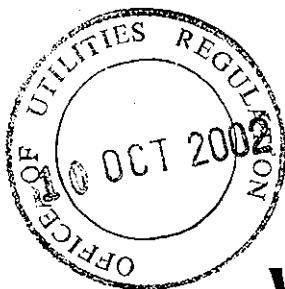


EXECUTIVE SUMMARY

OF THE REPORT

ON THE

WATER SUPPLY AND SEWERAGE SERVICES ACT



October 3, 2002

Background

The Jamaica Water Sector Policy (p. 37) calls for the enactment of an industry specific legislation which will define the policy and regulatory framework for the entire sector. The introduction of legislation to govern the body of potable water and sewerage services is regarded by the Ministry of Water and Housing as a priority in pursuance of government's objective to achieve universal access by 2005.

The legislation is also regarded as an urgent priority for the government against the background that:

- i. a Water Policy has been formulated
- ii. a Regulator (the OUR) has been created;
- iii. there is need to attract private capital to the sector; and
- iv. the National Water Commission (NWC) Act is not and cannot be construed as an Act to govern the sector as a whole.

In March 2002 work commenced on the development of proposals for new legislation to regulate the water industry in Jamaica. The first consultation on the new proposals was on May 7, 2002 and two other consultations on the proposals were held in June. In early August 2002 discussions were held between the Ministry, OUR and the Consultant regarding the scope of the drafting instructions.

The proposed Water Supply and Sewerage Services Act would regulate all water and sewerage service providers (other than irrigation). The Act would establish a regulatory mechanism for all aspects of water supply.

PROPOSED INDUSTRY STRUCTURE AND INSTITUTIONAL FRAMEWORK

The crucial issue that will underpin the development of legislation for the sector is a clear understanding of the industry structure and institutional framework for the sector.

The main participants in the water industry sector will be the Minister, the OUR, the National Water Commission (NWC) and other service providers. The Water Policy contemplates that the primary provider of water and sewerage services will be the National Water Commission (now to be called the National Water Corporation). However, it is generally appreciated that as legally formulated the NWC may not be best configured for optimal efficiency and that its operational and financial performance may be constrained by its legal structure. Water, however, being considered important to national well being, it is felt that the government would wish to retain a measure of control over the development of the sector particularly on issues related to universal service, the build out of the system and, if necessary, to be the service provider of last resort. At the same time the peculiarities of the sanitation requirements may be as such that the government may need a vehicle through which long-term development financing, which may not necessarily be accessible by the private sector, can be accessed by the government. The challenge is to develop a model that will achieve the dual objectives of (a) providing an environment for the NWC to operate along strict commercial lines and to be regulated by the Office as may best allow it to deliver a safe, economical and acceptable service to consumers while (b) allowing the government to deliver on its social objectives.

It is proposed that NWC will continue to own the government's assets in the water asset.

At the same time, the NWC (which could be renamed the National Water Corporation) will remain as a statutory entity but this being reviewed to determine whether in the long run it should be established as a limited liability company. NWC will be issued with a licence in accordance with the law. The agreement would speak to issues such as the company's obligation to expand the system and to earn returns on its capital invested, as would be the case of a private company operating a long-term concession. NWC would pay regulatory fees to the OUR.

Service providers will be entities, in addition to NWC, that have been issued with licences to operate as service providers of water only, sewerage only or water and sewerage services. These may be private investors such as Four Rivers Development Company, government owned companies such as Runaway Bay Water Company or companies operating with management contracts or concession agreements with the Ministry of Water.

One of the key objectives of the Water Policy is to attain universal access to water by 2005. The policy contemplates that a variety of modalities will be used ranging from full service connections at property boundaries to catchment tanks and trucking. Clearly, local government and the Parish Councils must play an important role in the delivery of these services. The functions of the Parish Councils ought to be redefined to be consistent with and enable them to, not only provide services in the context of the

Government's Universal Service objectives but to deliver these services in an economically efficient, environmentally sound and sustainable manner.

There will be the need for Government to allocate additional funding for the water sector. Taking over of non operating sewerage systems will involve the allocation of significant funding for such an activity. In addition the Parish Councils will need additional funding in order to meet the standards for delivery of potable water.

In regard to sewage operators they would be licenced by OUR. However this licensing process would linked to NEPA's licensing process for effluent discharges etc. The new Act will expressly require that both licensing processes will be linked. An example of this is section 21 of the Water Resources Act which provides:

"22(1) where a licence is required pursuant to section 19 and the use of the water to which that licence relates will or is likely to result in the discharge of effluents, then, an application shall also be made to the relevant authority for a licence to discharge effluents and a copy of that application shall accompany the application for a licence required pursuant to section 19".

NWC would hold government's assets in the sewerage sector. It is understood that a baseline study needs to be undertaken of the existing sewerage operations and the cost attendant on restructuring the sewage industry.

PROPOSED WATER AND SEWERAGE SERVICES ACT

The main features of the Act would be:

- The functions and duties of the Minister
- The functions and duties of the Director of Water
- The functions and duties of the Office – the regulatory regime
- The appropriate linkages to the other regulators – Environmental, Water Resources Authority, Ministry of Health
- Competition issues, relationship of the Office to the Fair Trading Commission and the FTA
- The Licensing Regime
- Universal Service Obligations
- Provisions specific to water services
- Provisions specific to sewerage services
- Other general provisions – common carriage, confidentiality, penalties, etc.
- Repeal and amendment of some laws
- Transitional arrangements
- Regulations and rules
- The Schedules

Under the Act a Director of Water would be established. The Director's duties would be to:

- Carry out the macro (high level) planning functions for the sector
- Managing concession agreements on behalf of the government

- Advising the Minister on water development and universal service issues
- Engaging in consultations with the Office on the need to issue new licences in order to meet supply objectives
- Recommending the institutional framework (in consultation with the Minister) to fulfill the government's universal service obligations
- Advising the Minister on appropriate arrangements for continuity of supply in the event of failure of any service provider.

Three key entities are envisaged by the Act: OUR (the regulating authority), the Minister (responsible for policy and planning) and the water and sewerage providers.

Under the Act NWC would cease to have any regulatory functions. The NWC Act would be recast so as to establish NWC solely as a water and sewerage provider along commercial lines including the establishment of performance standards.

RECOMMENDATIONS

1. The licence would be issued by OUR with an appeal to the Minister.

2. The Water and Sewerage Services Act would not apply to irrigation water. However provisions should be included in the drafting instructions for the application of the Act to irrigating water where it was considered appropriate to do so.

3. NWC should remain a statutory entity. However the Act would be recast so as to enhance its role as a service provider; promote efficiency and accountability through performance standards.

4. The Ministry (through the Director of Water) will be responsible for all potable water and sewerage systems development planning.

During the current consultations there has been broad agreement that sewerage services should be opened to private sector participation.

5. It is agreed that the role of the Ministry of Water (through the Director of Water) would be to:
 - Develop policy
 - Planning
 - Identifying and managing concessions agreements
 - Monitoring the water sector

- A Director of Water would be appointed in the Ministry of Water (such an appointment would be analogous to that of the Director of Electricity).

6. The mechanism to be established for rural water.

A rural water agency (e.g. Rural Water Limited) would be established to manage and deliver rural water and consolidate all investments in rural water.

7. NWC would not have a role in approval of private sewerage operations. The whole regulatory framework for sewerage operations would be the responsibility of OUR and NEPA is so far environmental standards are concerned. For this work it will be necessary for NEPA and the Ministry of Health to have adequate funding to discharge the technical standards flowing from these responsibilities.

MINISTRY OF WATER AND HOUSING

**LEGAL AND INSTITUTIONAL
FRAMEWORK FOR WATER
MANAGEMENT IN JAMAICA**

Prepared by:

*Dr. Winston McCalla
16th September, 2002*

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- ❖ **Drafting Institutions for Water Management Act**

- ❖ **Preliminary Draft of Sewerage Regulations**

TABLE OF ABBREVIATIONS

CECL	Carib Engineering Corporation Limited
MOH	Ministry of Health
EIA	Environmental Impact Assessment
GOJ	Government of Jamaica
NIC	National Irrigation Commission
NRCA	Natural Resources Conservation Authority
NWC	National Water Commission
OUR	Office of Utilities Regulation
UDC	Urban Development Corporation
WRA	Water Resources Authority
WUA	Water Users Association

REFORM OF WATER MANAGEMENT LEGISLATION IN JAMAICA

SUMMARY

PURPOSE

This Report proposes a broad framework for the regulatory arrangements, which need to be put in place to address the changing future of the Jamaican water industry. These changes include increasing private sector involvement in the industry, a stronger emphasis on water service providers responding to customer needs and a greater focus on ensuring the sustainability of the resource.

Regulatory arrangements outlined in this Paper are aimed at meeting the overarching public interest objectives of ensuring the maintenance of safe and reliable water services and protecting the safety of the community.

Issues to be addressed in Reviewing Regulatory Arrangements

The increasingly commercial and diversified nature of Jamaica water industry demonstrates that there is a clear need for the development of a consistent and coherent regulatory framework in relation to the provision of water services in Jamaica. It is intended that this regulatory framework should encompass all water service providers within the Jamaica water industry (public and private), as well as achieving congruence with some of the regulatory arrangements which are already in place. An essential requirement for this regulatory framework is that it should be non-discriminatory, in that it applies equally to all water service providers, regardless of the form of

ownership. The intention is to embody this new framework in water industry umbrella legislation, and to implement new regulatory arrangements for all water service providers, irrespective of form of ownership;

- Be based on an industry structure which allows clear separation of policy, regulatory and service delivery functions;
- Provide an unambiguous framework which maximizes the scope for commercially negotiated outcomes;
- Create a balance between achieving accountability and not placing onerous restrictions or reporting requirements on the industry;

Proposed Regulatory Framework

Principles and Objectives

A primary objective of the regulatory framework for water service provision is to ensure that continuity of supply and customer service standards are maintained. The regulatory framework proposed in this Paper is based on the following principles – that is, regulatory arrangements should:

- provide a generic framework which applies to all water users and to protect customers and the public and prevent or correct abuse of market power; and
- promote an industry structure which is both economically and ecologically sustainable.

Coverage

A fundamental principle underpinning the regulatory framework is that it will apply equally to all water service providers regardless of whether they are private or public sector entities.

However, implementation of the framework will recognize the historic importance of NWC. Water service providers will be licensed for their activities, with regulatory requirements imposed as a condition of the licence. In addition, regulation of water service providers will, as far as possible, recognize existing mechanisms which meet the requirements of the regulatory framework, to avoid duplication or unnecessary action on the part of water service providers in complying with their licence responsibilities.

Proposed Regulatory Roles

OUR will be the regulatory authority. The model used will be that set out in the Telecommunications Act. OUR will develop acceptable service standards for urban potable water and waste water. OUR will have responsibility for the approval of fees and tariffs based on prescribed/agreed water quality and service quality standards, minimum standards of sewerage and other provided to customers. OUR will be responsible for setting tariffs at a level which allows service providers to fully recover efficient cost levels (including both capital and operating costs). Finally OUR will have the following responsibilities:

- receive and process applications for a licence;
- issue licences for the provision of water;
- protect the interest of consumers, which having regard to the interests of service providers;
- carry out investigation in relation to a person's conduct as well as to determine whether and to what extent that person's acting is in contravention of the Act;
- make information available to the public concerning matters affecting the water sector;

- promote competition among service providers;
- advise the Minister on matters relating to water supply services.

Responsibilities of Providers of Water

- Responsibility to maintain service quality standards – it is proposed that this be implemented through water service providers being required to comply with appropriate service quality standards in relation to specific matters, for example levels of interruptions to supply, parameters in relation to pressure and flow. Water service providers will be required to develop customer service standards and have a current asset management plan to support their service quality standards. Customer service standards are required in the industry to endure that monopoly water service providers do not compromise standards of service in pursuit of commercial objectives. Similarly, water service providers will be required to have an asset management plan to support service standards and as a mechanism for ensuring that they do not compromise long-term asset maintenance to meet short-term profit objectives.
- Responsibility to report on certain activities – the regulatory framework will include a reporting component to enable the regulator to obtain information for performance monitoring function of the regulator will be specifically related to information required for monitoring compliance with licensing responsibilities.
- Responsibility to main water distribution system losses at minimum levels (where possible) – the regulatory framework will include a water use efficiency component by making it a responsibility attaching to a water service provider’s licence to put in place procedures to minimize distribution system losses in their system. Consequently, it is

proposed that the regulator and the service providers agree on appropriate targets for reduction of water losses on their distribution systems – for example, pipes – where it is cost effective to do so.

- Responsibility to comply with relevant technical standards and codes – where applicable, water service providers will be required to comply with the technical standards and codes which apply to the sewerage and water supply activities.

Rights of Providers of Water

It is also proposed to provide certain rights or powers to water service providers to generally conduct their business and to fulfill their obligations. These include:

- Powers required to service and protect assets and the resource – these particularly relate to rights of entry to maintain infrastructure.
- Powers in relation to charges, meters and accounts – a water service provider will also need to have clearly defined rights in terms of imposing charges for water supplied, including the ability to undertake certain functions which are necessary for it to determine the charges which should be imposed.

Enforcement and Provisions for Offences

The water industry legislative framework will clearly set out offence and enforcement provisions for a range of matters.

Powers of Minister

- Minister may issue guidelines or codes of practice to water service providers (NWC & other service providers) in relation to the performance of any of their functions.
- Minister may require NWC and other service providers to provide strategic planning for the delivery of water services.
- Minister to promulgate regulations.

Functions of NWC

NWC main functions would be that of a provider of potable water and sewerage services.

- Within the limits of its resources provide and improve water supply services in accordance with Government policy.
- Keep under constant review the quality, reliability and availability of its water supply services.
- Maintain and operate water supply services provided by the Commission.
- Hold the existing assets of government in the water sector.
- To operate and maintain sewerage services

Proposed Water and Sewerage Services Act

The new legislation will:

- Define the policy and regulatory framework for the entire water supply sector.
- Define the policy and regulatory framework for the entire sewerage services.
- OUR will be responsible for the granting of licences.
- The licence will set out various conditions and stipulations.

- While NWC would retain the majority of the water supply market, licences would also be issued for private sector provided that the coverage under such licences would be restricted to local operations.
- NWC Act would be amended to remove all provisions dealing with regulatory control and to establish a commission.
- Facilitate situations where a developer might propose to construct a water main; a sewerage system or a wastewater treatment works in order to provide services for a development. This may allow accelerated development of general infrastructure in circumstances where NWC may not (for reasons of work scheduling, cash-flow etc.) be in a position at a particular moment in time to provide the necessary water services infrastructure itself.
- Empower Minister to make regulations.
- Recast the existing NWC Act.
- Appoint a Director of Water Services in the Ministry.
- Establish a regulatory regime for sewerage licences.

Amendments to NWC Act

Most of these amendments are being dealt with in the pending National Water Commission (Amendment) Act 2002.

1. Section 4(1)(a) delete
2. Section 4(1)(c) – amend NWC would no longer advise the Minister on “the rates charged for such services”.

3. Section 19(1)(a) amend – the rates would now be prescribed under the Water Industry Act.
4. Section 19(1)(b): section 19(1)(b) would be transferred to the new Water Industry Act.
5. Section 19(2) – this section would be removed from the NWC and placed with the Water Industry Act
6. Section 27 – Licences would no longer be issued by NWC in any event this section should be moved to the Water Industry Act.
7. Section 30 – delete
8. Placing NWC responsible for sewerage.

1.0 OVERVIEW

Over the last one hundred and fifty years, several agencies have been charged with the responsibility of developing potable water systems to serve the Jamaican population.

In 1850, the Kingston and Liguanea Waterworks Company commissioned facilities based on the Hope River as source, to supply the Liguanea Plains in which Kingston is located. Later, in 1876, a filter plant was constructed at Cavaliers to treat water from the Hope River. It has been reported that this represented the first treatment works of its kind in the Western Hemisphere. The responsibility for supplying Kingston was taken over by the Kingston and St. Andrew Corporation between 1923 and 1933. This period saw the construction of the Hermitage Dam on the Wag Water River and the development of groundwater sources in the Kingston area. Systems were developed and operated outside of the Kingston and St. Andrew "metropolitan" area by the Local Government Ministry and its twelve (12) Parish Councils. The roles of these agencies were subsequently taken over by the Water Commission and the National Water Authority respectively, the latter working alongside the Parish Councils which continued to operate the minor water supply systems. The Parish Councils also retained the responsibility for distribution of water and the collection of user charges.

The year 1980 saw the Water Commission and the National Water Authority amalgamating to form the National Water Commission which has since assumed the responsibility for all major water supply systems islandwide. The Parish Councils still retain their role of operating the small systems, rainwater catchment and wayside tanks. In 1983, the Government of Jamaica

established Carib Engineering Corporation Limited for the sole purpose of implementing the Yallahs Pipeline Project. This wholly owned government agency subsequently (1986/7) assisted NWC in the execution of selected water supply capital works islandwide, performing in the capacity of Implementing Agency. On behalf of NWC, CECL has been responsible for an annual average of thirty-three discrete projects during the 1987 to 1994 period. After commissioning, these systems are handed over to NWC for operation.

The lead agency having environmental oversight for Jamaica's natural resources is the Natural Resources Conservation Authority established under the Natural Resources Conservation Authority Act. Water Planning is vested in the Water Resources Authority under the Water Resources Act.

Water resources management in Jamaica is governed by the Water Resources Act 1995. Agencies such as the National Water Commission and the National Irrigation Commission have the authority under their respective statute to manage domestic and irrigation water supply respectively. The National Water Commission has development and operational responsibilities for sewage systems. A number of other government agencies have participated in the development of water and sewage systems. The Ministry of Local Government has responsibility for minor supply systems.

The most recent piece of legislation passed was the Water Resources Act 1995. This became operational on April 1, 1996. The Water Resources Act is the response to the need for:

- (a) a unified and cohesive legislative framework for the proper administration, development and optimal use of the water resources of Jamaica
- (b) adequate water resources planning to ensure the rational development and equitable allocation of water resources
- (c) adequate control and management of water quality in aquifers and stream channels

With regard to water services currently the majority of these services are provided by NWC (as regards to potable water) and NIC (in regard to irrigation water). In the light of the move to greater private sector participation it will be necessary to examine various mechanisms to expedite the process of privatisation.

2.0 POLICY FRAMEWORK

A Water Sector Policy Paper was approved by Cabinet in 1999. In this document the Government outlined the current situation and problems within the water sector, defined the objectives of the Government to address the problems and set out the mode of implementation to ensure that the policy is implemented effectively.

The overall objective of the Policy is to encourage the use of freshwater and the treatment and disposal of wastewater in an efficient, equitable and sustainable manner consistent with the social, economic and environmental needs of the present and future generation.

The purpose of the Policy is to set down the goals and action by which the government intends to contribute to these objectives through its own and through the development of information and expertise, technological development of information and transfer, and promotion of public awareness. Stated government policy for the provision of water may be summarized as follows:

- Emphasis on water use efficiency and policies to encourage wise water use and conservation to reduce the amount of water otherwise demanded.
- Shifting of national priorities from water resources development to restoration of existing resources and enhancement of water quality serves to reduce the amount of capital otherwise required.

- Systematic planning as a matter of policy, based on reliable information and a range of plausible alternatives to provide the potential for containing demand and reducing the amount of capital expenditure needed.
- Cost recovery mechanisms to be used to ensure that the direct beneficiary pays and that the supply of service can be maintained.
- Increase the efficiency of provision of water services by, inter alia, introducing measures for the reduction of system leaks and unaccounted for water.
- Expansion of coverage.

Tariff Regulation

The Water Policy Paper provides that OUR will be responsible for setting tariffs at a level which allows the NWC to fully recover efficient cost levels (including both capital and operating costs). The NWC will be responsible for increasing the efficiency of its operations, and thus reducing costs to the lowest efficient levels.

Where exceptional circumstances dictate the need for additional funds for systems improvements or rehabilitation, the OUR will take this into account in setting tariffs.

Ownership and Private Participation in Urban Water and Wastewater

Privatization is but a part of the strategies of Government to secure economic benefits for Jamaica and not an end in itself. Private participation in the Water and Sewerage Sector is expected to bring improvements in the availability, quality and cost-effectiveness of services being delivered. Private participation arrangements should meet the following criteria;

- i) terms for privatization that are in the country's best interest;
- ii) improved economic efficiency in the sector, in both operating performance and the use of capital investment;
- iii) technical and managerial expertise and new technology into the sector to achieve productivity improvements;
- iv) injection of large-scale investment capital into the sector and/or access to private capital markets, thereby reducing public investment;
- v) insulation of the sector from short-term political intervention in utility operations and limitation of opportunities for intervention by powerful interest groups;
- vi) transfer of the risks and responsibilities of ownership from Government to the private sector over the long term;
- vii) delivery of a reliable and efficient service to communities throughout the island; and
- viii) making the sector more responsive to consumers' needs and preferences.

In order to implement these policies the Ministry of Water will develop a strategy for private participation in the sector. It is intended that the OUR will be responsible for licensing all participants in the industry.

Legal and Institutional Framework

The NWC will continue to be the main provider of potable water and sewerage services in Jamaica. New service providers will be restricted to prescribed development areas. Private sector participation will be encouraged to provide additional capacity through BOOT, joint venture and other appropriate configurations. In an effort to improve efficiency, certain aspects of NWC's operations will be outsourced to the private sector.

The OUR will function as the regulator for the sector. This will include, setting tariff and service standards and recommending the award of licences to service providers.

3.0 LEGAL FRAMEWORK

The section on the legal framework is divided into three subsections: the common law framework, the regulatory framework and water and sewerage services.

3.1 Planning Framework

The Town and Country Planning Act

This Act confers powers to plan and control development on the Town Planning Department and also government authorities. The Act also controls the use of mangrove areas and wetlands. The Act covers any change in land use which takes place on land. Permission has to be granted for such changes. The location of buildings along river banks would also fall within the permitting power.

The Act established the Town and Country Planning Department which has responsibility for ratifying Development Orders containing broad-based land use plans and regulations. The Development Orders are prepared by the Town Planning Department to control the development of land in both urban and rural areas, secure proper sanitary conditions and conveniences, coordinate building of roads and public services protect and extend amenities and conserve and develop resources. Development Orders have been prepared for a number of areas including St. Elizabeth, Montego Bay, St. James, Hanover, Negril/Green Island, Trelawny, Westmoreland, St. Ann, St. Mary, St. Thomas, Portland and Kingston.

The Town and Country Planning Authority is appointed pursuant to section 3 of the Act. The Town Planning Department prepares Development Orders to guide the grant or refusal of

permission for development or changes of use. Currently the whole island of Jamaica is not covered by development orders and some existing plans are now outdated.

The Act was amended in 1999 to allow the making of an interim development order to address the future development of an area and enable control by the planning authority in a relatively short period of time. Interim Orders only need to contain the following information, the description of the area of land; the parish in which the land is situated, the types of development which cannot take place without planning permission; time in which the development may commence and the functions of the local planning authority.

“Development” is defined under the Act as the carrying out of building engineering, mining or other operations in, on or under land or the making of any material change in the use of buildings or other land. The Act provides exemptions as to operations and uses not considered development including the carrying out by any local authority or statutory undertakers or any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes or cables and the use of any land for the purposes of agriculture or forestry. The Planning Authority is required under section 11 to have regard to the Development Order so far as material thereto and to any other material considerations in regard to the grant or refusal of planning permission. There are few recorded cases, which include the denial of planning permission, as compensation is payable by the Local Planning Authority or the Town and Country Planning Department where such a refusal is upheld. The Act does provide provisions for exemption from compensation as well. This is not a system that is led by the development plan and is

highly discretionary as material considerations and Development Orders are given the same weight under the Act.

Local Improvements Act

The Local Improvements Act requires that anyone wishing to subdivide land for building, lease, sale or other purposes must provide the Local Planning Authority with a plan for approval. The subdivision section of the Town and Country Planning Department coordinates interagency review of subdivision application and forwards recommendations (approval, denial, approval with conditions) to local planning authorities.

The Act prescribes functions for the local parish councils that have been prescribed by virtue of the Act being applied to given parishes. The Act prescribes requirements for subdivisions and sets forth a process by which a plan and specifications are deposited with the local parish council on this type of development. The Council requires specifications on sewers and water pipes for instance. The Council is given the discretion to grant or refuse such an application. An appeal lies to the Minister under section 8 of the Act.

Local Improvements (Community Amenities) Act

Under section 3 of the Act, the Minister may by order declare any area defined in the order to be a specific improvements (infrastructure) area. Among the factors leading to such an order are the lack of roadways, water supply, sewage disposal.

Once an order is made declaring an area to be a special improvement area, the Minister shall pursuant to section 12 cause to be prepared a special improvement (infrastructure) scheme in respect of the land. The scheme will seek to address the provision of a number of facilities including water supply and facilities for sewage disposal.

Before a scheme is approved the Minister should consult with the local Authority, NWC, and the Minister responsible for health. Section 18 provides that the Local Improvements Act or the Town and Country Planning Act shall not apply to the carrying into effect of the provisions of any scheme. Coordination of the water sector is of fundamental importance in implementing any strategy.

3.2 Regulatory Framework

Water Resources Act

The Water Resources Act establishes the Water Resources Authority. The functions of the Authority are spelt out in section 4 of the Act. Under section 4 it is the duty of the Water Resources Authority to regulate, allocate, conserve and otherwise manage the water resources of Jamaica. Under the Act the Authority may:

- obtain, compile, store and disseminate data concerning the water resources of Jamaica;
- exercise planning functions as provided in this Act in relation to the Master Plan and the Water Control Plan;
- allocate water resources in accordance with the provisions of the Act;

- provide to any department or agency of Government, at its request, technical assistance in respect of any projects, programmes or activities which relate to the development, conservation or use of water resources;
- perform such other functions relating to the management, conservation and use of water resources as may be assigned to it by the Water Resources Act or any other enactment.

Section 16 requires the Authority to prepare and submit to the Minister for approval a draft Water Resources Plan. The Master Plan will identify and describe, in relation to Jamaica, the projected needs for water and recommend the projects, programmes and other steps which in view of such needs, should be undertaken in respect of the development of water resources.

Under section 17 (1) of the Water Resources Act the abstraction and use of water is governed by the provisions of the Water Resources Act notwithstanding any contrary provision in any existing enactment. In addition section 17 (1) makes it clear that nothing in any existing enactment shall be construed as derogating from the provisions of the Water Resources Act.

Section 18 of the Water Resources Act provides that all water resources that were vested in the Crown immediately before the appointed day shall remain so vested after the appointed day. By section 19 a licence is required for the licence or use of water or to construct or alter works for the abstraction and use of water. No licence is required where a person has a right of access to the source of water and the water is required only for domestic use. Section 25 makes it clear that the grant of a licence under the Act does not dispense with the need to obtain planning permission under the Town and Country Planning Act.

Where an application is made for a licence under section 19 and the use of the water will or is likely to result in the discharge of effluents then a simultaneous application shall be made to the NRCA for a licence to discharge effluents.

Sections 26 to 28 deal with the establishment of easements, the constitution of such easements and the registration of easements. By section 29 the Authority may deal with surface water and underground water as one source of supply, if in its opinion the surface water and underground water are so interconnected as to constitute one source of supply.

The Natural Resources Conservation Authority Act

The Natural Resources Conservation Authority Act (hereinafter called "NRCA") was enacted in 1991 to provide a framework for the effective management of the physical environment of Jamaica. It provides for three Acts, Wildlife Protection Act, Watershed Protection Act and the Beach Control Act to be administered by the Natural Resources Conservation Authority. The Authority is a 10 member board constituted under section 3 of the NRCA Act that manages the Natural Resources Conservation Authority. The NRCA is given wide functions and duties including to develop, implement and monitor plans and programmes relating to the management of the environment and to formulate standards and codes of practice for the improvement and the maintenance of the quality of the environment.

The NRCA Act provides specific regulatory power to set qualitative standards for the discharge of wastewater (sewage and trade effluent) and the setting of water quality standards. The Act also makes provisions for the control of discharges into waters or on and into the ground. Under section 12 of the Act it is an offence to discharge on or cause or permit the entry into waters or into the ground of sewage or trade effluent including the discharge of poisonous, noxious or polluting matters without the grant of a licence by the Authority. Section 12(1) provides for an exemption where a discharge or entry:

- results from a use of water made in pursuance of a licence to abstract and use water granted under any enactment
- where such is determined to be good agricultural practice as determined by the Authority after consultation with the Ministry of Agriculture
- where such is permitted in an emergency in order to prevent great danger to the public
- where such results from domestic waste effluent by means of absorption or soakaway pits or other prescribed waste disposal system under the NRCA Act or any other law in force pertaining to such disposal.

The exemption provided under section 12(1) would include the grant of licences under section 19 of the Water Resources Act although the implementation of this provision may be problematic taking into consideration the objectives of the Water Resources Act which include protecting and conserving water quantity and quality.

The exemption under section 12(2) currently has not been implemented as no standards of good agricultural practice have yet been agreed between the Ministry responsible for agriculture and the NRCA. The exemption in section 12(3) may also be problematic as it

theoretically applies to persons or companies owning sewage treatment plants from both the public and private sectors.

The exemption provided under section 12(4) effectively allows all household systems to discharge domestic waste via absorption and soakaway pits without a licence granted under the NRCA Act. This would include household units in large subdivisions. The exemption however provides that domestic waste water systems can be prescribed under the NRCA Act and that they may be prescribed "in accordance with such provisions which may be prescribed" under the NRCA Act or other enactment. This section could assist in the implementation of section 40 of the WRA Act concerning water quality zoning or the prescription under the NRCA Act of the types of domestic waste water systems that may be implemented with various conditions e.g. in certain soil types or a setback when in proximity to wells.

The provisions that require the grant of a licence to discharge wastewater may also be enforced against the Crown and the Crown is also bound by the standards set under the Act. Section 39 of the Act states that this Act binds the Crown. An exemption is however provided under section 14(1) of the Act to the NWC. The Act provides that the NWC is required to obtain licences to discharge trade or sewage effluent but the Commission is allowed to contravene the conditions of such licences where

- (i) such is attributable to a discharge into the sewer or works caused or permitted by another person;
- (ii) the Commission is not bound to receive the discharge into the sewer or works or not bound to receive it in such condition;
- (iii) the Commission could not have prevented the breach of such terms and conditions;

(iv) the Commission could not reasonably have been expected to prevent the discharge into the sewer or works.

If a private entity were to take over the existing NWC operations then the private entity should be entitled to the same exemption.

The justification for these exemptions must be clear and transparent and there may be a need to review in light of changes in legislation and issues of concern.

Office of Utilities Regulation Act

The Office of Utilities Regulation Act, 1995 repealed the Public Utility Commission Act and established new provisions with regard to the supervision of utility services. Under the Act “utility services” are defined to include the supply or distribution of water. Section 5 establishes an Office of Utilities Regulation (OUR). The functions of OUR are essentially advisory. By Section 4, the OUR is to receive and process all licence applications for utility service and to make recommendations to the appropriate Minister. The Act defines “responsible Minister” as meaning the Minister having responsibility for that utility service.

Under Section 4 (5) the OUR may by order:

- prescribe the unit of measurement and the type of measuring device to be used by an approved organization
- prescribe standards for the measurement of quantity, quality, etc. or other conditions relating to service

- prescribe minimum standards of quality and accuracy in relation to equipment used or commodity supplied by an approved organization in connection with utility service
- prescribe the systems of accounts to be kept by an approved organization used or commodity supplied by an approved organization in connection with utility service as respects utility services
- make provision as the OUR considers necessary to ensure the safety of the public as respects utility services
- impose licence fees to be paid by approved organizations at such rates as may be specified in the order.

OUR is empowered to require an approved organization to under take certain measures where the approved organization is not fulfilling its obligation.

3.3 Water and Sewerage Services

National Water Commission Act

Section 3 of the National Water Commission Act establishes the National Water Commission (NWC).

NWC is charged with the responsibility (within the limits of its resources) to provide and improve water supply services throughout the island. NWC is also required to prepare and submit to the Minister proposals for an efficient, coordinated and economical water supply system capable of meeting the water needs of the Island. In addition NWC is authorised to prepare and submit for Ministerial approval details of schemes for the development of water resources and the supply of water in particular areas.

NWC is empowered to borrow and to issue securities for raising money which it is authorised to borrow.

Under section 12, NWC is empowered to make sewerage connections where it constructs, extends or operates any sewerage system. By section 19, NWC with the approval of the Minister may make regulations in regard to a variety of matters, including:

- prescribing the rates and charges to be imposed by NWC
- prescribing the fees payable in respect of any other services properly rendered on account of consumers
- providing for the recovery of rates, charges and fees
- prescribing offences in relation to the use, misuse or fraudulent use of water or interference with waterworks or sewerage system.

Parishes Water Supply Act

Under the Parishes Water Supply Act a Parish Council may apply to the Minister to authorize the construction of waterworks or the improvement or enlargement of existing waterworks.

Where a Parish Council has been authorized to construct any waterworks the Minister may define the limits of the district for which such water supply is to be provided.

Once authorized each Parish Council is empowered to construct such waterworks and make such waterways as may be necessary and also to carry out the appropriate repair, improvement

of such waterworks. In addition the Parish Council is empowered to alter or regulate the course of any non-navigable river, stream or watercourse or to take water from any such river, stream or watercourse in such manner as it considers necessary. There is provision for compensation to be paid for damages sustained by any person in consequence of the alteration or regulation of the river, stream or watercourse.

Under the Act for the purpose of carrying out waterworks a Parish Council may, with general or special approval of the Minister, acquire lands under the Land Clauses Act. All lands so acquired vest in the Commissioner of Lands. However the Parish Council shall have the entire occupation, management and control of all the waterworks so constructed as well as the public water supply.

By section 16 of the Act a Parish Council, with the approval of the Minister, fix the water rates to be paid in the District. Section 16 (a) to (h) sets out the procedure for such rates. Under section 20 all taxpayers resident in a district who shall pay water rates for such district shall be entitled to be supplied with water from the public water supply of such district.

A Parish Council is entitled under section 22 to sell and dispose of and deliver water from any waterworks in the district in such manner as the Parish Council may determine. Section 24 allows a Parish Council in charge of public water supplies to provide free supply of water.

The Parochial Water Works Charges Act (Cap. 27) provides that the Parish Council of a parish shall charge for water supplied by the parish. The Minister may by order approve of the free

distribution of water for a period to be named in the order. The free distribution of water may be made either to the general public or to such persons or classes of persons as may be designated by the Minister.

4.0 INSTITUTIONAL FRAMEWORK

Office of Utilities Regulation (OUR)

One of the responsibilities of the OUR is to safeguard consumers' interests with respect to the quality of service provided by the utility. The OUR will set a series of overall standards against which the utility's overall performance in terms of quality of service will be measured. Also, to encourage commitment to customer service, the OUR and the utility service provider will agree on specific Guaranteed Standards against which the utility will be obliged to make payments to customers when those standards are not met.

National Water Commission

The main sectoral institution responsible for water and sewerage operations in Jamaica is the National Water Commission (NWC). NWC was formed in 1980 through a merger of the Kingston Water Commission (KWC), and the National Water Authority (NWA) which was responsible for water services provided by the Parish Councils (local government) throughout the country. This amalgamation resulted in the merging of some major systems islandwide under one authority. NWC's mandate is set out in the National Water Commission Act of 1980, in which it is given the task to provide water supply services islandwide. The exception is the small gravity fed rural water supply systems, which were transferred back to the parishes in 1990. NWC is also responsible for the collection, treatment and disposal of urban sewerage systems.

NWC's mandate is intended to ensure the application of full cost recovery principles, and the implementation of economically viable investments.

NWC has grown rapidly and was successful in extending water supply service coverage to 82% of the population by 1998. The number of accounts doubled between FY 1984 and FY 1994, partly due to the merger with the parish council systems. During the same decade, production volume increased by 43%. Sales, however, have not grown significantly due to the high levels of unaccounted for water.

Sewerage coverage has remained relatively low. Only about 24% of households are connected to sewerage systems, while the majority of the population is served by individual sanitation systems. Also, in recent years, NWC has been forced to economize on the operation and maintenance of these systems primarily due to financial constraints.

The National Water Commission (Water Supply Services) (Rates and Charges) Regulations, 1995 provides that NWC shall keep and provide in the service area a constant supply of water, sufficient for the domestic, commercial and industrial use of occupiers of property.

The Regulations make provision for contracts with customers and the supply of water.

Under the Regulations where an occupier is in arrears with payment of any rates, charges or fees or fails to make such payments NWC may discontinue water supply service to such occupier.

The Regulations also permits NWC to reduce or discontinue the supply of water where there is drought, or any contingency affecting its supply works due to repairs etc. In addition where there is a deficiency in the supply of water due to drought NWC may institute various prohibitions and restrictions regarding the use of water such as prohibiting watering of gardens, filling tanks, swimming pools etc, washing cars or any activity which may require the use of a considerable or excessive quantity of water.

Ministry of Local Government

As the Parish Councils have a major role to play as suppliers of water the Ministry of Local Government would be responsible for coordinating these functions of the parish council in this regard.

Ministry of Water

The Ministry of Water has responsibility for policy development for the water sector. The Ministry is also involved in coordinating the activities involved with water management.

Private Water Suppliers

There are a number of private suppliers of water. These include: Four Rivers Development, Runaway Bay Water Company, bauxite companies, Rio Bueno Water Company and private farms such as those owned by Jamaican producers. With regard to the private suppliers they would all have licences to abstract water. However only Four Rivers Development is in the process of being licensed by OUR as a utility.

As the process of private sector participation is strengthened it will be necessary to ensure that the legal arrangements are in place for such privatization. Essentially this would mean that the private suppliers of water would be licensed by OUR. Two critical features of a regulatory framework would need to be established, namely: (1) standards for the delivery of water, (2) determination of applicable water rates.

5.0 FUTURE INSTITUTIONAL FRAMEWORK

Role of Minister

- Policy
- Regulations
- Concessions
- Waive fees
- Declare emergency areas
- Loan guarantees with approval of the Minister responsible for finance
- Approve plans

Water Commission

The Water and Rivers Commission was created as the state's agency for managing the state's water resources. It will have the following additional responsibilities:

- establishing property rights to water – licence allocation of water are tradeable
- requirement for community based water resource management committees
- requirement for statutory planning for the management and allocation of water resources.

Office of Utilities Regulation (OUR)

The purpose of the Office of Utilities Regulation (OUR) is to pursue the efficient and effective delivery of water services to the community by regulating licensed providers of water services, fostering and encouraging competing in the provision of water services and promoting the development of commercial water services.

Mission of OUR

To improve water supply and wastewater services in Western Australia by setting standards, planning and encouraging competition and efficiency.

Core roles of OUR

The core roles of the Office are:

- policy development and advice to the Minister for Water Resources;
- issuing licences
- advice to Minister re price levels and structure and the future development of the industry.

Policy Development and Advice

The Office has a key policy development role and is a prime source of advice to the Minister for Water Resources regarding price levels and structures and the future development of the industry. The Office also is involved in encouraging competition and introducing water efficiencies.

- Encouraging competition and introducing water efficiencies.

Licensing

A water service provider must have an operating licence before providing a service. Licences are required for the four types of water services defined in the Act: water supply and sewerage.

Customer Services

One of the ways the OUR helps to improve customer service is by investigating and conciliating complaints not settled by the water utilities' usual complaint resolution mechanism. Where appropriate, and when requested by the customer, the Office can offer the parties an arbitration process to settle disputes. This option is usually undertaken when all other avenues have not been successful.

- provides advice to the Minister on policy issues relevant to the reform of the water industry and on the performance of licence holders;
- ensures that there is a planned approach for future provision of water services;
- and

- OUR issues licences to water service providers to ensure availability of services that meet relevant standards.

6.0 COMPARATIVE STUDY OF WATER RESOURCE MANAGEMENT LEGISLATION

This section seeks to take a comparative look at Water Management using models from all over the world, particularly models from countries that have undergone a review of their water management industry in recent times, with a view to determining what can be extracted from these models and applied as a blueprint to the review of the Jamaican water management industry.

Identifying the problems that besets this industry is easily the best place to start because from this the goals and objectives for a review of the present system will be made clear.

The National Water Commission (NWC), a government agency has the responsibility for all major water supply systems islandwide, while the Parish Councils, under the Local Government Ministry operate the smaller systems. Under the current legislative framework for the water sector are a plethora of statutes that governs with no unity between them. Each are concerned with some specific aspect and administered by a very wide range of statutory bodies set up under them.

“As a result there is overlapping of administrative powers and often conflicts arise from competing claims by various agencies on the use of the available water sources... there is inconsistency in policy and practice. Together these factors have resulted in competition and conflict over water resources allocation among competing sectors and agencies, over-exploitation of available resources and water quality degradation.”¹

What may be described as the initiating concern to review the sector is the need to establish an appropriate framework within which the water management industry can be effectively regulated by The Office of Utility Regulation (OUR) as a public utility in light of “the move to greater privatisation”.

From this it can be seen that certain water management principles will need to be laid down to guide the framework. Chief among them must be the need for an integrated resource management approach, the need for a flexible administration and management system that must be comprehensive and consultative. It must strike the right balance between a sustainable environment and the economic and social well being of Jamaicans.

Alberta

The principles stated above have been strongly expressed in some of the legislation examined. Particularly in the Water Act of Alberta (2001) Canada. This Act seeks to reform the system that was under the 60 years old Water Resources Act, which was primarily a tool for merely allocating water. The new Act, however focuses on managing and protecting Alberta’s water sector and streamlining administrative processes. Much can be learned from this modern Act which seeks even to provide water utilities with two tax incentives to conserve and reuse water. It envisions a system where for water conservation utility companies can deduct 75% of the amount of money they invest in conservation measures. For water re-use, 75% of the income they raise by selling reclaimed water will not be taxed. Under this Act geographic limits for

water management planning areas will normally be watershed boundaries rather than boundaries such as cities.

Like most of the Acts looked at under this study, the Water Act starts out with certain developmental objectives. An Integrated Resource Management is a central theme. An interdisciplinary and comprehensive approach to decision-making is the method by which sustainable development will be achieved.

This Integrated Resource Management approach incorporates decisions, legislation, policies, programs and activities across resource sectors to gain the best overall long-term benefits for society and the environment and to minimize conflicts. The Act conceives that its natural resource management decision-making will consider the full range of environmental, social, health and economic interest and values and integrate their management into an effective whole. It envisions that products and processes will be straightforward, not open to a wide range of interpretations, with roles and responsibilities being clearly defined (thus minimizing incidents of overlapping roles and responsibilities, as exist under the Jamaican system). Decision-making processes will be fair and will provide public access to relevant information and those affected by decisions will be consulted before action is taken.

A government body, Alberta Environment, is the supervisory body that works cooperatively with other provincial government, departments, industry and the public to ensure an integrated resource management approach. The water sector in Alberta is a privatised one and an interested

person may apply for licensing approval of a Water Management Plan (WMP) to provide water services to an area in the province, once the requisite information is submitted, fees are paid and notice is given to the public of the application. Applications are sent to a Director, a number of whom are assigned responsibility under the Act for water management for a designated area of the province. The Director may cancel or approve a Water Management Plan in consultation with the Lieutenant Governor in Council or the Minister. Any Water Management Plan brought before the Director must be in line with the water management objectives of the Act, since any such plan must have potential linkages with regional strategies and the Environment Protection and Enhancement Act. The Director in making his decision must consider the effects on public safety, on household users or any other matters applicable in the Director's opinion. The Director seems to be given wide discretionary powers, but his discretionary power is really limited by the ambit of the Act's objectives and principles and the Act makes provisions for a review of any decisions he makes.

Public consultation is essential to the planning process, since any water management plan proposal must be gazetted and documented and made publicly available.

Resource managers are appointed under the Act to carry out performance monitoring of licensees and the service they provide and to check progress and confirm results of compliance with the provisions of the Act. What stands out quite starkly is that the appropriate licensee must provide financial or other insurance in respect of the matters to which and in the amount and type required by the Director.

Inspectors are also appointed with powers to enter and inspect, with or without warrants, the premises of the licensees. They can seize documents or anything else that is necessary for an investigation. They have powers to issue what is described as water management orders that may require certain performances by the licensee.

The licensee is required to submit to a Dispute Resolution Board where disputes are resolved through mediation what is seen from this Act is an efficient, flexible and integrated system that is not highly beauracritic. It is privately run by licensees who have to conform to Government standards and regulations, but at the same time are independent. The Act is simple and comprehensive and is written in modern drafting style that is easy to read and therefore user-friendly. This framework for water management planning will be reviewed every five years to make sure it remains current and continues to support sustainable water management.

Australia is an ideal place to look for these purposes, since it has faced many of the problems that Jamaica is presently experiencing in relation to its water industry management. A number of its states have undergone reform in their legislative framework and would therefore be quite instructive.

Victoria

Much the same can be said of the Water Industry Act 1994 of the State of Victoria which incorporates amendments of as recent as the 14th February 2002. This Act is “customer-focal” in its approach and scope.

Under the Act an Essential Services Commission that plays a supervisory role is established. Its functions are outlined in Section 7:

- to ensure the maintenance of an efficient and economic water industry;
- to protect the interest of customers with respect to the water industry charges and terms and conditions of water industry services;
- to protect the interest of customers with respect to the reliability and quality of water industry services;
- to facilitate the maintenance of a financially viable water industry.

The significant players in the State of Victoria water industry are private licensees and the Melbourne Water Corporation, all of whom are regulated by the Essential Services Commission. What is lacking from a reading of this Act is the make-up of this latter body. It seems however to be a government agency.

By virtue of section 9 of the Act interested persons may apply to the Commission for the issue of a licence for not less than 6 months, not more than 30 years for a water licence, a water and sewerage licence or a drainage licence. Any such application must be accompanied by a fee determined by the Commission. This body too has very wide discretionary powers as it may refuse or grant the licence for any reason it considers appropriate.

Among the things worth adopting from this Act are the criteria that an applicant must meet as set out in Section 10(2). He must be:

- financially viable;
- possess the technical capacity to comply with the conditions of the licence;
- must be a Victorian body corporate or a statutory corporation;
- and the granting of the licence must not be inconsistent with any statement of government policy declared under the Essential Services Commission Act.

A similarity is struck between the Victorian Act and the Alberta Act, in that it makes provision for community participation in the decision-making process, since the name of the applicant, the type of licence applied for and the area in respect of which the application is made must be gazetted or published in a local newspaper. It invites the public to make submissions to the office in respect of the application. The Act captures the principle of giving reasons for the refusal to grant the application as well.

The Essential Services Commission acting in accordance with government policy not only have powers to grant or refuse licences, but it also determines industry codes. It also performs a monitoring role. It monitors the relationship between the licensee and its customers, requiring in sections 19-21 that the terms and conditions of the customer contracts must be sent to that customer no later than the date on which the account is sent to that person in respect of first billing period ending after the issue of the licence.

A licensee is required to adhere to many conditions, such as providing specified information to the Commission and the Minister concerning planning, construction, operation or maintenance of

works. He has quality and performance standards to be met and community service obligations to be discharged. Such as developing and implementing specified programs for the conservation and efficient use of water, including programs intended to educate the community about the conservation and efficient use of water (Section 11 (4) (1)).

like the Alberta Act inspectors are assigned under the Act. Their roles are wider however under the Victorian Act. They are consultants or technical advisers and they also carry out searches and monitor licence compliance with respect to technical performance standards and water quality standards. Their powers of entry, search and seizure are however subject to the consent of the occupier. Serious penalties under section 45 are attached to the giving of false information.

A licensee's licence is issued subject to a condition requiring him to enter into a customer dispute resolution scheme approved by the Office of the Regulator General. The scheme must be accessible to the licensee's customers with no charge to them.

What is seen in this Act is a privatised management industry, heavily supervised, monitored and regulated by the government with the customer's interest at its heart, in keeping with its principle that Victoria's water resources belong to the people of Victoria. It is however not as heavily focused on environmental issues as the Alberta Water Act and may need to be a little more balanced in that respect.

South Australia

The Water Resources Act 1997 of South Australia like the other acts looked at above starts with certain developmental principles. Section 6 (1) states that it proposes to

- establish a system of use and management of the water resources that ensures that the use and management of the water resource satisfies the physical, economic and social wellbeing of the people of the State and facilitate the economic development of the State while
 - ensuring that those resources are able to meet reasonably foreseeable needs of future generations;
 - protecting the ecosystems that depend on those resources and that by regulating the use of caution and other safeguards, reduces to a minimum the detrimental effect of that use and management.

The Act seeks also to identify alternative sources of water, to keep the state and condition of the water of the state under review, to encourage members of the community to take part in planning the management of water resources and to integrate, as far as practicable the administration of the Act and other acts dealing with natural resources.

An older and shorter piece of legislation, it is not as comprehensive as the others. Section 8 sets out the procedure for applying for a licence: The government may, by regulation made on the recommendation of the Minister declare that water, lake or well be a prescribed watercourse. Before making a recommendation to the Governor, the Minister must cause to be published in

the *Gazette* and a paper circulating generally throughout the State the proposed recommendation, stating the reasons for it and inviting interested persons to make written submissions to the Minister in relation to a proposal within a period specified in the notice. This notice must also be served on all councils. Other relevant bodies include The Catchment Water Management Board, Water Resource Committee, and Councils. Section 9 of the Act emphasizes that a person cannot take water from a prescribed area, unless he has a water licence and the relevant authority in relation to the granting of a water licence is the Minister.

The Act speaks to a need for an interested person to have a water plan when applying for a licence, but unlike the Alberta Water Act, it does not outline what needs to be in the plan, but alludes to a water plan in a very indirect way (see Section 10). It is at least similar to the Water Industry Act of Victoria in its recognition of the need to encourage members of the community to take an active part in the management of water resources and similar also to the Alberta Water Act and the Victorian Act in its consultative approach.

Western Australia

The basis of the reforms in Western Australia is a state wide community impact on proposals to update the State's water management laws. The existing law is the Rights in Water and Irrigation Act 1914. In common with many old Acts, it provides the means to allocate and manage the use of the State's water resources, but it does not provide any guidance as to what should be considered. The Commission and advisory water committees established under it have had to make their own interpretation of what is relevant by interpreting the title of the Act.

Hence the problem with the existing law is that it provides the power to manage water use, but it does not give any guide as to what should be achieved and what matters are important.

What is being done in Western Australia then are the formulation of plans to reform the old law. Western Australia therefore provides a case study of law reform in the making. The major decision-making consideration is as it is put 'what are we trying to achieve?' The Commission and local water management committees have come up with certain considerations that they feel are relevant including the sustainability of the water use. The benefits of the use impacts on ecology, government policy and agreements, commission and local management policy, local custom and practice. The Commission and local water management committees will be making decisions about the level and conditions of use of water resources, the allocation, management and protection of those water resources and the transfer of licences. The managers should be able to consider all matters that impact on the objectives of the Act, including the needs of the water user and the economic, social and environmental needs of other users and the wider community. The legislation should also recognize that integration of natural resource management policies and actions is desirable by allowing the commission and local water management committees to support local, states, national and international policies and agreements.

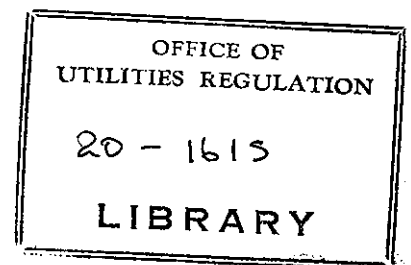
It is proposed that the new legislation's objectives be to promote:

- the sustainable management of the State's water resources;
- the integrated management of the State's natural resources;

- the orderly, equitable and efficient use of water resources and
- members of the community taking an active role in managing these resources.

The current multiple vesting of surface and underground water is intended to be replaced by a single general vesting of both types of water in a way that does not introduce new controls over springs, soaks or wetlands contained wholly on one property. The major change is that surface waters outside proclaimed areas will become vested in the Crown without the need to proclaim the area. This will allow the progressive development of local rules to manage water use.

What is remarkable is that it is proposed to place a duty of care on all people involved in the management or use of water resources, including the Commission, local water management committees, landholders and water users. The statutory duty is to be a codification of the common law duty that applies generally to everyone who may harm another person by his or her actions. This statutory statement of the duty of care will apply to activities and wastage that might harm current and future generations and instill in landholders an ethic of stewardship and a pro-active approach to environmental protection. The duty of care would cover the management of water resources and dependent flora and fauna, biological diversity and ecological integrity. It will also require a person to take all reasonable and practical steps to comply with the objectives of the Act including taking action to identify, assess and manage the risks of harming the environment or others.



It would be left to the local rules to stipulate the legal requirements for the fulfilment of the duty of care. The duty of care would apply to all those persons who own, manage or use water resources, including the Water and Rivers Commission, landholders, holders of native title and the Crown. Essentially it would apply to all persons who have any indirect influence on the management of water resources, with their obligations being proportional to their influence.

The establishment of a duty of care under this Act would be unique and forward-thinking.

The relevant water managing bodies are the Board of the decision of the Water and Rivers Commission a government body that appoints committees to assist it. Some of these committees are statewide and some are local advisory committees. These committees have a majority of local community. Matters such as licence refusal, adverse licence condition, cancellation or suspension of licence.

Prior to 1994 the Water Authority of Western Australia (WAWA) was the service provider of water, sewerage and drainage as well as being the government agency responsible for managing the entire state's water resources that included managing the private use. Private users abstracted water from both groundwater and surface water resources for industry, commerce and horticulture. The private user required a licence, under the Rights in Water and Irrigation (RIWI) Act, the states principle act for managing the water resources, from WAWA.

After 1994 it was recognized that the WAWA had a conflict of interest by being the state regulator and main user of the water resources.

At this time there was no legislation that would allow competition in providing water services and WAWA was a virtual monopoly.

In late 1994 legislation was enacted that allowed competition into the water industry.

The Water and Rivers Commission was created as the state's agency for managing the state's water resources. It then undertook the role of issuing licences to utilize the water resources. The Water Corporation was then subject to the provision of the RIWI Act and were licensed to access water resources for the provision of town water supplies.

The Office of Water Regulation (OWR) was created as the state agency to regulate and manage water service providers. They have their own legislation that requires water service providers to obtain an operating licence from OWR.

Industry and Licensing

The Western Australian Water Industry serves 1.7 million customers in over 300 towns and communities throughout the State. Water services include potable and non-potable water supply, sewerage, irrigation and drainage.

The Water Corporation is by far the State's largest water service provider. Other industry participations include the Bunbury and Busselton water boards, irrigation scheme cooperatives and port authorities.

The regulatory framework for the industry was established under the Water Services Coordination Act 1995. The Act provides for a licensing system for water services, which is administered by the Office of Water Regulation.

Most licences issued to date have been for existing services. There are however opportunities for competition for the provision of new services.

In regulating the industry the Office of Water Regulation:

- provides advice to the Minister for Water Resources on policy issues relevant to the reform of the water industry and on the performance of licence holders;
- ensures that there is a planned approach for future provision of water services;
and
- issues licences to water service providers to ensure availability of services that meet relevant standards.

Regulatory agencies, in addition to the Office of Water Regulation, which play a role in the WA water industry include the Water and Rivers Commission and the Health Department.

The Waters and Rivers Commission is responsible for protecting and managing the State's water resources, with responsibility for the oversight and management of water allocations. While the Office of Water Regulation Licences service providers they are still required to approach the Commission in order to obtain the water resources required to carry out their services.

The Health Department advises the Office of Water Regulation on the appropriate health standards for drinking water supplied by the service providers.

The regulatory structure separates service provision from resource protection (which is the responsibility of the Water and Rivers Commission) and the setting of service standards.

Queensland

The Water Act of Queensland 2000 is not only very modern, but very comprehensive. It commences with a vesting of all rights in use, flow and control of all water in Queensland in the State (Section 19). It states in Section 35 that for advancing the purposes of the Act the Minister must plan for the allocation and sustainable management of water to meet Queensland's future water requirements, including, for example, for the protection of natural ecosystems and security of supply to water users. Implicit in it are the Act's developmental objectives. In so doing the Minister may prepare a water resource plan for any part of Queensland.

The plan must accomplish the regulation of the taking of overland flowwater and subartesian water. There must be a public notice of his proposal to prepare a draft water resource plan and

the notice must include, *interalia*, the proposed plan area, the purpose and reasons for the plan and the water in the proposed plan area to which the draft plan is intended to apply, written submissions are then invited about a proposed draft plan and a community reference panel is established.

This Act also recognizes the need for community impact in any water management plan.

The panel that is established must include representatives of cultural, economic and environmental interests in the proposed plan area. Much consideration goes into deciding for or against an application that may come due to the draft water resource plan notice. Any person may apply and the application must be in an approved form, be accompanied by a prescribed fee and must be referred to the community reference panel (Section 42 (a) (4)). When the Minister receives the referral panel's recommendation, the Minister must decide the application, taking into account the panel's recommendation, give the applicant notice of the decision and publish his decision in the Gazette.

The contents of the draft plan are very instructive (Section 46). It must include the purpose, a map of the proposed area, the water and natural ecosystems monitoring requirements to assist in assessing the effectiveness of the proposed management strategies in achieving the outcomes, state the outcomes and among other things include a schedule of proposed arrangements for implementing the draft plan. Once granted, the applicant must apply for a service provider licence. A Chief Executive acts under the Minister to approve standard supply contracts (Section

12 (2) (A)) and to closely monitor the relationship between the service provider and the customer.

Once a service provider obtains a licence, he must go on to prepare a strategic asset management plan, approved by an engineer and must be regularly reviewed and annually reported on (Section 4 & 5). Such a requirement is only one of the many industry checks and balances contained in this Act. Another is the requirement of a regular audit report that must be accompanied by a statutory declaration by the service provider and the auditor (Section 418).

An interesting feature of this Act is that it is the service provider that prepares and sets customer service standards, copies of which must be sent to both to the Regulator General, that is the chief executive (Section 514) and the customers. These must however, be approved by the chief executive and the service provider must adhere to the guidelines issued by the chief executive. It is ultimately to the chief executive that the customer complains when dissatisfied with customer service standards (Section 427).

The chief executive, or to use his other description under the Act, the regulator's functions are outline in Section 515 of the Act:

- to keep a register of service providers registered under this Act and
- to review and make recommendations about standards and practices;
- to monitor compliance.

The Act explicitly states that in performing his functions, the regulator must consider the purposes of the Act.

Assisting the chief executive are a number of water authorities, whose main functions are to carry out the water activities decided by the authority. Their powers and functions vary from protecting riverine areas to levying charges on customers or rate payers.

A curious, yet sensible characteristic of the Act is that it leaves whole areas of itself blank to accommodate changes and developments.

Israel

Israel's Water Law of 1959 states that the water resources in the State are public property, subject to the control of the State and are destined for the requirements of its inhabitants and for the development of the country. A principle that runs as a common factor through the Acts examined so far.

The Act focuses on the corrective measures the relevant bodies may take to prevent water pollution and protect 'protective strips'. It also concentrates heavily on water rights around water sources. It merely outlines these measures and is therefore not an instructive study on water resource management. This very prescriptive legislation combines the efforts of the Water Commissioner, the Minister of Environment and the Minister of Agriculture with supervision from a Water Board established under the Act.

Northern Ireland

The Water Order (Northern Ireland) 1999 is a relatively new piece of legislation with the effect of replacing the Water Supplies Act 1942. The latter was very regulatory in its scheme merely made provision for the taking of supplies of water by way of sanitary authorities incidental matters.

The newer Act sought to provide a more cohesive legal framework for the provision of water services in a manner consistent with modern concepts of sustainable development. Key elements of it are the establishment of a National Water Services Authority which will be that body which will take on and develop responsibilities once discharged by the Minister's Department including preparation of multi-annual water services investment programmes. It also has authority of supervising the provision of water services.

Like the other Acts looked at in this study, the management approach used was that of introducing a licensing system to the sector which has been plagued by water quality problems.

The general scheme provides that the water services authorities roles will be defined in terms of county and city councils. They will generally have a comprehensive range of administrative powers to consolidate and update the existing body of water services legislation dating back to the 19th Century.

The Water Service Authorities therefore represent a new institutional framework within which the water resources of Northern Ireland are operated.

As is stated in the Act, the main objectives in the establishment of the water services authorities are to:

- direct and supervise the discharge of their functions under the Act, including management and supervision of the Water Services Investment Programme;
- develop a centre of excellence to enhance and support the provision of water services, including the development within the public service of the type of legal, financial and technical skills necessary for modern service procurement and provision;
- maximize efficiency and effectiveness in the planning, procurement and delivery of water services;
- free the Minister and the Department from production and operational tasks so as to allow for concentration on the critical core areas of policy, legislation, planning and budgeting.

The role envisaged for the Water Services Authorities (WSA) represents a significant departure from the existing institutional arrangements which do not provide for direct supervision of local authorities. Applications for licences are made to the WSA.

The Act allows for an interesting mix of water services schemes. Applicants for the provision of water services can be government in the form of local authorities or even the water services authorities or an agent of the authority, a person acting on behalf of the authority or someone acting on their own initiative, typically a group water services scheme.

The Water Services Authority has wide discretionary powers subject to its legal obligations under the Act. It is empowered to make regulations, prescribe performance standards or from the direction of the Minister, issue guidelines or codes of practice.

The Act goes even further to allow the Water Services Authorities to enter into an agreement with a developer to provide specified water services infrastructure, the operation of which the Water Services Authority would subsequently take over. This allows for accelerated development of general infrastructure in circumstances where the water services authority may not be in a position to provide the necessary water services infrastructure itself.

The Act also makes provision for inspectors with powers of entry and seizure. What is seen from a look at this legislation is in fact a cooperative and integrative approach to water management.

New Zealand

Water supply and sewage disposal in New Zealand is predominantly a function of local government, a creation of statute with no sovereign powers of its own. Water supply and sewage disposal are functions local government can undertake as being within its statutory powers, but there is not an express obligation on local government to supply water or sewers.

Local Government delivers the service through a variety of mechanisms:

- most common is for there to be a Department of the Council responsible for the supply. This Department would undertake the asset planning and customer interface;
- a variation on this is for there to be a business unit, which is a part of the Council. The difference is a supposedly greater degree of separation from the Council and more commercial accounting and governance;
- in some cases it is common for the service delivery and maintenance to be contracted to an independent private contractor.

Regulation is dispersed over different agencies and functions. There are national drinking water guidelines for water quality. Water systems are regulated by the Health Department but upgrading to a minimum standard for private property, national water supply regulations, local by-laws and in some cases area specific pieces of national legislation.

There are no national service standards. They are set by local councils. A few have specific service contracts for their customers. Others use an annual process where their draft annual plans are open to scrutiny and comment by the public. Most operators have some system for assessing public satisfaction with their service by survey of consumers.

South Africa

In South Africa the scarcity and vulnerability of water dictate the need to establish and manage a licensing or permit system for abstracting water and disposing of wastewater, under the National Water Act of 1998. Water use in South Africa is determined by conditions of climate, geography and history. Water is generally scarce, because in South Africa it is highly seasonal and variable, especially in the more arid areas where unpredictable droughts occur. In order to counteract and balance these problems of supply and demand, there are large water resource development works and extensive inter-basin transfers. In addition there is a construction of large dams with great storage capacity.

The policy of the South African government with respect to water management is really to redress the inequities in the allocation of water resources. Two important features of the former legislation were the possession of water rights by only a small minority of the population and the issuing of water licences in perpetuity, without a term of expiry.

The main object of the Act is to provide for the management of the nation's water resources so as to enable the achievement of sustainable use of water for the benefit of all water users. To that

end, it states that it is necessary to provide for the protection of the quality of water resources and for the integrated management of water resources with delegation of powers to institutions at regional or catchment level so as to enable everyone to participate in the processes. A common feature of the more modern statutes studied.

The Act seeks to establish a Water Tribunal to hear appeals against the decisions of a responsible authority and applications for compensation as a result of the deprivation of water use rights. It also seeks to provide for mediation. This is quite advanced and goes beyond most of the other Acts in this Study.

All aspects of licensing and permits related to water abstraction, waste disposal and afforestation should be considered under a common approach by the Department of Water Affairs and Forestry. It seeks to establish mechanisms to prevent and reduce corruption by:

- simplifying procedures as much as possible for ease of compliance and enforcement;
- reducing discretion of the licensing authorities as much as possible;
- reducing to a minimum the information and other requirements for applications for licensing, according to regional user characteristics and prohibit any official asking for more requirements to issue a licence;
- distributing procedures and leaflets to users, so they become fully aware of their rights and duties, as well as of those of the Government.

The Department of Water Affairs and Forestry is the relevant authority for these purposes. Under this Department, a single organizational unit are personnel who deal with the technical aspects of water quantity and quality and the business procedures of licensing and all kinds of water use authorizations.

This Act seems to have a distinct water rights focus, but there are other adaptable features of the legislation, example, its decentralizing approach and its establishment of a Water Tribunal to handle disputes.

Conclusion

What seems clear from this Study and the various approaches to water management strategies is that there must be a level of cooperation between the different water managers. There must therefore be partnerships between the government, the service providers and the communities that are being served. Most are consultative at every level. They all use licensing schemes in their privatisation efforts with government setting out clear and distinct criteria to meet in their applications, particularly in the more modern Acts.

The Acts that really stand out in their developmental objective and administrative scope are The Water Act of Alberta 2001, The Water Industry Act of the State of Victoria 1994, The Water Resources Act of South Australia 1997 and The Proposed Legislation of Western Australia.

7.0 REFORMS LEGISLATION AFFECTING THE WATER SECTION

A number of amendments have been proposed to implement various aspects of the policy on the Water sector. These are:

1. **The Water Resources (Amendment) Act**

- This amendment will amend the Water Resources Act to confer responsibility on the WRA for the regulation of flood water control. The Act would also be amended to increase the level of fines.

2. **The National Water Commission (Amendment) Act**

- This amendment would enable OUR to execute the functions of regulation, setting tariffs, service standards for the water industry. OUR would also be empowered to recommend to the Minister on the issue of licences to new providers. Thus the power of NWC to issue licences to other water utilities would be removed. The Act would also be amended to exempt NWC from paying transfer tax and property tax. Under the amendment it would be an offence to sell water supplied by NWC.

3. **The Irrigation Amendment Act**

- The Irrigation Act would be amended to include and recognize water users association in irrigation areas.

4. The Irrigation (Validity) Act

- This proposed amendment would retroactively cover the period of the Commission's activities subsequent to the expiration of all irrigation authorities.

WATER INDUSTRY ACT (Proposed)

The Water Act will establish a single principal Act that will define the framework for the production, distribution, conservation and supply of potable water and for the collection treatment and disposal of sewage operation of sewage treatment facilities. The Act will also recognize the role of regulation of services and resource management in this sector.

The new Water Industry Act will address the following:

i. Industry Structure

Establishing the structure of the water sector, making provisions for private service providers in both the delivery of potable water and sewerage, and for service provider to be licensed.

ii. Defining the role of NWC

Under the Act NWC (or any other entity designated by Government) would remain the main provider of water and sewerage services but would be licenced like other water providers.

- iii. The Act would define the role, functions and duties of the Minister
OUR would issue licences to all service providers.

- iv. Defining the role of OUR
OUR would under the Act execute the functions of the regulation, setting tariffs, service standards and the issuing of licences.

- v. Issuance of licences for water and sewerage services.

- vi. Amendment of NWC Act
The NWC Act would be recast so as to enhance its role as a service provider, promote efficiency and accountability through performance standards. NWC's regulatory functions would be removed.

- vii. Repeal of Parish Councils (Water Supply) Act

- viii. Establishing a Director of Water Services

- ix. Amendment of the Water Resources Act to confer on WRA the power to hold government's assets in watershed lands currently under the control of NWC.

8.0 LEGAL AND INSTITUTIONAL ISSUES

There are a number of legal and institutional issues which impede the effective management of the water sector. These include:

(a) Inadequacies in Current Legislative Coverage

- Domestic waste water systems are not prescribed under any Act except under the Kingston Improvements Act where the Government may prepare estimates, designs and specifications for sewers in the Corporate Area. The NRCA does not approve of the design of waste water systems of the type of system that should be implemented. The Water Resources Authority only recommends systems to the NRCA on an ad hoc basis under the permit and licence system. The designs of the sewage systems are instead prepared by the Ministry of Health.
- Promulgate sewage and trade effluent standards. No regulations to establish sewage and trade effluent standards have yet been promulgated.

(b) Sewage Approval Process and Standard Setting

There are a large number of agencies involved in sewage approval process and in standard setting in this area. The Government agencies and Departments which have jurisdiction over setting standards for sewage and trade effluent and the regulation of sewage and trade effluent plants are the Ministry Of Health, the Public Health Department of the Ministry of Health, the Local Board of Health of the Parish Council,

NRCA and the Town and Country Planning Department. The Ministry of Health was the first Government department to set administrative sewage effluent standards, which they still apply to all types of sewage plants. However, in 1992 the NRCA created an Interagency Committee called the Inter-Agency Environmental Standards Technical Committee to create standards for sewage and trade effluent in Jamaica to rationalise and harmonise the setting of such standards. This Interagency Committee has overseen the drafting of both sewage and trade effluent standards. Draft Sewage and Trade standards have been developed to be administered by the NRCA.

The NRCA permits the construction of new sewage and trade effluent plans and licences such new and existing facilities under the Permit and Licensing Regulations. The NRCA Act allows for the creation of regulations under section 38 for standards and codes of practice with respect to the protection and rehabilitation of the environment and the conservation of natural resources; the quantity, condition or concentration of substances that may be released into the environment; and the design, construction, operation, maintenance and monitoring facilities for the control of pollution and the disposal of waste. Sewage and trade effluent standards have not yet been promulgated into law in Jamaica, all such standards are applied administratively to sewage and trade effluent plants.

It will be necessary for adequate funding to be allocated to NRCA/NEPA in order to ensure that NRCA/NEPA is able to fully discharge its responsibilities to monitor and regulate sewerage facilities.

(c) **Water Rates**

OUR Act establishes that OUR is responsible for fixing rates. This will continue under the new Water and Sewerage Services Act.

APPENDICES

- ❖ **Drafting Instructions**
- ❖ **Preliminary Draft of Sewerage Regulations**

APPENDIX 1

DRAFTING INSTRUCTIONS

For

WATER AND SEWERAGE SERVICES ACT

October 3, 2002

Introductory Comments on the Proposed Water and Sewerage Services Act

The Water Industry Act would regulate all water and sewerage service providers (other than irrigation). The Act would establish a regulatory mechanism for all aspects of water supply.

Three key entities are envisaged by the Act: OUR (the regulating authority), the Minister (responsible for policy and planning) and the water providers.

The Minister would grant licences on the recommendation of the OUR. However there should be a public and transparent process in the granting of licences.

Under the Act NWC would cease to have any regulatory functions. The NWC Act would be recast so as to establish the commission solely as a water provider.

Role of the Ministry of Water

The Ministry of Water would

- Develop policy
- Planning
- Identifying concessions and monitoring such concessions
- Monitoring the water sector

Repeal/Amendments

Acts to be repealed and/or amended are

- Parish Council Water Supply Act
- Parishes Water Charges Act
- NWC Act

Consumer Protection

The Act would contain specific provisions regarding consumer protection

Name of Act:

The Act is to be called the Water Industry Act

Definitions:

Key terms to be defined

The Act will be divided in the following Parts:

Part 1 – Preliminary matters

Part 2 – Objectives of the Act

Part 3 – Administration

Part 4 – Licensing – Water Providers

Part 5 – Licensing – Sewerage Providers

Part 6 – Restrictions in the case of inadequate water

Part 7 – Regulations

Minister empowered to make regulations for the better implementation of the Act.

Objects of the Act

1. The objects of this are -
 - (a) to promote and protect the interest of the public by –
 - (i) facilitate fair and open competition in the provision of water services (except the provision of irrigation water);
 - (ii) promoting access to water services;
 - (iii) providing for the protection of customers;
 - (iv) promoting the interests of customers, purchasers and other users (including, in particular, persons who are disabled or the elderly) in respect of the quality and variety of water services and equipment supplied;
 - (b) to promote universal access to water services for persons in Jamaica, to the extent that it is reasonably practicable to provide such access;
 - (c) to promote the water industry in Jamaica by encouraging economically efficient investment in, and use of, infrastructure to provide specified services in Jamaica.

Definitions

“office” means the Office of Utilities Regulation established under the Office of Utilities Regulation Act;

“water provider” means a person who is the holder of a service provider licence

“sewage” means the wastes of animal life other than stable manure, the drainings of stables, water discharged from sinks, basins, baths, and all other water that has been used for domestic purposes or in any industrial processes, and all waste water;

“sewerage” means the system of sewers and their accessories by which sewage is intended to be collected, conveyed and treated and includes all sewerage which may hereafter be constructed under any of the powers contained in this Act or any other enactment.

Minister's Role

The Minister is empowered to:

- (a) enter into concession agreements, BOT agreements, leasing agreements of water facilities on the recommendation of OUR;
- (b) monitor policy implementation water sector;
- (c) take steps to facilitate and encourage private sector involvement in the water sector.

Role of the OUR

2. (1) The Office shall regulate the water industry in accordance with this Water Industry Act and for that purpose the Office shall –

- (a) issue licences to water providers;
- (b) regulate specified services establish standards etc.;
- (c) receive and process applications for a licence under this Act and make such recommendations to the Minister in relation to the application as the Office considers necessary or desirable;
- (d) protect the interests of customers, while having due regard to the interests of providers of water;
- (e) carry out, on its own initiative or at the request of any person, investigations in relation to a person's conduct as will enable it to determine whether and to what extent that person is acting in contravention of this Act;
- (f) make available to the public, information concerning matters relating to the water industry;
- (g) facilitate competition among service providers;
- (h) advise the Minister on such matters relating to the provision of water services as it thinks fit or as may be requested;
- (i) carry out such other functions as may be prescribed by or under this Act.

(2) In making a decision in the exercise of its functions under this Act the Office shall observe reasonable standards of procedural fairness, act in a timely fashion and observe the rules of natural justice, and, without prejudice to the generality of the foregoing, the Office shall –

- (a) consult in good faith with persons who are or are likely to be affected by the decision;
- (b) give to such persons an opportunity to make submissions to and to be heard by the Office;
- (c) have regard to the evidence adduced at any such hearing and to the matters contained in any such submissions;
- (d) give reasons in writing for each decision;
- (e) give notice of each decision in the prescribed manner.

(3) In exercise of its functions under this Act, the Office may have regard to the following matters –

- (a) the needs of the customers of the specified services;
- (b) whether the specified services are provided efficiently and in a manner designed to –
 - (i) protect the health and well-being of users of the service and such members of the public as would normally be affected by its operation;
 - (ii) protect and preserve the environment;
 - (iii) afford economical and reliable service to its customers;
- (c) whether the specified services are likely to facilitate or inhibit competition.

(4) Where the Office has reasonable grounds for so doing, it may for the purpose of its functions under this Act, require a licensee to furnish, at such intervals as it may determine, such information or documents as it may specify in relation to that licensee's operations and the licensee shall be given a reasonable time within which to furnish the information.

(5) The Office make rules, subject to affirmative resolution, prescribing the system of regulatory accounts to be kept by a service provider in relation to specified services.

Relationship to Fair Trading Commission

3. Where after consultation with the Fair Trading Commission the Office determines that a matter or any aspect thereof relating to the provision of specified services –

- (a) is of substantial competitive significance to the provision of specified services; and
- (b) falls within the functions of the Fair Trading Commission under the Fair Competition Act,

the Office shall refer the matter to the Fair Trading Commission.

Ministerial Directions

4. The Minister may give to the Office such general directions of a of a policy nature as to the policy to be followed by the Office in the performance of its functions under this Act as the Minister considers necessary in the public interest and the Office shall give effect to those directions.

Obligation of Secrecy

5. (1) Every person having any official duty or being employed in the administration of this Act shall regard and deal with as secret and confidential all confidential information relation to applicants and applications for licences, and the management and operation of licensees and shall, upon assuming such duty or employment make and subscribe a declaration to that effect before a Justice of the Peace.

(2) Subject to subsection (3), a person who, by reason of his capacity or office has by any means access to the confidential information referred to in subsection (1) shall not, while his employment in or, as the case may be, his professional relationship with the Office continues or after the termination thereof, communicate any confidential information to any person.

(3) Subsection (2) shall not apply where –

- (a) the confidential information is disclosed –

- (i) with the consent in writing of a licensee or an applicant for a licence;
 - (ii) on the written directions of the Minister to the police who require such disclosure for the purpose of the investigation of a criminal offence;
 - (iii) to the Minister, an agent of the Office or the Fair Trading Commission; or
 - (iv) subject to paragraph (b), to any person who is authorized by the Office to receive it;
- (b) in the opinion of the Office or the Minister, disclosure is necessary in the public interest, so, however, that before such disclosure is made, the Office or the Minister shall give not less than fourteen days' notice of the proposed disclosure to the applicant or licensee concerned who shall, upon receipt of that notice, be entitled to apply to a Judge in Chambers for an order prohibiting the disclosure on the ground that it would be harmful to the interest of the applicant or licensee;
- (c) subject to subsection (4), pursuant to a court order.

(4) Where an application is made to a court for disclosure of confidential information, the party claiming confidentiality has a right to require that the information be first disclosed only to the Judge for the purpose of determining the extent of and necessity for the disclosure.

(5) A person who contravenes subsection (2) shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(6) In this section "confidential information" means any information classified as such and includes information that a reasonable person would regard as confidential having regard to the nature of the information.

Licensing of Water Services

6. (1) A person shall not –

- (a) operate a facility in Jamaica unless that person is the holder of a licence granted under this Act;

- (b) provide specified services to the public by means of that facility unless the person is also the holder of a service provider granted under the Act;

(2) A person shall not provide a specified service to the public in Jamaica unless that person is the holder of a service provider licence granted.

Application for licences

- 7. Any person may apply to the Office for a licence
- 8. (1) An application for registration as a service provider must be –
 - (a) made to the office in the prescribed form; and
 - (b) supported by sufficient information to enable the regulator to decide the applications; and
 - (c) accompanied by the fee prescribed by regulations.
- (2) The OUR may require –
 - (a) the applicant to give additional information about the application; or
 - (b) the information included in the application, or the additional information required under paragraph (a), to be verified by statutory declaration.
- (3) Upon receipt of an application subsection (1), the Office shall –
 - (a) publish a notice in a daily newspaper circulating in the island, containing information as to –
 - (i) such other information as the Office considers relevant;
 - (b) determine the period within which applications shall be submitted, not being less than sixty days in cases where a limited number of licences are to be issued;
 - (c) publish at the end of that period and in the manner specified in paragraph (a), a notice of each application submitted;

- (d) afford members of the public a reasonable opportunity to comment on any matter regarding such applications within such period as the Office may determine, being not less than thirty days after the publication of the notice pursuant to paragraph (c).

(3) Where any comments made pursuant to subsection (2) (d) include a proposal for refusal of an application, such comments shall contain a statement of the reasons for that proposal.

Application for Licence

9. (1) An application for a licence under this Act shall be made to the Office in the prescribed form and shall be accompanied by the prescribed application fee and contain a statement that –

- (a) the applicant undertakes to comply with the provisions of this Act relating to the type of facility or specified service to which the application relates, including licence limitations;
- (b) the applicant is not disqualified from being granted a licence by reason of any legal impediment;
- (c) the applicant possesses the technical qualifications to fully perform the obligations imposed by the licence; and
- (d) the applicant satisfies the financial requirements for the construction and operation of the facility or the provision of the services to which the application relates.

(2) In deciding whether an applicant be granted a licence, the Office shall –

- (a) determine whether the applicant is a fit and proper person to be granted a licence, is an undischarged bankrupt or has previously been granted a licence which was revoked;
- (b) determine whether any connected person has previously been granted a licence which was revoked;
- (c) have regard to such other matters as the Office considers relevant.

(3) The Office may, where it considers necessary or desirable for the purposes of subsection (2), by notice in writing, require an applicant to furnish such information as is specified in that notice.

(4) For the purposes of this Act, the following persons shall be treated as being connected with a given person ("L") and the person with them, and shall be so treated notwithstanding that at the relevant time any of the persons in question (not being individuals) had not yet come into existence or had ceased to exist –

- (a) a holding company or subsidiary of L;
- (b) any company of which L has control;
- (c) any company of which L and persons connected with L together have control;
- (d) any company which together with L constitute a group.

Application Fee

10. The office shall determine the amount of the application fee which shall be such as is necessary to recover the costs of processing the application.

Criteria for deciding application for a licence

11. (1) In deciding whether to grant or refuse the application or the conditions for the licence, the OUR must consider the following –

- (a) the application and additional information given in relation to the application;
- (b) any water resource plan or resource operations plan that may apply to the permit;
- (c) give the licensee a copy of the notice received under subsection (1)(a) and an amended licence in the approved form; and

(2) The amended licence takes effect from the day stated in the amended licence.

(3) Unless the licensee otherwise consents, the day stated in the amended licence must not be earlier than 5 business days after the day the OUR gives the licensee an amended licence.

(4) If subsection (2) applies because of subsection (1)(b), the amendment may, with the consent of the new entitlement holder and the licensee, include the new holder instead of the previous holder.

Grant of Licence

12. (1) The Office may, subject to subsections (2) and (3) –
- (a) in the case of an application for a licence, grant that licence authorizing the licensee to own and operate the facilities specified in the application; or
 - (b) refuse to grant the licence and the OUR shall as soon as practicable give written reasons for such refusal.
- (2) The Office shall not grant a licence to an applicant unless the office is satisfied that the applicant satisfies all the necessary requirements.
- (3) A licence granted under this section shall be in the prescribed form and, subject to subsection (5), shall be subject to the following conditions –
- (a) the licensee shall not operate a facility, provide specified services or use any frequencies designated in the licence beyond the period of the licence or in any manner other than that authorized by the licence;
 - (b) the licence or any right granted thereby shall not be assigned or otherwise transferred except in accordance with this Part;
 - (c) such other condition as may be considered necessary to ensure that the licensee complies with the requirements specified in section 11 (1) (a) to (d);
 - (d) subject to subsection (4), such other condition as the Minister deems reasonably necessary to achieve the objects of this Act.
- (4) Where a licence contains a condition such as is referred to in subsection (3) (d), the Minister shall inform the applicant in writing of the reasons for that condition.
- (5) A licence granted under this Act may, on the expiry thereof, be renewed in accordance with the provisions of this Act.
- (6) A licence granted under this Act shall, unless sooner revoked, be valid for such period as is specified therein;

Revocation of Licence

13. (1) Where the Office has reason to believe that a licensee has contravened the conditions of the licence or, as the case may be, has failed to pay any amount required under this Act, the Office shall give to that licensee notice in writing –

(d) adjourn any investigation from time to time.

(7) If a person fails or refuses without reasonable cause, to furnish information to the Office when required to do so, the Office may apply to the Court for an order to compel the person to furnish the information to the Office.

Renewal of Licence

14. The office shall renew a licence (hereinafter in this section referred to as the “original licence”), if the office is satisfied that –

- (a) the applicant has operated within the terms of the original licence; and
- (b) during the continuance in force of the original licence, the applicant has not engaged in any conduct amounting to a material contravention of this Act or any regulations made hereunder.

Licence Procedure

Contents of water operators licence

A water operators licence –

- (a) must be granted for a stated period; and
- (b) must state the water to which the licence relates; and
- (c) must state the location from which the water may be taken or at which it may be interfered with; and
- (d) may be amended, renewed, reinstated, transferred, amalgamated, subdivided, surrendered or cancelled; and
- (e) attaches to the licensee’s land unless the licensee is –
 - (i) the interim resource operations licence holder; or
 - (ii) the resource operations licence holder; or
 - (iii) a local government; or
 - (iv) a water authority; or

- (v) an entity prescribed under a regulation

Amending water licence on application of licensee

The licensee may apply to amend a water licence.

Other amendments OUR may make to water licence

- (1) The OUR on the recommendation of the Office may amend a water licence if satisfied that the licence should be amended.
- (2) Before the OUR amends the licence, the OUR must give the licensee a show cause notice about the proposed amendment.
- (3) In deciding whether to amend the licence, the OUR must consider any properly made submission about the proposed amendment.
- (4) If the OUR is satisfied that the proposed amendment should be made, the OUR must, within 30 business days after the decision, give the licensee an amended licence in the approved form and an information notice.
- (5) If the OUR is not satisfied the amendment should be made, the OUR must give the licensee notice that the licence will not be amended.
- (6) The amended licence takes effect from the day the licence is given to the licensee.

Minor amendment of water licence

- (1) The OUR may amend the licence without complying with the provisions of this subdivision about amending a licence if the amendment is only-
 - (a) to correct a minor error in the licence, or make another change that is not a change of substance; or
 - (b) if the licence states that an amendment of a stated type may be made to the licence by amendment under this section – to make an amendment of the stated type.
- (2) If the OUR amends a licence under subsection (1), the OUR must give the licensee an amended licence in the approved form.

Renewing water licence

- (1) The licensee may apply to renew a water licence before the licence expires.
- (2) The application must be –
 - (a) made to OUR in the approved form; and
 - (b) accompanied by the fee prescribed under a regulation.
- (3) If a licensee applies to renew a licence, the licence remains in force until –
 - (a) the applicant has been given an information notice; or
 - (b) if the application is refused and the applicant has appealed against the decision – until the date on which notification of the final outcome of the appeal has been given to the applicant.
- (4) If the OUR is satisfied the application should be approved, the OUR must –
 - (a) approve the application; or
 - (b) approve the application, subject to variation of the licence by one or more of the following
 - (i) the amendment or revocation of a term to which it is subject or the addition of another term;
 - (ii) the reduction of the volume of water the licensee is authorised to take under the licence or the rates at which, and the times when, it may be taken;
 - (iii) the reduction of the authority to interfere with the water.
- (5) However, the variation to the licence under subsection (4)(b) must not –
 - (a) increase the volume of, rate of or times when water may be taken under the licence; or
 - (b) increase the interference with the flow of the water; or
 - (c) change the location from which water may be taken, or interfered with, under the licence; or
 - (d) cause a significant adverse effect on –

- (i) the availability of water for the requirements of natural ecosystems; or
 - (ii) the quality of water; or
 - (iii) availability of water for existing water entitlement holders.
- (6) If the OUR is not satisfied the application should be approved, the must refuse the application.
- (7) Within 30 business days after deciding the application, the OUR must –
 - (a) give the applicant an information notice; and
 - (b) if the application is approved, give a new licence in the approved form to –
 - (i) the licensee; or
 - (ii) if after the application the applicant has ceased to be the owner of land to which the licence attaches – the registered owner of the land.
- (8) If the applicant is given a new licence, the licence has effect from the day the applicant is given the licence.

Reinstating expired water licence

- (1) If a licensee fails to renew a water licence, the licensee, may, within 30 business days after the licence expires, apply to have the licence reinstated.
- (2) The application must be –
 - (a) made to the OUR in the approved form, and
 - (b) accompanied by the fee prescribed under a regulation.
- (3) If an application for the reinstatement of a water licence is made, the expired licence is taken to have been in force from the day the application was made until the applicant has been notified of the OUR decision on the application.

Transferring water licence to another person

- (1) The licensee of a water licence may apply to transfer the licence to –
 - (a) any owner of the land to which the licence attaches; or
 - (b) a person who will be an owner of the land to which the licence attaches at the time the transfer is approved; or
 - (c) if the licensee is an entity mentioned in section – another entity mentioned in section.
- (2) The application must be –
 - (a) made to the OUR in the approved form; and
 - (b) supported by evidence that enables the OUR to transfer the licence, including, for example the written consent of the transferee; and
 - (c) accompanied by the fee prescribed under a regulation.
- (3) The OUR must give the transferee a new licence on conditions that have the same effect as the conditions on the previous licence, other than for the change of name of the licensee –
 - (a) for an application made under subsection (1)(a) or (c) – within 30 business days after receiving the application; or
 - (b) for an application made under subsection (1)(b) – within 30 business days after the transferee gives the OUR notice that the transferee has become an owner of the land.
- (4) The new licence has effect on the day the transferee is given the licence.

Part II
SEWERAGE

1. Any person intending to operate a sewerage facility shall apply for a licence.
2. OUR shall receive all licence applications.
3. Licence to be issued by OUR.
4. Minister to make regulations re licensing.

Part III
SERVICE PROVIDERS

Who must apply for registration as a service provider

The following persons must, before commencing to operate as a service provider, apply for registration as a service provider –

- (a) each local government that owns infrastructure for supplying water or sewerage services;
- (b) each water authority that owns infrastructure for supplying water or sewerage services;
- (c) each person who is the legal owner of one or more elements of infrastructure for supplying water or sewerage services for which a charge is intended to be made.

Registration as a service provider

- (1) If the regulator is satisfied the applicant has complied with relevant statutory provisions the regulator must –

- (a) register the applicant in the service provider register as a service provider for the service shown in the application; and
 - (b) give the applicant notice of the registration.
- (2) The registration takes effect the day the regulator registers the applicant in the register as a service provider.

Notice of transfer of infrastructure

- (1) If a service provider (the “**transferor**”) intends to transfer the ownership of the service provider’s infrastructure for a registered service to another person (the “**transferee**”).
- (2) The transferor must give the regulator notice of the proposed transfer.
- (3) The notice must be –
- (a) in the approved form; and
 - (b) accompanied by the fee prescribed under a regulation.
- (4) The regulator may require –
- (a) the transferor or transferee to give additional information about the notice; or
 - (b) the information included in the notice, or the additional information required under paragraph (a), to be verified by statutory declaration.

Registering transferee as a service provider

- (1) If the regulator is satisfied the transferor has complied with the Act -
- (a) cancel the transferor’s registration as a service provider for the infrastructure and services shown in the notice of the proposed transfer; and
 - (b) register the transferee in the service provider register as a service provider for the infrastructure and services; and
 - (c) give the transferor notice of the cancellation under paragraph (a); and
 - (d) give the transferee notice of the registration under paragraph (b).

- (2) The registration –
 - (a) must not be on a day earlier than the day the regulator received the notice of the proposed transfer; but
 - (b) may, if the transferor and transferee give their written agreement, be on a later day.
- (3) On registration –
 - (a) the transferor stops being the service provider for the infrastructure and services; and
 - (b) the transferee becomes the service provider for the infrastructure and services.
- (4) Subsection (5) applies if –
 - (a) the ownership of infrastructure is transferred under this section; and
 - (b) the regulator has given a compliance notice to the transferor before registration takes effect under subsection (2); and
 - (c) the transferor has not complied with the notice.
- (5) The transferee is taken to have been the service provider given the notice.

Notice of intention to stop operating as a service provider

- (1) Subsection (2) applies if –
 - (a) a service provider is likely to stop supplying a registered service; and
 - (b) there is no other entity willing to take over the operation of all or part of the service provider's infrastructure for the service.
- (2) The service provider must give the regulator at least 1 year business days notice of the possible stoppage unless the service provider has a reasonable excuse for not giving the notice.

[Penalty]

- (3) The notice must –
 - (a) be in the approved form; and

- (b) state the date by which the service provider intends to stop supplying service.
- (4) The regulator may require
 - (a) the service provider to give additional information about the notice; or
 - (b) any information included in the notice, or any additional information required under paragraph (a), to be verified by statutory declaration.
- (5) If the service provider fails, without reasonable excuse, to comply with the requirement within the reasonable time stated in the requirement, the notice given under subsection (2) is of no effect.
- (6) If the service provider continues supplying the service after the day stated in the notice –
 - (a) the notice ceases to have effect as a notice for subsection (2); and
 - (b) if the service provider is again likely to stop supplying the service – the service provider must give a further notice under subsection (2).

Power to disconnect unauthorized connections

- (1) Subsection (2) applies if a person makes an unauthorised connection to the service provider's infrastructure.
- (2) If the person does not satisfy the service provider, within the time stated in the notice, why the connection should not be disconnected –
 - (a) an authorised person may enter the place where the connection is and disconnect the connection; and
 - (b) the service provider may recover from the person, as a debt due to the service provider –
 - (i) the cost of the disconnection; and
 - (ii) the value of any service used by the person through the connection.
- (3) However, if the connection is causing damage to the service provider's infrastructure –

- (a) an authorised person may, without notice, enter the place where the connection is and disconnect the connection; and
 - (b) the service provider may recover from the person, as a debt due to the service provider –
 - (c) the cost of the disconnection; and
 - (d) the value of any service used by the person through the connection.
- (4) If an authorised person enters a place under subsection (5), the authorised person must give a notice to the person who appears to the authorised person to be the owner of, or in control of, the place, advising the purpose of the entry.
- (5) If there is no person at the place at the time of the entry under subsection (5), the authorised person must –
- (a) leave the notice at the place; and
 - (b) ensure the notice is left in a reasonably secure way and in a conspicuous position.

Power to do direct remedial work

- (1) Subsection (2) applies to the owner of –
- (a) defective or improper equipment connected to, or adversely affecting, a service provider's infrastructure; or
 - (b) land on which there is situated vegetation or any other thing adversely affecting the service provider's infrastructure or ability to provide the services for which the service provider is registered.
- (2) The service provider may give the owner a notice to do work, within the reasonable time stated in the notice, to –
- (a) rectify the equipment; or
 - (b) remove the vegetation or other thing
- (3) If the owner does not do the work within the time stated in the notice –
- (a) an authorised person may, enter the place where the work is required and do the work; and

- (b) the service provider may recover from the owner, as a debt due, the cost of the work.

Power to install meters

- (1) A service provider may install, or approve the installation of, a meter in a position, decided by the service provider, on infrastructure supplying water to premises.
- (2) The meter is the property of the service provider even if it is installed inside the boundary of the premises.

Power to enter places for restricted purposes

1. (1) The Office or its agents or servants duly authorized in that behalf by the office may at any time between the hours of eight o'clock in the morning and six o'clock at night, enter any premises supplied with water by the Commission for the purpose of examining the pipes or means by which such water is supplied to such premises or any appliance or thing used on such premises in connection with such pipes or means of supply or for the purpose of locking off the supply of water from such premises or of restoring the supply of water to such premises.

(2) Any person who assaults or obstructs a person acting in the performance of his functions under subsection (1) shall be guilty of an offence and liable on summary conviction before a Resident Magistrate to a fine not exceeding one hundred thousand dollars or to imprisonment with or without hard labour for a term not exceeding twelve months.

Restricting water supply

- (1) If a water service provider considers it necessary, because of climatic conditions or water conservation needs, the water service provider may restrict –
- (a) the volume of water supplied to a customer or type of customer; or
 - (b) the hours when water may be used on premises for stated purposes; or
 - (c) the way water may be used on premises.
- (2) The water service provider may impose a restriction under subsection (1) (a “water restriction”) only if –

- (a) there is an urgent need for water restriction; or
- (b) the available water supply has fallen to a level at which unrestricted use of the water is not in the public interest; or
- (c) the service provider has a reasonable and comprehensive demand management strategy and the restriction is essential to ensure the aims of the strategy are met; or
- (d) the Minister has published a notice under the Act.

(3) However, a restriction imposed under subsection (1) must be consistent with conditions contained in the service provider's resource operations licence, interim resource operations licence, water licence or water allocation, relating to the supply of the water.

Notice of water restriction must be given

- (1) The water service provider must give notice of the water restriction to anyone affected by it in the way the service provider considers appropriate having regard to the circumstances in which the restriction is imposed.
- (2) The water restriction does not have effect until the day after the notice is given.
- (3) A person must not contravene a water restriction.

[Penalty]

Temporary interruptions to water supply

- (1) A water service provider may shut off the water supply to premises for the time reasonably necessary for the service provider to perform work on the service provider's infrastructure, including a property service.
- (2) However, the service provider must give to anyone likely to be affected by shutting off the water supply at least 48 hours notice of its intention to shut off the water supply, advising the reasons for shutting it off, and for how long it will be shut off.
- (3) Subsection (2) does not stop the service provider shutting off its water supply, without notice, if there is –
 - (a) a serious risk to public health; or

- (b) a likelihood of serious injury to persons or damage to property; or
 - (c) another emergency.
- (4) If the service provider acts under subsection (3), the service provider must give, to anyone likely to be affected by the action –
- (a) notice of the action; and
 - (b) the reasons for the action; and
 - (c) if the action is continuing when the notice is given – notice about how long the action will continue.

Regulatory Fees

15. (1) The Office may impose an annual regulatory fee in accordance with this section in relation to all licences issued under this Act.

(2) The amount of the regulatory fees shall be such sum as, in the opinion of the Office, is a reasonable estimate of the costs which will be incurred by the Office in relation to the regulation of the specified services to which the licences relate (hereinafter in this section referred to as “regulation costs”).

(3) In determining the amount of the regulatory fee payable by a licensee, the Office shall apportion regulation costs reasonably and equitably among licensees.

(4) Where a licensee fails to pay the amount of the regulatory fee within the time required by the Office for such payment, the licensee shall be liable to such amount by way of a surcharge as the Office may determine, not exceeding twenty-five per cent of the amount unpaid.

16. (1) The Office shall cause to be kept a register of all applications for licences received by it and all such licences granted pursuant to this Act and such register may be kept in electronic form.

(2) Subject to section 7 (Obligation for secrecy) the Office –

- (a) shall make available for public inspection during its business hours, all applications for licences and supporting documents and all licences granted pursuant to this Act;

- (b) may permit any person to make copies of any entry in the register and may charge such fees as it considers reasonable for such copies.

17. (1) Where a service provider is denied permission to enter on any land or the permission for such entry is unreasonably delayed, the carrier may make an application to the court for an order permitting such entry.

(2) An application under subsection (1) shall –

- (a) identify the land to which the application relates;
- (b) identify the owner or occupier of such land;
- (c) state the means by which entry is to be effected, the purposes and the approximate dates and the period for which such entry is required;
- (d) specify –
 - (i) the date of any prior notice given to the owner or occupier of the land; and
 - (ii) the amount of compensation offered to such owner or occupier;
- (e) state that all reasonable attempts to seek permission for entry have failed.

(3) The court may grant an order under this section if it is satisfied that the applicant has complied with the requirements of this Act.

18. (1) A person who is aggrieved by a decision of the Minister may, within fourteen days after receipt of that decision, apply to the Minister in the prescribed manner for a reconsideration of the matter.

(2) Where an application is made under subsection (1), the Minister may –

- (a) order that the decision to which it relates shall not have effect until the matter has been reconsidered and further determined by him; and
- (b) confirm, modify or reverse that decision or any part thereof.

(3) Where no order is made under subsection (2) (a), the decision shall remain in effect.

(4) A person who is aggrieved by a decision of the Office may, within fourteen days of receipt of that decision, apply to the Office in the prescribed manner for a reconsideration of the matter.

- (5) An application under subsection (4) shall be heard only if the applicant –
- (a) relies upon new facts or changed circumstances that could not, with ordinary diligence have become known to the applicant while the matter was being considered by the Office; or
 - (b) alleges that the decision was based upon material errors of fact or law.

(6) The Office may, in relation to an application under subsection (4), confirm, modify or reverse the decision or any part thereof.

(7) Where a decision is confirmed, the confirmation shall be deemed to take effect from the date on which the decision was made.

- (8) Where an application is made under subsection (4) –
- (a) the Office may, on an application by the applicant, order that the decision shall not take effect until a determination is made under subsection (6); and
 - (b) the Appeal Tribunal shall not hear an appeal under section 62 in relation to that decision until such a determination is made by the Office.

19. There is hereby established for the purposes of this Act, an Appeal Tribunal and the provisions of the Second Schedule shall have effect as to the constitution of the Appeal Tribunal and otherwise in relation thereto.

20. (1) A person who is aggrieved by a decision of the Office may appeal against the decision to the Appeal Tribunal –

- (a) if the person is a party, within twenty-one days after receipt of the decision; or
- (b) in any other case, within thirty days from the date of notification of that decision.

(2) On hearing an appeal under this section the Appeal Tribunal may, subject to subsection (3) –

- (a) confirm, modify or reverse the decision of the Office or any part thereof; or

- (b) by a direction in writing, refer the decision back to the Office for reconsideration by it, either generally or in relation to any matter specified in the direction,

and the Tribunal shall state the reasons for so doing within thirty days.

(3) The Tribunal may, on application by an appellant, order that the decision of the Office to which an appeal relates shall not have effect until the appeal is determined.

(4) The Appeal Tribunal may dismiss an appeal if it is of the opinion that –

(a) the appeal is frivolous or vexatious or not made in good faith; or

(b) the appellant does not have a sufficient interest in the subject matter of the appeal.

(5) Where the Appeal Tribunal dismisses an appeal, it shall in writing inform the appellant and the Office, stating the reasons therefore.

(6) In making a decision the Appeal Tribunal shall observe reasonable standards of procedural fairness and the rules of natural justice and act in a timely fashion.

Cease and Desist Orders

21. (1) The Office may, where it is satisfied that there are reasonable grounds for believing that any conduct specified in subsection (2) is being carried out by any person, on its own initiative or on the application of any person, issue to the person concerned, a cease and desist order.

(2) The conduct referred to in subsection (1) is as follows –

(a) ownership or operation of an unlicensed facility;

(b) providing any specified services to the public without a licence issued under this Act.

(3) An order under subsection (1) shall –

(a) state the facts constituting the alleged conduct and where appropriate, the name of the person against whom the allegation is made; and

(b) be accompanied by documents, if any, in support of the allegation.

(4) Before issuing a cease and desist order, the Office shall cause to be served on the person concerned, a notice –

- (a) containing a statement of the facts referred to in subsection (3) (a); and
- (b) specifying the period within which and a place at which a hearing will be held to afford to the person concerned an opportunity to show cause why the order should not be made.

(5) Where at a hearing referred to in subsection (4) (b) –

- (a) the person concerned fails to show cause why the cease and desist order should not be made, the order shall be issued; or
- (b) the Office determines that the alleged conduct has not occurred, a cease and desist order shall not be issued.

22. A cease and desist order shall be served on the person to whom it is addressed and shall –

- (a) contain a description of the alleged conduct;
- (b) require the person concerned to cease and desist from the conduct rise to the order,

and the order shall take effect from the date specified therein.

23. (1) If the Court is satisfied on an application by the Office that a licensee –

- (a) has failed to comply with any term or conditions of the licence; or
- (b) has contravened any provision of this Act or any regulations made hereunder,

the Court may exercise any of the powers specified in section 66.

(2) Before making an application to the Court under subsection (1), the Office shall –

- (a) notify the licensee concerned in writing regarding the nature of the alleged contravention; and
- (b) afford to the licensee an opportunity to –

- (i) remedy the alleged contravention to the satisfaction of the Office, within such period as the Office shall specify in the notice or on the application of the licensee;
- (ii) make submissions to and to be heard by, the Office concerning the matter,

and where any such hearing is held, the Office shall notify the licensee of its determination in the matter;

- (c) take into consideration any relevant circumstances, including –
 - (i) the resources available to the licensee or to any person or entity affected by the licensee’s actions;
 - (ii) the continued economic viability of the licensee or any other person or entity effected as aforesaid; and
 - (iii) the conduct of any such other person or entity or the licensee’s competitors.

(3) In exercising its powers under this section, the Office shall have regard to–

- (a) the nature and extent of the conduct giving rise to the application;
- (b) the nature and extent of any loss suffered by a person as a result of the alleged contravention;
- (c) the circumstances of the alleged contravention; and
- (d) any previous determination against the licensee concerned.

24. (1) The Court may, pursuant to an application under section 65 (1)

- (a) order the offending licensee to pay to the Crown such pecuniary penalty not exceeding five hundred thousand dollars in the case of an individual and not exceeding three million dollars in the case of any other person;
- (b) grant an injunction restricting the offending licensee from engaging in conduct described in subsection (1) (a) or (b) of section 65; or
- (c) make such other order as the Court thinks fit,

in respect of each contravention or failure specified in that subsection.

(2) In exercising its powers under this section the Court shall have regard to the matters specified in section 65 (3).

(3) Proceedings under this section and section 65 shall be civil proceedings.

25. (1) A person commits an offence if he –

(a) trespasses upon any facility by any means;

(b) meddles or interferes or tampers with any facility or otherwise causes harm to that facility;

in order to obtain unauthorized use of specified services.

(2) Subsection (1) shall not apply to a customer in relation to any facility that–

(a) is located on his premises; and

(b) having regard to a contract in relation to such premises between the customer and the service provider, is intended to be used or dealt with by the customer in the ordinary course of his enjoyment of the service provided under that contract,

unless any act is done in relation to such facility that is expressly forbidden by that contract or is inconsistent with the terms of that contract or is detrimental to the safety or efficient operation of such facility.

(3) A person who is guilty of an offence under this section shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

Offences

26. (1) The following will constitute offences under the Act:

(a) knowingly made any false statement in an application for a licence or in any statement made to the Office;

(b) knowingly failed to provide information or evidence that would have resulted in a refusal to grant a licence;

Rules

27. (1) The Office may make rules subject to affirmative resolution prescribing any matter required by this Act to be prescribed by such rules or any matter that it considers necessary or desirable for the effective performance of its functions under this Act.

(2) Notwithstanding the provisions of section 29 of the Interpretation Act, rules made pursuant to this Act may provide for the imposition of penalties on summary conviction in a Resident Magistrate's Court of fines not exceeding five hundred thousand dollars or imprisonment for a term not exceeding twelve months or both such fine and imprisonment.

Regulations

28. (1) The Minister may make regulations:

- (a) as to the procedures to be followed in making an application for a licence;
- (b) as to the procedures to be followed in regard to the granting, renewal and transfer of access licences;
- (c) as to the procedures to be followed for the cancellation or suspension of licences;
- (d) as to fees and charges that may be unposed under the Act;
- (e) regarding sewerage licensing and related matters;
- (f) prescribing the forms of applicants for the supply of water to consumers, the manner of effecting such supply and the incidence of the charges or fees in respect of the cost of connecting the consumer's premises with the mains;
- (g) prescribing the security to be furnished by consumers and the conditions for the discontinuance of the supply in cases where the consumer fails to observe the requirements of this Act or of any regulations made thereunder, or is in arrears with his payments of any proper rates, charges or fees, or where such discontinuance may be considered necessary or advisable;
- (h) providing for the recovery of rates, charges and fees payable by consumers;

- (i) prescribing offences in relation to the use, misuse or fraudulent use of water supplied by the Commission, or to interfere with any water works or sewerage system belonging to the Commission and penalties for such offences;
- (j) prescribing anything required by this Act to be prescribed;
- (k) generally for giving effect to the provisions and purposes of the Act.

(2) Notwithstanding the provisions of section 29 of the Interpretation Act, regulations made under subsection (10) may provide for the imposition of penalties on summary conviction in a Resident Magistrate's Court of fines not exceeding five hundred thousand dollars or imprisonment for a term not exceeding twelve months or both such fine and imprisonment.

29. It shall be lawful for a service provider, on non-payment of any rate or any money payable under the provisions of this Act or any other enactment for the time being in force in relation to water supply services, to lock off the supply of water from any premises supplied with water by the Commission.

30. Any person who, not being supplied with water by a service provider, takes water from the water works, shall be guilty of an offence.

31. Every offence against this Act or any regulations hereunder shall be tried summarily before a Resident Magistrate and any person convicted of any such offence shall, where no other penalty is provided by this Act, be liable to a penalty not exceeding one thousand dollars and, in default of payment thereof, to imprisonment, with or without hard labour, for a term not exceeding three months.

APPENDIX 2

DRAFT SEWERAGE REGULATIONS

PRELIMINARY DRAFT OF SEWERAGE REGULATIONS

SUMMARY OF PROVISIONS

PART 1 – PRELIMINARY

1. Citation
2. Objects
3. Definitions

PART 2 – LICENSING

4. Definition of terms
5. Application for a licence
6. Grant of a licence
7. Conditions of a licence

PART 3 – ENFORCEMENT

8. Records to be kept

PART 1 – PRELIMINARY

Citation

- 1 Sewerage Regulations

Objects

- 2 The object of these regulations ensure that on-site sewerage facilities are operating effectively and efficiently so as to protect public health and the environment.

Definitions

- 3 In this law

“hazardous material” means a substance which:

- (a) because of its chemical, biochemical, microbiological or radiological properties, temperature or state of compression could in sufficient concentration cause:

- (i) harm to human health and safety or personal injury; or
- (ii) property damage; or
- (iii) environmental harm or environmental nuisance;

- (b) and includes

- (i) a hazardous substance; and
- (ii) a dangerous good; and
- (iii) a scheduled poison.

“pest” includes vermin and insects.

“service” includes in relation to an on-site sewerage facility:

- (a) the inspection of the on-site sewerage facility any premises, equipment or thing involved in connection with the operation of the on-site sewerage facility; or
- (b) the measuring, weighing, sampling, testing or otherwise examining anything that may be inspected pursuant to paragraph (a); or
- (c) the maintenance, repair, cleansing, replacement or alteration of anything that may be inspected pursuant to paragraph (a).

“waste water” means a liquid waste.

PART 2 – LICENSING

Application for a licence

- 4 An application for a licence for the operation of the on-site sewerage facility must be accompanied by:
- (a) the address and real property description of the premises at which the on-site sewerage facility will be operated; and
 - (b) the name, address and telephone number of the person who will be operating the on-site sewerage facility; and
 - (c) details of the on-site sewerage facility including:
 - (i) the use of the premises on which the on-site sewerage facility is to be erected; and

- (ii) the number of sanitary facilities to be served by the on-site sewerage facility; and
 - (iii) the maximum number of persons to be served by the on-site sewerage facility; and
 - (iv) the make and model of the on-site sewerage facility; and
 - (v) the proposed effluent irrigation system; and
- (d) a plan to scale and specifications of the operation of the on-site sewerage facility showing:
- (i) all buildings on the premises; and
 - (ii) the real property boundaries of the premises; and
 - (iii) the proposed location of the on-site sewerage facility and the effluent irrigation system; and
 - (iv) the results of soil percolation and permeability tests.

Grant of a licence

- 5 (1) The OUR may grant a licence for the operation of the on-site sewerage facility if satisfied that:
- (a) the operation of the on-site sewerage facility can be lawfully conducted on the premises; and
 - (b) the matters which are the subject of the conditions specified in section 6 (Conditions of a licence) of this local law policy which are relevant to the operation of the on-site sewerage facility can be adequately addressed by the imposition of those conditions.

Conditions of a licence

- 6 The OUR may impose all or any of the following conditions on a licence for the operation of the on-site sewerage facility
- (a) Effluent from an on-site sewerage facility installed after the commencement must meet the following minimum standards:
- (i) BOD₅ must not exceed 20mg/1 in any sample; and
 - (ii) Suspended solids must not exceed 30mg/1 in any sample; and
 - (iii) Free residual chlorine must not be less than 0.5 mg/1 in any sample; and
 - (iv) E-coli must not exceed 1,000/100ml in any sample and the geometric mean of 5 samples taken at 30 minute intervals must not exceed 200/1,000ml.
- (b) Effluent from on-site sewerage facility must be disposed of on the premises on which the on-site sewerage facility is operating by irrigation in a manner approved by the local government.
- (c) Effluent from the on-site sewerage facility must not flow into a watercourse or waters or escape onto neighbouring premises.
- (d) Effluent from the on-site sewerage facility must not be used for aerial irrigation or aerial spraying of fruit, vegetables or any other plant grown for human consumption.
- (e) Effluent from the on-site sewerage facility must not be connected, or any provision made for connection, to the water supply system, and no draw-offs taps shall be fitted on the effluent irrigation line.

- (f) The design, details of construction, materials and methods used for the construction of the on-site sewerage facility must be approved by the local government before construction commences.
- (g) The disposal area and irrigation system must be built and commissioned before the commissioning of the on-site sewerage facility.
- (h) A final inspection of the on-site sewerage facility must be carried out by the local government before the commencement of use of the on-site sewerage facility.
- (i) The owner of the premises on which the on-site facility is operating must:
 - (i) enter into a service contract with a person licensed under the Water Planning Act to service the on-site sewerage facility to ensure the proper operation of the on-site sewerage facility; and
 - (ii) ensure that the service contract is carried out at least once every three months; and
 - (iii) ensure that a report comprising the service contractor's normal service report is sent to the local government within thirty (30) days of the service of the on-site sewerage facility.
- (j) The local government may carry out any tests it considers necessary, at the expense of the owner of the premises on which the on-site sewerage facility is operating to ensure compliance with the effluent standards specified by NEPA.
- (k) The on-site sewerage facility to be operated must be authorized by NEPA.

- (l) Any necessary repairs or modifications to the on-site sewerage facility must be carried out at the owner's expense within the time specified in a notice given by the local government.
- (m) The sullage distribution systems shall be:
 - (i) fitted with an appropriate pump as approved by the local government; and
 - (ii) operated by an automatic float switch.
- (n) Operation of the on-site sewerage facility must not cause an odour nuisance to neighbouring premises.
- (o) The operation of the on-site sewerage facility must not constitute a nuisance under Public Health Act or regulations.
- (p) Contaminants must not be released to the environment as part of the operation of the on-site sewerage facility where the release may cause environmental harm unless such release is specifically authorized by NEPA.
- (q) All objects (including vehicles and machinery) which are dismantled as part of the operation of the on-site sewerage facility must be dismantled undercover on a paved impervious surface which is unaffected by stormwater runoff.
- (r) All spillages of wastes, contaminants or other chemicals must be cleaned up immediately. Such spillages must not be cleaned up by hosing, sweeping or otherwise releasing such wastes, contaminants or material to any stormwater system or waters.

- (s) The operation of the on-site sewerage facility must not attract fly breeding or vermin infestation.
- (t) The operation of the on-site sewerage facility must be kept free of pests and conditions offering harbourage for pests.
- (u) All hazardous materials must be stored and used in a safe manner as part of the operation of the on-site sewerage facility.
- (v) Adequate storage must be provided for all hazardous materials stored or used as part of the operation of the on-site sewerage facility.
- (w) All maintenance of the on-site sewerage facility must be performed safely in accordance with all relevant laws.
- (x) All waste (including waste water) generated as part of the operation of the on-site sewerage facility must be disposed of in a safe and sanitary manner and in accordance with approval from NEPA.
- (y) Waste from the operation of the on-site sewerage facility must not be disposed of into the stormwater, waters or a watercourse.
- (z) The operation of the on-site sewerage facility the subject of the licence must not be changed in any respect without the prior notification of the local government and approval of an authorized person.
- (aa) The operation of the on-site sewerage facility must comply with the NRCA Act, and the Water Resources Act.
- (ab) The operation of the on-site sewerage facility must be adequately managed to ensure compliance with the licence conditions.

- (ac) The operation of the on-site sewerage facility must not breach a provision of a local law or a local law policy.
- (ad) The operation of the on-site sewerage facility must comply with:
 - (i) any developmental approval; and
 - (ii) the provisions of the planning scheme and any relevant planning scheme policy

PART 3 – ENFORCEMENT

Records to be kept

- 7 Every license shall keep the following records
 - (a) records must be kept by the owner of premises on which the on-site sewerage facility is operating; and
 - (b) the records must contain details of
 - (i) all reports prepared by the service contractor in relation to the service performed in respect of the on-site facility; and
 - (ii) when the on-site sewerage facility was serviced; and
 - (iii) the name, address and telephone number of the person who serviced the on-site facility; and
 - (c) all records must be kept for a period of seven (7) years.