹ In sum, the Protocol requires taking decisions concerning all the varying circumstances.

Compliance with the Protocol requires that the Contracting State establish procedures and mechanisms to assess and promote and develop them for the purposes of allowing for a full and open exchange of information.

WHY THE DUMPING REGIME IS NEEDED IN ANTIGUA AND BARBUDA

Prior to UNCLOS entering in to force and being ratified and adopted by Antigua and Barbuda the State had already taken the legislative steps to protect the marine environment and the living resources which it supports. The resulting legislation is The Dumping at Sea Act 1975 (Cap. 141) (“1975 Act”), which came in to force on 3 December 1975. Most recently the Environmental Protection and Management Act, 2015 (“2015 Act”) has created a broad international environmental framework which defines dumping more so than the 1975 Act. The 2015 Act established a permit-based regime regulating dumping in and into the marine environment.

Commented [BB3]: Why reference to UNCLOS?

THE BENEFITS OF THE LONDON REGIME IN DOMESTIC LEGISLATION

⁵⁸ By resolution LP.3(4), (circular LC-LP.1/Circ.36). Adopted on 30th October 2009

⁵⁹ Adopted on 2nd November 2006, by Resolution LP.1(1), (circular LC-LP.1/Circ.5) and entered into force in 2006 for all Parties.

⁶⁰ London Protocol Preamble

⁶¹ London Protocol Article III

The London Protocol is a “key pillar” in the protection of the marine environment, complementing other treaties including MARPOL, UNCLOS, and regional seas agreements.⁶² Contracting Parties are more able to exchange views on an international platform to foster dialogue dealing with coastal management and transboundary issues. Further, SDG 14⁶³ is advanced through the regulation of dumping by virtue of conservation of the oceans, seas, and marine resources; food security and sustainable economic growth.⁶⁴

With the renewed focus on the part of the IMO combined with Antigua and Barbuda’s current need to ensure that its regulatory framework is sufficiently robust for the implementation of its ocean governance policies. It is for this reason the ratification of the protocol would advance its efforts to regulate the Twin-Island States marine protection and preservation strategies.

The amendment or repeal of the 1975 Act along with amendments to the 2015⁶⁵ Act requires the resulting regulations to ensure that the common interests of the Eastern Caribbean Region also be taken in to account to protect the marine environment and to ensure that regional agreements to develop harmonized procedures for Contracting and likely non-contracting Parties⁶⁶. Further, to effectively enforce the Act, the nature, quantity, description, and type of substances or articles must be identified and equally specified.

THE DUMPING AT SEA ACT 1975 (CAP 141) (“THE 1975 ACT”)

The 1975 Act enacted the London Convention in to the laws of Antigua and Barbuda. The Act incorporated selected provisions of the London Convention. The Act sought to prevent the dumping and permanent deposit of substances, articles, solids in to the sea from a vehicle, ship, aircraft, hovercraft, or marine structure or from a structure on land constructed, or adapted wholly or mainly

⁶² International Maritime Organisation (IMO), *The London Protocol, What it is and Why It is Needed. 1996-2016*

⁶³ Sustainable Development Goals, are a universal call to action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity. SDG 14 is to conserve and sustainably use the oceans, seas and marine resources for sustainable development 18. The increasingly adverse impacts of climate change (including ocean acidification), overfishing and marine pollution are jeopardizing recent gains in protecting portions of the world’s oceans.

⁶⁴ International Maritime Organisation, ‘The London Protocol: What it is and Why It is Needed: 20 London Protocol 1996-2016, Global Treaty at the Forefront of Protecting Our Oceans – for Present and Future Generations’ 2016

⁶⁵ Antigua and Barbuda Environmental Protection and Management Act, 2015 < <http://laws.gov.ag/acts/2015/a2015-11.pdf>> accessed 1 November 2017

⁶⁶ London Protocol Article 12

for the purpose of depositing solids in the sea, are not permitted.⁶⁷ The Act offered many protections and under the enactment of the London Protocol international dumping standards and obligations can be met under the most recent legislation Antigua and Barbuda has passed in 2015.

THE ENVIRONMENTAL PROTECTION AND MANAGEMENT ACT 2015

Commented [BB4]: Is this different from the Environment Protection Act?

The 2015 Act ensures the incorporation of international treaty obligations with respect to the environment into national and law related matters. It also serves as the legal regime for the implementation of Multilateral Environmental Agreements and to provide the framework financial mechanisms to implement the Act.

A National Coordinating Mechanism⁶⁸ NCM is responsible for coordinating the management and implementation of multilateral environmental agreements as well as settle any environment related disputes that may from time to time be referred.⁶⁹ Multilateral environmental agreements refer to those listed under section 81 within the Act. Noticeably absent is the London Regime although both instruments have been ratified.

The 2015 Act grants guidance, articulates policy, and a delegation mechanism by Minister to the Department of the Environments of a special and general character in the exercise of the powers conferred and the duties imposed on the Department by or under this Act to follow through with the implementation of this Act. Specifically, to facilitate and implement obligations assumed by Antigua and Barbuda under multilateral environmental agreements and enhance the legal, regulatory and institutional framework for environmental management.⁷⁰ The Minister of Foreign Affairs is

⁶⁷ [Section 3\(2\) London Dumping Act 1975](#)

⁶⁸ Part X, Section 80(1) (2) The Committee shall comprise— four members appointed by Cabinet one of which shall be a representative of the Ministry of Foreign Affairs who shall chair the Committee and of the remaining three at least one of whom shall be from a non-Governmental organisation with expertise in environment matters and one of whom shall be from the business community; the Director, who shall be the Secretary to the Committee; five other members of the Committee, appointed from the public service, who have expertise in health, fisheries, agriculture, forestry and public works; and a representative of the Public Utilities Authority. The Committee shall advise the Cabinet on any issues are referred to it in respect of international environment agreements or environment disputes that need to be settled. Upon the commencement of this Act, the Committee shall undertake the review, with the goal of making recommendations for the ratification of multilateral environmental agreements which have not yet been ratified by Antigua and Barbuda.

⁶⁹ Section 80 (1) 2015 Act

⁷⁰ p 20 (d and f)

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empowered to publish a multilateral environmental instrument. And may amend Schedule IX from time to time.⁷¹

The negotiation and accession to agreements, the Minister of Foreign Affairs is tasked to collaborate with other member states of the Organisation of Eastern Caribbean States (OECS) and the Caribbean Community (Caricom) to develop and strengthen sub-regional and regional negotiating mechanisms for multilateral environmental agreements' cooperate with other OECS member states and Caricom to formulate political positions during negotiation and implementation of such multilateral environmental agreements; integrate principles within the Liliendaal Declaration⁷² in to the negotiation and implementation of multilateral environmental agreements; establish appropriate mechanisms to facilitate the exchange of information relating to the negotiation, implementation and compliance of multilateral environmental agreements.⁷³

The multilateral environmental agreements set out in Schedule VIII have the force of law in Antigua and Barbuda.⁷⁴ An amendment to the 2015 Act concerning Section 83, which specifies Schedule VIII as the list of Multilateral Environmental Agreements is required with immediate and urgent effect as Schedule IX possesses the pertinent and relevant schedule. In fact, Schedule VIII contains the List of Protected Wildlife. A potential adverse effect is that the existing and future multilateral environmental agreements may not have the force of law as intended.

The 2015 Act identifies more readily various appropriate authorities to assist in the regulation of hazardous substance transported by sea, air or inland waterway as being the Antigua and Barbuda Port Authority and for pollution control is the Central Board of Health. The 2015 makes provisions for a permit-based dumping regime and sets out guidelines for the issuance of permits, reporting, monitoring of all dumping by the designated appropriate authority or authorities.⁷⁵

⁷¹ Environmental Protection and Management Act 2015 Section 81

⁷² Liliendaal Declaration On Climate Change And Development Issued By The Thirtieth Meeting Of The Conference Of Heads Of Government Of The Caribbean Community, 2-5 July 2009, Georgetown, Guyana

⁷³ Environmental Protection and Management Act 2015
Section 82

⁷⁴ Environmental Protection and Management Act 2015 Section 83

⁷⁵ Environmental Protection and Management Act 2015
Section 29

The competent authorities of Antigua and Barbuda include both the Ministry of Health and its Environmental Department. The Environmental Department established and operates an Environmental Registry for the purpose of administering environmental information and providing assistance to the Department in the monitoring compliance reporting and notification requirements under multilateral environmental agreements to which Antigua and Barbuda is a party.⁷⁶ Currently, the 2015 Act does not readily identify ADOMS as an appropriate authority, or a cooperative entity.

Commented [BB5]: Is this a deficiency in your laws

The environment registry contains all documents produced collected or submitted to the Department which deals with the import, export, transportation, disposal and management of any hazardous substance or waste; hazardous substances, permits, or licences; the dumping of wastes or other matter; the issuance of permits and licences under this Act or regulations made thereunder; any enforcement proceeding undertaken therein or any other matter that may be prescribed by Regulations made under the Act.

Commented [BB6]: Not sure it is relevant.

Similar to the London Protocol, decisions by the Environmental Department apply both the “polluter pays” principle, and the “precautionary” principle. Another guiding principle which will bolster the regulation of dumping is the avoidance principle which states, that it is “preferable to avoid environmental damage as it can be impossible or more expensive to repair rather than prevent damage.”⁷⁷ ADOMS is highly recommended to be referenced within the 2015 Legislation along with the relevant marine environmental treaties cited in the 2006 Act and its Amendments.

THE REQUIREMENT FOR THE IMPLEMENTATION OF THE LONDON PROTOCOL 1996 IN ANTIGUA AND BARBUDA

Although the London Protocol has been ratified, Antigua’s existing legislation dealing with dumping is clearly outdated, fragmented, and requires updates by way of the London Protocol and its amendments. The incorporation of the London Protocol in to the 2015 Act is of paramount importance considering the nation’s efforts to establish a Blue Economy. The evolution of the ‘blue economy’ concept exhibits practical strategies to ensure that economic activities are sustainable and do not

⁷⁶ Environmental Protection and Management Act 2015 Section 77

⁷⁷ Environmental Protection and Management Act 2015 Section 5 (1) (c)

compromise the long-term capacity of ocean ecosystems to support economic activities allowing for health and resilience.⁷⁸

Article 194(2) UNCLOS provides that States should take all measures necessary to ensure that activities under their jurisdiction are so conducted as not to cause damage by pollution to other States and their environment...”. The ratification and implementation of the London Protocol paves the way to ensuring that the marine environment is protected and preserved.

THE ENACTMENT OF REGULATIONS FOR THE LONDON PROTOCOL IN ANTIGUA AND BARBUDA

Antigua and Barbuda is a dualist State and requires international agreements which are governed by international law which concern the relationship of Antigua and Barbuda with any international organization, agency, association or similar body to be incorporated in to national legislation to be binding and enforceable in the jurisdiction.

The Ratification of Treaties Act (CAP 364) provides inter alia that where a treaty to which Antigua and Barbuda becomes a Party is one which affects or concerns the relationship of the State with any international organisation, agency, association or similar body, such Treaty shall not enter into force with respect to Antigua and Barbuda unless it has been ratified or approved in accordance with the provisions of the Act⁷⁹. No provision of a treaty shall become, or be enforceable as, part of the law of Antigua and Barbuda except by or under an Act of Parliament. The instrument of ratification shall be issued under the signature of the Minister responsible for external affairs.⁸⁰

On the 24th November 2015, in London, United Kingdom, Antigua and Barbuda acceded to the Convention and became a party to the 1996 Protocol. The London Protocol (as amended) has been ratified as a treaty under Section 3(1) (c) of the Ratification of Treaties Act. Ratifying and therefore implementing the London Protocol paves the way to ensuring that the marine environment is protected and preserved. It is considered that The Protocol in its whole form which could obligate the State to the entirety of the Protocol’s provisions which could have detrimental effects and subject it to

⁷⁸ Commonwealth Secretariat, ‘The Blue Economy and Small States’ Commonwealth Blue Economy Series, No. 1 iii

⁷⁹ [Section 3 \(1\)\(c\) Ratification of Treaties Act < http://laws.gov.ag/acts/chapters/cap-364.pdf>](http://laws.gov.ag/acts/chapters/cap-364.pdf) accessed on 15 November 2017

⁸⁰ Section 3(4)

international law obligations including State Responsibility. For this reason, its incorporation in to domestic law is required to ensure that Antigua and Barbuda’s rights and obligations are clear, effective, and enforceable.

The Protocol, as it is already ratified can be incorporated under Table B in Schedule IX of the 2015 Act as a multilateral treaty and its resulting management. The 2015 Act specifically “establishes and consolidates in one legal regime the Implementation of the Multilateral Environmental Agreements and to provide the framework...”.⁸¹ Section 81 states, where the Minister of Foreign Affairs publishes a multilateral environmental instrument, and once published version shall constitute evidence of its contents. The Minister of Foreign Affairs may amend Schedule IX from time to time.⁸² Section 109(1) granting the Minister responsible for the Environmental portfolio the ability to make regulations for giving effect to the Provisions of this Act. Succinctly, once the Protocol is incorporated in to Schedule IX, the Act allows for the implementation of regulations.

The significance of the London Dumping Regime and its implementation cannot be underscored enough. The current Dumping Act 1975 is out-dated and the London Protocol can be readily incorporated in the form of regulations by way of the 2015 Act. Regulations pursuant to the 2015 Act which provides a scalable framework to incorporate necessary environmental instruments such as the London Protocol.

The Regulations are divided in to five parts and are scheduled to the 2015 Act. The Preliminary part is comprised of the Scope and Citation of the Regulations and the Interpretation and Application Section. In Part II, the Regulations deal with the Dumping at Sea provisions, followed by Part III that deals with Administration. Part IV outlines the permits scheme. Part V deals with record-keeping and reporting. Six annexes set out the following prescribed forms;

Annex I – Table B- List of Multilateral Environment Instruments and Environment Conventions

Annex II – Fees

Annex III – Permit to Dump Waste or Restricted Material

⁸¹ Environmental Protection and Management Act, 2015 Preamble

⁸² Environmental Protection and Management Act, 2015 Section 81(2)

REGULATIONS FOR THE LONDON DUMPING REGIME

THE ENVIRONMENTAL PROTECTION AND MANAGEMENT ACT, 2015 ENACTING THE ENVIRONMENTAL PROTECTION (DUMPING OF WASTES AND OTHER MATTER IN TO THE MARINE ENVIRONMENT) REGULATIONS 2018

PRELIMINARY

Scope
.....

Citation
.....

Interpretation
.....

Application
.....

General.....

.....

PART II

Dumping at
Sea.....

Enforcement
.....

PART III

Administration
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Part IV

Dump-Site Selection
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Permit to Dump Criteria
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Application for Permits and Fees
.....
Conditions for
Permit.....
Renewal of Permit
.....
Transfer of Permit
.....
Refusal of Permit
.....
Modification, Suspension, Revocation.....
Permit Charges.....

PART V

Recordkeeping and Reporting
.....

PRELIMINARY

SCOPE.

A schedule to incorporate the international treaty obligations with respect to the 1996 Protocol to The Convention on The Prevention of Marine Pollution by Dumping of Wastes And Other Matter, 1972 (London Protocol) (As Amended) as required by the **ENVIRONMENTAL PROTECTION AND**

MANAGEMENT ACT, 2015 ("The Act"), an established and consolidated legal regime for the Implementation of Multilateral Environmental Agreements.

CITATION.

1. These Regulations may be cited as the Environmental Protection (Dumping of Wastes and Other Matter in to the Marine Environment) and Management Regulations 2018.
 1. Subject to the provisions of the 2015 Act, the Regulation and any amendments thereto, shall, unless otherwise provided in these regulations and notwithstanding the provision of any other law, form part of the Laws of Antigua and Barbuda.
 2. The obligations assumed by Antigua and Barbuda under the London Protocol are implemented pursuant to the provisions within sections 80, 81, 82, and 83 and Schedule IX of the 2015 Act and primarily section 3(1) (c) of the Ratification of Treaties Act
 3. These regulations shall come in to force 1 January 2019.

2. INTERPRETATION.

1. In these regulations, unless the context otherwise requires:

“the Act” means

- (1) the Antigua and Barbuda Environmental Protection and Management Act, 2015.
- (2) Definitions contained in the Act shall be amended to incorporate the meaning of the Protocol

“ADOMS” is the Antigua and Barbuda Department of Maritime Services and Merchant Shipping and the **“Appropriate Maritime Authority”** and shall---

- a. consult with the Department of the Environment;
- b. consult with the Antigua and Barbuda Port Authority in relation to any hazardous substance transported by sea, air, or inland waterway; and / or
- c. consult and coordinate with the Central Board of Health;

for the issuance of pollution control permits; assessment; and monitoring of dumping in to the sea of waste and other matter.

“Convention” means the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, as amended.

“director ” means the Director of the Department of Environment;

“discharge” means

(a) for the purpose of Part V of the Act, the release of a (harmful substance) from a ship, petroleum exploration facility or other source, whether accidental or otherwise;

(b) for the purpose of Part V of the Act, the release of a harmful substance or effluent containing a harmful substance, but does not include-

(i) dumping for the purposes of the Act;

(ii) the release of a harmful substance directly arising from the exploration, exploitation or offshore processing of seabed mineral resources; or

(iii) the release of harmful substances for the purposes of legitimate scientific research into pollution abatement or control; and

(b) for the purpose of Part V of the Act, includes any spillage, leakage, pumping, pouring, emission, emptying or dumping, of a harmful substance whether accidental or otherwise;

“environmental minister” means the Minister to whom the responsibility for environmental and protection and management.

“Organisation” means the International Maritime Organisation

“London Protocol” means the 1996 Protocol to The Convention On The Prevention Of Marine Pollution By Dumping Of Wastes And Other Matter, 1972 (As Amended)

“Secretary General” means the Secretary-General of the Organisation

“dumping” for the purposes of Part V of the Act and these regulations means:

(1) any deliberate disposal into the sea wastes or other matter from land, vessels, aircraft, platforms, structures, or other man-made structures at sea;

(2) any deliberate disposal into the sea vessels, aircraft, platforms, structures, or other man-made structures at sea;

(3) any storage of wastes or other matter in the seabed and the subsoil thereof from vessels, aircraft, platforms or other man-made structures at sea; and

(4) any abandonment or toppling at site of platforms or other man-made structures at sea, for the sole purpose of deliberate disposal.

(5) The disposal or storage of wastes or other matter directly arising from, or related to the exploration, exploitation and associated offshore processing of seabed mineral resources.

“dumping” does not include:

1. the disposal into the sea of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms, structures, or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms,

structures or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or other man-made structures;

2. placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Protocol; and
3. abandonment in the sea of matter (e.g., cables, pipelines and marine research devices) placed for a purpose other than the mere disposal thereof; and

“Antiguan and Barbudan aircraft” means an aircraft registered in Antigua and Barbuda;

“Antiguan and Barbudan waters” means—

- (1) any area submerged at mean high water springs, and also includes, so far as the tide flows at mean high water springs, and estuary or an arm of the sea and the waters of any channel, creek, bay or river.
- (2) Any part of internal waters, archipelagic waters, territorial sea, contiguous zone, and exclusive economic zone of Antigua and Barbuda;

“archipelagic waters” means—

- (1) Area is comprised of the sea (other than internal waters) on the landward side of the baselines

“captain” means—

- (2) Master;
- (3) Skipper; and
- (4) In relation to a hovercraft or aircraft means the person who is designated by the operator to be in charge of it during any journey or failing such designation, the person who is for the time being lawfully in charge of it;

“commander” in relation to an aircraft, means the member of the flight crew designated as commander off that aircraft by the operator thereof, or failing such a person, the person who is for the time being the pilot in command of the aircraft;

“department” means the Environmental Department

“environment” shall include the coastal zone and coastal environment;

“foreign vessels” means a vessel which is not a ship

“harbour” means the harbours referred to in section 31 and specified in the Third Schedule to the Ports Authority Act, 1982:

“IMO” means International Maritime Organisation

“incineration at sea” means-

- (1) the combustion on board a vessel, platform, structures, or other man-made structure on land, or at sea of wastes or other matter for the purpose of their deliberate disposal by thermal destruction.

"incineration at sea" does not include--

- (1) the incineration of wastes or other matter on board a vessel, platform, structures, or other man-made structure at sea if such wastes or other matter were generated during the normal operation of that vessel, platform, structures, or other man-made structure at sea.

"managing owner" in relation to a ship, includes any person not being an agent in whom an owner of such ship has vested authority to manage and operate the ship;

"marine structure" means a platform or other man-made structure on land or at sea

"master" means—

- (1) captain;
- (2) skipper;
- (3) pilot;
- (4) in relation to any ship, vessel means the person having the command, conduct, or charge of the vessel for the time being

"owner" in relation to a ship, includes a demise or bareboat charterer and a managing owner;

"permit" means express, written authorization provided by the appropriate authorizing authority in accordance with the measures adopted pursuant to permission granted in advance and in accordance with relevant measures adopted pursuant to Part V of the Act;

"pollution" means

- (1) the introduction, directly or indirectly, by human activity, of wastes or other matter into the sea which results or is likely to result in such deleterious effects as harm to living resources and marine ecosystems, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities;
- (2) the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and

"regional states" means Caribbean States, the Overseas territories of France; United Kingdom; the Netherlands; and the United States located in the Caribbean;

“the Regulations” means the Environmental Protection (Dumping of Wastes and Other Matter in to the Marine Environment) Regulations 2018

“sea” means all marine areas including internal waters, the territorial zone, contiguous zone, exclusive economic zone, as well as the seabed and the subsoil thereof and sub-seabed repositories accessed only from land.

“seafarer” includes every person employed or engaged in any capacity on board any ship, other than a master or a pilot or a person temporarily employed on the ship while in port, and apprentices;

“structure” includes a structure that is either man-made or structures created form by natural or un-natural causes;

“tribunal” means an arbitral tribunal;

“wastes or other matter” means any tangible or intangible material or substance of any kind, form or description;

“vessel” and / or “aircraft” means

(1) means ship, boat, tug, lighter, hovercraft, or boat of any kind whatsoever whether the same is propelled by steam or otherwise or is towed and any other description of vessel used in navigation;

(2) waterborne or airborne craft of any type whatsoever. This expression includes air-cushioned craft and floating craft, whether self-propelled or not;

APPLICATION.

1. These regulations shall apply to:

1. Vessels and aircraft registered in Antigua and Barbuda or flying its flag;
2. Vessels and aircraft loading in Antigua and Barbuda territory the wastes or other matter which are to be dumped or incinerated at sea; and
3. Vessels, aircraft and platforms other man-made structures believed to be engaged in dumping or incineration at sea in areas within which Antigua and Barbuda is entitled to exercise jurisdiction in accordance with international law; and

2. These regulations shall also apply to the internal waters, territorial sea, archipelagic waters, and exclusive economic zone.

GENERAL.

3. The acceptance of dumping under certain circumstances shall not remove the obligations under this Regulation to make further attempts to reduce the necessity for dumping. Particular attention

shall be paid to opportunities to avoid dumping in favour of environmentally preferable alternatives.

4. The precautionary approach as set out in Section 5 of the Act shall be applied where appropriate to establish preventative measures when there is reason to believe that wastes or other matter introduced into the marine environment are likely to cause harm even when there is no conclusive evidence to prove a causal relation between inputs and their effects.
5. The polluter pays principle bears the cost of pollution prevention and control requirements for the authorized dumping and incineration activities shall be applied having due regard to the public interest.
6. The Department shall act so as not to transfer, directly or indirectly, damage or likelihood of damage from one part of the environment to another or transform one type of pollution into another.
7. The Department shall take appropriate measures in accordance with international law to prevent and if necessary punish acts contrary to the provisions of this Protocol.
8. The Department agrees to co-operate in the development of procedures for the effective application of this Protocol in areas beyond the jurisdiction of any State, including procedures for the reporting of vessels and aircraft observed dumping or incinerating at sea in contravention of this Protocol.
9. This Protocol shall not apply to those vessels and aircraft entitled to sovereign immunity under international law. The Department shall ensure by the adoption of appropriate measures that such vessels and aircraft owned or operated by it act in a manner consistent with the object and purpose of this Protocol and shall inform the Organization accordingly.

PART II - Dumping at Sea

10. All dumping at sea of wastes or other matter is prohibited with the exception of those listed below in accordance with Annex I of the Protocol, which may be considered for dumping upon the relevant permit. They are as follows –
 1. Dredged Material;
 2. Sewage sludge;

3. Fish waste, or material resulting from industrial fish processing operations;
 4. Vessels and platforms or other structures, or man-made structures at sea;
 5. Inert, organic geological material;
 6. Organic materials of natural origin;
 7. Bulking items primarily comprising iron, steel concrete and similar harmless materials, for which the concern is physical impact, and limited to those circumstances where such wastes are generated at locations, such as small islands with isolated communities, having no practicable access to disposal options other than dumping;
 8. Carbon Dioxide streams from carbon dioxide capture processes for sequestration.
2. An offence under this section arises otherwise than in accordance with these regulations, dumping at sea occurs.

11. Incineration at sea of wastes or other matter is prohibited.

1. The Department shall prohibit incineration at sea of wastes or other matter;
 - i. On a vessel or platform in Antigua and Barbuda waters; or
 - ii. On an Antigua and Barbuda vessel in any party of the sea.
 - iii. Export of wastes and other matter to foreign countries for the purpose of dumping or incineration is prohibited.
1. An offence arises this section is committed if exportation of wastes and other matter to a foreign country is conducted:
 - iv. Knowing that it will be dumped in to the sea or incinerated at sea or
 - v. Recklessly as to whether it will be dumped into the sea or incinerated at sea.

12. Loading for the purpose of dumping or incineration is prohibited, otherwise than in accordance with these Regulations.

1. An offence against this section is committed if any person:
2. Loads wastes or other matter on a vessel, aircraft or platform in Antigua and Barbuda or its waters:
3. Knowing that it will be dumped into the sea or incinerated at sea; or
4. is reckless as to whether it will be dumped into the sea or incinerated at sea.

13. Loading for the purpose of dumping or incineration is prohibited, otherwise than in accordance with these Regulations.

1. An offence against this provision is committed if any person:

- i. Loads wastes or other matter on a vessel, aircraft or platform in Antigua and Barbuda or its waters.;
- ii. Knowing that it will be dumped in to the sea or incinerated at sea; or
- iii. Is reckless as to whether it will be dumped into the sea or incinerated at sea; or
- iv. Loads wastes or other matter on any Antiguan and Barbudan vessel or its flagged aircraft:
 - 1. Knowing that it will be dumped into the sea or incinerated at sea; or
 - 2. Is reckless as to whether it will be dumped into the sea or incinerated at sea.

14. Exceptions

- 1. The provisions under this part shall not apply:
 - i. When It is necessary to secure the safety of human life or of vessels, aircraft, platforms or other man-made structures at sea in cases of force majeure caused by stress of weather;
 - ii. In any case which can be regarded as a danger to human life or a real threat to vessels, aircraft, platform or other man-made structures at sea;
 - iii. If dumping or incineration at sea appears to be the only way of avoiding the threat; and
 - iv. The dumping amount is less than would otherwise occur.
- 2. Such dumping or incineration at sea shall be conducted to minimize the likelihood of damage to human or marine life and shall be reported to the Department and also the IMO.

15. Where an offence under this provision arises and an action taken where the Director reasonably believes that a person has committed an offence under this Act or regulations made thereunder, the Department shall cause a written notice of violation (hereinafter called a "Notice") on such person in the form determined by the Department which shall include—

- i. a request that the person make such modifications to the activity within a specified time, as may be required to allow continuation of the activity; or
 - ii. an invitation to the person to make representations to the Director concerning the matters specified in the Notice within a specified time.
2. Where a matter specified in the Notice may be satisfactorily explained or otherwise resolved, the Department may cancel the Notice or dismiss the matters specified therein; or

- i. enter into a consent agreement containing such terms and conditions as the Director deems fit. if, otherwise than in accordance with these Regulations.

16. Pursuant to Section 95(1) of the Act, a restraining order or other injunctive or equitable relief to prohibit continued violations or for the prevention of activity that would lead to violation;

1. Seek an order for the closure of a facility or pursue any other remedy;
2. Any action under this party may be instituted in addition to any other action taken by the Director under the Act.

17. Prosecution of Offences

1. Pursuant to Section 96 of the Act the Director or any other authorized officer or appropriate authority may rely on the courts to prosecute whether punishable on summary conviction or indictment.

PART III- Administration

18. The Minister shall be responsible for the administration and enforcement of the provisions of these regulations and any amendments shall occur from time to time.

1. The Department and its administering officers shall discharge functions under these regulations as authorized and directed by the Director for the purposes of these regulations.

19. The Department, as required by the Minister shall

1. Conduct an evaluation of:
2. Types, amounts and relative hazard of wasters generated;
3. Details of the production process and the sources of wastes within the process, feasibility of the following waste reduction prevention techniques:
 - i. Product reformulation;
 - ii. Clean production technologies;
 - iii. Process modification;
 - iv. Input substitution and
 - v. On-site, closed -loop recycling
4. Permits can be issued upon completion of the valuation.

20. Characterization of the wastes and their constituents shall take into account:

1. origin, total amount, form and average composition;
2. properties: physical, chemical, biochemical and biological;
3. toxicity;
4. persistence: physical, chemical and biological; and
5. accumulation and biotransformation in biological materials or sediments.

(2) Pursuant to section 6(2) of the Act, the Minister may in writing delegate to the Director any of his or her functions under this Act other than the power under section 109 to make Regulations.

Part IV – Permits

Dump-Site Selection

21. Information required to select a dump-site shall include:

1. physical, chemical and biological characteristics of the water-column and the seabed;
2. location of amenities, values and other uses of the sea in the area under consideration;
3. assessment of the constituent fluxes associated with dumping in relation to existing fluxes of substances in the marine environment; and
4. economic and operational feasibility.

Permit to Dump Criteria

22. A permit-system is established including:

1. designation or establishment within the Department for the issuance of permits;
2. establish administrative procedures for the issuance of permits;
3. establish procedures to review permits at regular intervals;
4. set monitoring and surveillance conditions; and
5. designate approved sites.

23. Applicant must provide a detailed description and characterization of the waste as an essential precondition for the consideration of alternatives and the basis for a decision as to whether a waste may be dumped.

1. If a waste is so poorly characterized that proper assessment cannot be made of its potential impacts on human health and the environment, that waste shall not be dumped.

Applications for Permit and Fees

Issuance of Permits and Reporting

24. The Department has the power to issue permits in respect of the wastes listed in the regulations.
25. ADOMS will work in tandem to coordinate with the Department and such other entities as may be appropriate from time to time the following—
 1. the issuance of permits in respect of the wastes listed in in the Annexes of this regulation are intended for dumping into the sea provided that the wastes are:
 - a. loaded in the internal waters, archipelagic waters, the territorial zone, contiguous zone, exclusive economic zone of Antigua and Barbuda; and
 - b. loaded onto a vessel or aircraft registered in Antigua and Barbuda or flying the flag of Antigua and Barbuda in the territory of a State not a Party to the Protocol
26. A detailed description and characterization of the waste is an essential precondition for the consideration of alternatives and the basis for a decision as to whether a waste may be dumped. If a waste is so poorly characterized that proper assessment cannot be made of its potential impacts on human health and the environment, that waste shall not be dumped.
27. Notwithstanding any other provision of this Protocol, this Protocol shall relate to internal waters, archipelagic waters, territorial sea, contiguous zone, and the exclusive economic zone.
28. The Environmental Department should provide the IMO with information on legislation and institutional mechanisms regarding implementation, compliance and enforcement in marine internal waters.
29. The Environmental Department should also use their best efforts to provide on a voluntary basis summary reports on the type and nature of the materials dumped in marine internal waters.
30. Pursuant to Section 31, applicants for pollution control permits shall submit to the Department at least ninety days before the date on which applicant proposes to commence an activity that is likely

to result in the discharge of a pollutant into the environment. And shall be in the form as may be in the form prescribed by the Department.

31. Applications will be considered in collaboration with the Department and any other relevant authority, the Department considers appropriate to either grant a pollution control permit or refuse application and thereafter giving reasons to the applicant.
32. Each assessment shall conclude with a statement supporting a decision to issue or refuse a permit for dumping.

Fees and Charges

33. The holder of a permit shall be liable for the payment of pollution charges with respect to the release of any pollutant into the environment.
 1. The following pollution charges are payable for permit, in the amount as may be prescribed by regulations—
 - i. a pollution control permit fee for every year during which the permit is in force, based on the costs to the Department of supervising permits granted to different categories of permit holders, paid annually in advance fifteen days prior to the start of the year to which it relates; and
 - ii. pollution levy, calculated on the basis of the amount of each pollutant released into the environment measured as specified by the Department, paid quarterly in arrears within fifteen days after the end of the quarter to which the payment relates

Conditions for Permit

34. A decision to issue a permit shall only be made if all impact evaluations are completed and the monitoring requirements are determined. The provisions of the permit shall ensure, as far as practicable, that environmental disturbance and detriment are minimised and the benefits maximized. Any permit issued shall contain data and information specifying:
 1. the types and sources of materials to be dumped;
 2. the location of the dump-site(s);
 3. the method of dumping;
 4. monitoring and reporting requirements;
 5. certification of equipment and vessels involved in dumping operations;
 6. quality of assurance for sampling and analysis;

7. training / education of officers involved; and
8. establishment of contacts with all involved parties.

35. Department shall have regard to-

1. the applicable environmental quality standards;
2. the background concentration of pollutants in the environment;
3. the desirability of preserving the quality of the environment at the existing level or
4. restoring the quality of the environment to a higher level;
5. the desirability of ensuring that the best practicable available treatment or control of substances released into the environment is employed;
6. the combined effects of the proposed release of a pollutant into the environment and other existing releases into the environment; and
7. the desirability of making provision for future releases of pollutants into the environment.

Renewal of Permit

36. A permit operates for the period for which the permit is renewed pursuant to Section 36 of the Act.

37. On application, made not later than ninety days before the expiry, the applicant may apply for a renewal of the pollution control period

1. The permit may be renewed for such period or conditions as the Department deems fit.

Transfer of Permit

38. A pollution control permit granted under this Part shall not be transferable.

Refusal of Permit

39. A permit to dump wastes or other matter shall be refused if the Department determines that appropriate opportunities exist to re-use, recycle or treat the waste without undue risks to human health or the environment or disproportionate costs. The practical availability of other means of disposal should be considered in the light of a comparative risk assessment involving both dumping and the alternatives.

40. Where an application for a pollution control permit is refused by the Department, or is granted by the Department subject to conditions, the applicant may, within twenty-eight days from receipt of

notice of the decision, appeal to the Minister in the manner prescribed under section 107 of the Act for an appeal.

Modification, Suspension, Revocation

41. Where there is a change in the circumstances regarding environmental conditions or pollution control technology, the Director may by notice in writing served on the permit holder modify the permit to the extent the Director sees fit.
42. The Director may suspend or revoke by notice in writing served on the permit holder where there is a default or irreversible degradation to the environment.
 1. A permit shall not be revoked unless;
 - i. A notice has been served with the intention of the revocation or suspension of the permit holder;
 - ii. Within the notice specify a reasonable date which the permit holder may submit in writing any representation which the Director may consider to either take in to account any action to remedy such default to mitigate against the occurrence of similar defaults; and any representations the permit holder wishes the
 - iii. Where there is a modification, suspension or revocation of a permit, the permit holder may within twenty – eight days from service of modification, suspension or revocation, as the case may be, appeal in writing against that decision to the Minister, setting out the grounds upon which the appeal is made.
 - iv. At any time when a pollution control permit is in force, the permit holder may, by giving to the Director one month's prior notice in writing, surrender it, and upon surrender of the permit.

PART V – Recordkeeping, Monitoring and Reporting

43. The Department shall keep records of the nature and quantities of all wastes or other matter for which dumping permits have been issued and where practicable the quantities actually dumped and the location, time and method of dumping; and monitor individually, or in collaboration with other Contracting Parties and competent international organizations, the condition of the sea for the purposes of this Protocol.

44. Permits shall be reviewed at regular intervals, taking into account the results of monitoring and the objectives of monitoring programmes.
1. Review of monitoring results will indicate whether field programmes need to be continued, revised or terminated and will contribute to informed decisions regarding the continuance, modification or revocation of permits.
45. Keep records of the nature and quantities of all wastes or other matter which correspond with issued dumping permits and the quantities actually dumped and the location, time and method of dumping;
46. Monitor the condition of the sea in cooperation with other Contracting States and the IMO;
47. Analyze problems and establish preventative and remedial measures concerning dumping at sea;
48. The initial stages in assessing alternatives to dumping should, as appropriate, include an evaluation to implement preventative and remedial measures regarding dumping at sea. These include but not limited to;
1. Conduct research, studies, monitoring programmes;
 2. Gather, collect, analyze, publish and disseminate information;
 3. Promote the planning, approval, finding and implementation of measures designed to ensure the wise and sage use of the sea;
 4. Train personnel involved in environmental health;
 5. Undertake surveys, monitoring and investigating necessary reports, plans and programmes;
 6. Advise and coordinate with ADOMS;
 7. Implement and administer approved programmes;
49. The Department in conjunction with ADOMS shall set dates to report to the IMO administrative and legislative measures;
1. The Department shall inform other States where vessels and/or aircraft are observed dumping or incinerating at sea in contravention of these regulations;
 2. Any person that has observed dumping of sea by vessels and / or aircraft within Antigua and Barbuda waters or flying its flag is required to report the same to the Department.

Monitoring

50. Monitoring is used to verify that permit conditions are met. Both compliance monitoring and field monitoring shall have clearly defined objectives. The assumptions made during the permit review and site selection process must be determined to be correct and sufficient to protect the environment and human health.

ANNEX I

LIST OF MULTILATERAL ENVIRONMENT INSTRUMENTS AND ENVIRONMENT CONVENTIONS

Schedule IX – Environmental Protection and Management Act, 2015

TABLE B

INSTRUMENT & TITLE	PLACE & DATE OF SIGNATURE	RATIFICATION
1996 Protocol ^{83 84} to the 1972 Convention (“The Convention”) on the Prevention of Marine Pollution by Dumping of Wastes and other Matter	London	24th November 2015

⁸³ London Protocol came in to force on 24 March 2006

⁸⁴

ANNEX II

FEES

DESCRIPTION	FEE
<i>Application</i>	
<i>Assessment</i>	
<i>Stop Notice</i>	
<i>Prohibition Notice</i>	
<i>Type Of Waste: Character and Composition</i>	
<i>Amount/ Quantity Of Waste</i>	
<i>Location Of Dumping</i>	
<i>Location Of Incineration</i>	
<i>Frequency Of Dumping</i>	
<i>Period Of Dumping</i>	
<i>Tribunal Hearing</i>	
<i>Tribunal Administrative</i>	

**ANNEX III
FORM**

PERMIT TO DUMP WASTE OR RESTRICTED MATERIAL

1. Name of Permit Holder

2. Address (or address of principal or registered office if a company)

3. Telephone number _____ Email Address _____

4. Character and Composition of Waste or Restricted Material

5. Date and place of proposed dumping

6. Conditions of dumping

I hereby certify that the dumping of waste/material referred to above is permitted to be undertaken in accordance with the conditions of this permit set out above, between the ____ day of _____, 20__ and the ____ day of _____, 20 .

Minister of Environment

Date