

## **Chapter 01**

### **ENVIRONMENTAL QUALITY ACT**

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**24.0101 Short title.**

This chapter shall be known as the Environmental Quality Act.

**History:** 1972, PL 12-45 § 1.

**Case Notes:**

Consent decrees (pertaining to the American Samoa Environmental Quality Act, A.S.C.A. §§ 24.0101 et seq., and the Water Quality Standards, A.S.A.C. § 24.0201 et seq.) are binding only on the parties thereto and do not define or restrict the rights of the United States or of any private party, either with respect to the right to bring any action or to the merits of such action. *American Samoa Government v. StarKist Samoa, Inc.*, 16 A.S.R.2d 27 (1990).

**24.0102 Policy.**

(a) It is the public policy of this Territory and the purpose of this chapter to achieve and maintain such levels of air and water quality as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this territory and facilitate the enjoyment of the natural attractions of this Territory.

(b) To these ends it is the purpose of this chapter to provide for a coordinated Territory-wide program of air and water pollution prevention, abatement, and control; and to provide a framework within which all values may be balanced in the public interest.

**History:** 1972, PL 12-45 § 2.

## **24.0103 Definitions.**

(a) As used in this chapter:

(1) “Air pollutant” means any pollution agent or combination of such agents, including any physical, chemical, biological, radioactive substance or matter which is emitted into or otherwise enters the ambient air. Such term shall also include odorous substances and any precursors to the formation of any pollutant, to the extent that the agent or combination of such agents is identified by any federal or territory rules as precursors.

(2) “Air pollution” means the presence in the outdoor atmosphere of one or more air pollutants in such quantities and duration as is or tends to be injurious to human health or welfare, plant or animal life, or property, or would interfere with the enjoyment of life or property.

(3) “Air pollution emission source” means property, real or personal, which emits or may emit air pollution.

(4) “Chairman” means the chairman of the Environmental Quality Commission or persons authorized to act on his behalf.

(5) “Clean Air Act” means the federal Clean Air Act of 1963 as amended.

(6) “Commission” means the Environmental Quality Commission or its duly authorized agents.

(7) “Compliance plan” means a plan which includes a description of how a source proposes to comply with all applicable requirements pursuant to this chapter and includes a schedule of compliance and a schedule under which the permittee will submit progress reports to the commission.

(8) “Discharge” means the releasing, expelling, spilling, leaking or dumping of pollutants onto land or into the waters of American Samoa.

(9) “Emission” means a release, into the outdoor atmosphere, of air pollutants.

(10) “Executive secretary” means the executive secretary of the Environmental Quality Commission.

(11) “Hazardous air pollutant” or “HAP” means those hazardous air pollutants listed in section 112 (b), as amended, 42 United States Code 7412 (2), and any other pollutant designated by federal or territory rules as hazardous.

(12) “Major stationary source(s) of air pollution” or “major source” means an air pollution emission source or group of sources under the common control or command of the same owner or operator which emits or has the potential to emit 100 tons per year or more, considering controls, of any pollutant subject to regulation under the federal Clean Air Act or the laws of this territory.

(13) “Non-major source(s) of hazardous air pollution” or “non-major HAP source” means an air pollution emission source or group of sources under the common control or command of the same owner or operator which emits or has the potential to emit in the aggregate an amount greater than 10 tons per year of any hazardous air pollutant; no more than 10 tons per year of any hazardous air pollutant, including fugitive emissions; and no more than 25 tons per year in the aggregate of any combination of hazardous air pollutants, including fugitive emissions.

(14) “Owner or operator” means any person who owns, leases, operates, controls, or supervises a pollution emission or discharge source.

(15) “Permit” means written authorization from the chairman or, in the case of stationary air pollution source permits, the executive secretary, to construct, reconstruct, modify, relocate, or operate a pollutant discharge or emission source. A permit authorizes the permittee to cause or allow the discharge or emission of pollutants in a specified manner or amount, or to do any act, not forbidden by this chapter or by rules adopted pursuant to it, requiring review by the chairman or executive secretary of the commission.

(16) “Person” means any individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the territory, trust, estate, or any other legal entity.

(17) “Pollutant” means solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, hazardous wastes, biological materials, air pollutants, radioactive materials, oil, grease, wrecked or discarded equipment, industrial, municipal or other waste discharged into or upon the land, air or water. Dredge spoil, rock, sand, dirt and agricultural materials shall also constitute a pollutant when discharged into waters of American Samoa.

(18) “Pollution” means the presence in the outdoor environment of air pollution, water pollution, or one or more pollutants in such quantities as is or tends to be injurious to human health or welfare, plant or animal life, or the use and enjoyment of life, property, or the environment.

(19) “Pollution source” or “source” means any building, structure, facility, or installation from which there is or may be the discharge or emission of pollutants.

(20) “USEPA” means the United States Environmental Protection Agency.

(21) “Waters of American Samoa” includes all streams, lakes, ponds, rivers, bays, lagoons, navigable water, groundwaters, underground waters, and coastal waters.

(22) “Water pollution” means the presence in the water of visible floating materials, oil, grease, scum, foam or other materials which produce visible turbidity or settle to form deposits; or materials which produce color, odor or taste, either of themselves or in combination, or in the biota; or materials which induce undesirable aquatic life; or materials which are toxic or an irritant to humans, animals, plants, or aquatic life.

(b) For the purposes of this chapter, addition to or enlargement or replacement of pollution source, or any major alteration therein, shall be construed as construction, installation, or establishment of a new air or water pollution source.

**History:** 1972, PL 12-45 § 1, 2000, PL 26-22.

#### **24.0104 Administration of chapter.**

Except as specifically provided herein:

(a) The chairman of the environmental quality commission has the responsibility for the administration of this chapter.

(b) The chairman shall administer the provisions of this chapter in accordance with the commission’s rules, orders, standards of air and water quality and classifications.

(c) The chairman may delegate to any employee of the commission such of his functions and duties as he deems necessary for the proper and efficient administration of this chapter.

**History:** 1972, PL 12-45 § 1, 2000, PL 26-22.

#### **24.0105 Environmental quality commission- Establishment-Meetings.**

(a) There is an environmental quality commission referred to in this chapter as the commission. The commission consists of 5 members to be appointed by the Governor to serve for an indefinite period of time.

(b) The commission shall meet at least 4 times per year at regularly scheduled times. A quorum of 3 members is necessary to conduct any business before the commission. A majority vote of those present shall decide all issues before the commission. A record of each meeting shall be taken, and the record shall be available for public inspection.

**History:** 1972, PL 12-45 § 1.

#### **24.0106 Environmental quality commission- Powers and duties.**

In addition to the other powers and duties conferred upon it by this chapter, the commission is authorized and directed to:

- (1) adopt, amend and repeal rules implementing and consistent with this chapter;
- (2) hold hearings relating to any aspect of or matter in the administration of this chapter, and in connection therewith, compel the attendance of witnesses and the production of evidence;
- (3) issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings;
- (4) require access to records relating to emissions or discharges which cause, threaten to cause, or contribute to pollution;
- (5) secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise;
- (6) prepare and develop a comprehensive plan or plans, including administrative rules, for the prevention, abatement and control of pollution in this territory;
- (7) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;
- (8) encourage and conduct studies, investigations and research relating to and, water, and other forms of pollution and their causes, effects, prevention, abatement, and control;
- (9) determine by means of field studies and sampling the degree of pollution in the territory;
- (10) establish air and water quality standards for the territory;

(11) collect and disseminate information and conduct education and training programs relating pollution in the territory;

(12) advise, consult, contract, and cooperate with other agencies of the territory, industries and the federal government, and with interested persons or groups;

(13) consult, upon request, with any person proposing to construct, install, or otherwise acquire pollution source or device or system, regarding any pollution problem which may be related to the source, device or system; nothing in any such consultation shall be construed to relieve any person from compliance with this chapter, rules in force pursuant thereto, or any other provision of law;

(14) accept, receive, and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of this chapter.

(15) establish and administer, as necessary, territory-wide pollution control permit programs.

**History:** 1972, PL 12-45 § 1, 2000, PL 26-22.

#### **24.0107 Emission and discharge control requirements.**

The commission may establish such emission and discharge control requirements, by rule, as in its judgment may be necessary to prevent, abate or control pollution. Such requirements may be for the territory as a whole or may vary from area to area, as may be appropriate to facilitate accomplishment of the purposes of this chapter, and to take account of varying local conditions.

**History:** 1972, PL 12-45 § 1, 2000, PL 26-22..

#### **24.0108 Monitoring and reporting pollutants.**

(a) The commission may require the owner or operator of any potential source to establish, maintain, and submit such records, make such reports, install, use, and maintain such monitoring equipment or methods, sample such emissions or discharges in accordance with such methods and procedures, and at such locations and intervals as the commission shall prescribe, and provide such information to the commission as the commission may reasonably require.



(b) The commission may require the owner or operator of any stationary source discharging pollutants to install monitoring equipment or devices, conduct source tests and maintain records as the commission may prescribe and submit periodic reports on the nature and amount of such discharges to the commission.

**History:** 1972, PL 12-45 § 1, 2000, PL 26-22.

#### **24.0109 Confidentiality of records-Exceptions-in Government usage.**

(a) Any records, reports or information obtained by the commission shall be government information available to the public for inspection, except that upon a showing satisfactory to the commission by any person that records, reports, information or a particular part thereof, other than emission or discharge data, to which the commission has access would, if made public, divulge production or sales figures, or methods, processes, or production unique to such person, or would otherwise tend to affect adversely the competitive position of such person by revealing trade secrets, the commission shall consider such record, report, information, or particular portion thereof confidential. The contents of a permit issued pursuant to this chapter shall not be entitled to confidentiality protection.

(b) Nothing in this section may be construed to prevent the use of such records or information by the commission in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere; provided, that such analyses or summaries do not identify any owner or operator or reveal any information otherwise confidential under this section.

(c) Nothing in this section may be construed to prevent disclosure of such report, record, or information to federal, territory, or local representatives as necessary for purposes of administration of any federal, territory, or local pollution control laws, or when relevant in any proceeding under this chapter.

**History:** 1972, PL 12-45 § 1, 2000, PL 26-22.

#### **24.0110 Interpretation of chapter.**

Nothing in this chapter may be construed to:

(1) grant to the commission any jurisdiction or authority with respect to air pollution existing solely within commercial and industrial plants, works, or shops;

(2) affect the relations between employers and employees with respect to or arising out of any condition of air pollution;

(3) limit the applicability of any law relating to sanitation, industrial health or safety;

(4) abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of any person to damages or other relief on account of injury to persons or property, or to maintain any action or other appropriate proceeding therefor.

**History:** 1972, PL 12-45 § 1, 2000, PL 26-22.

#### **24.0115 Stationary air pollution source permits.**

(a) The commission may establish and operate a territory-wide program under which a permit shall be required for the construction, reconstruction, operation of or modification to new and existing major stationary sources of air pollution and non-major stationary sources of hazardous pollution. Under this program a permit may also be required for non-major sources of all other pollutants. Permits issued to major stationary sources of air pollution and to non-major stationary sources of hazardous air pollution shall require compliance with all applicable federal requirements and contain monitoring, recordkeeping and reporting requirements sufficient to insure compliance with the applicable federal requirements. All permit limitations, controls or requirements under this program shall be permanent, quantifiable and otherwise enforceable as a practical matter.

(b) The authority vested in the commission shall include the power to delay or prevent any construction, reconstruction, modification, or operation of air pollution emission sources which, in the opinion of the executive secretary, may cause the ambient air pollution level in the locality of such construction, modification or operation to exceed limits for ambient concentration established by the American Samoa Territorial Implementation Plan promulgated pursuant to the Clean Air Act as amended (42 U.S.C. § 7401 et seq.), or which would, in the opinion of the executive secretary, violate any provision of any land use plan established by the American Samoa Territorial Implementation Plan.

**History:** 1972, PL 12-45 § 1, 2000, PL 26-22.

#### **24.0116 Stationary air pollution source permits—Fees.**

(a) The executive secretary shall set fees for permits issued pursuant to this chapter to be paid by the applicant at rates and schedules established by the commission.

(b) All monies collected as fees shall be deposited in the Stationary Air Pollution Source Fund established pursuant to section 24.0117. The fees shall be at such a rate to ensure that the Fund has sufficient capital to adequately support and administer the permit program established pursuant to 24.0115.

**History:** 2000, PL 26-22.

#### **24.0117 Stationary Air Pollution Source Fund.**

There is established a fund to be known as the Stationary Air Pollution Source Fund which shall be maintained separate and apart from any other funds of the American Samoa Government, and shall be administered by the executive secretary. Independent records and accounts shall be maintained in connection therewith. All emission fees, fines, penalties, bail forfeitures, and other funds collected or received pursuant to this chapter shall be deposited in the Stationary Air Pollution Source Fund and used for the direct and indirect costs of administration and implementation of the permit program and related costs, and for providing staff and resources to: assist permit applicants with the application process; review and act upon permit applications; write permits; implement and enforce permit conditions including legal support; prepare guidance and rules; prepare emission inventories and monitor air quality; inspect facilities to ensure compliance and offer assistance with pollution prevention alternatives; provide technical assistance to permittees; administer the Fund, and perform any other duties needed to administer the permit program.

**History:** 2000, PL 26-22.

#### **24.0118 Permits for sources of pollution, or equipment causing or intended to prevent pollution.**

(a) The commission by regulation shall prohibit the construction, reconstruction or modification of any new or existing sources of pollution, or the installation, modification, or use of any equipment, device or other article which it finds may cause or contribute to pollution or which is intended primarily to prevent or control the emission or discharge of water pollutants unless a permit therefore has been obtained from the commission.

(b) A person shall not construct, reconstruct or modify any new or existing sources of pollution, or install, modify or use any equipment, device or other article designated by regulation, capable of causing or contributing to pollution, without a permit from the commission, or in violation of any conditions imposed by such permits.

**History:** 1972, PL 12-45 § 1, 2000, PL 26-22.

#### **24.0119 Permits-Applications.**

(a) Requests for permits shall be submitted to the commission on permit application forms provided to applicants by the commission.

(b) The commission may require permit applications to be accompanied by compliance plans and certifications, other plans, specifications, monitoring data, and other information necessary to identify the source, levels of discharge or emissions, and the soil, water or air quality impacts to determine whether the proposed installations, modification, or operation will be in accord with applicable rules and standards.

(c) Every proposed stationary air pollution source permit or application therefor submitted by a major source or a non-major HAP source shall be subject to federal oversight. The commission shall submit copies of such permit application to USEPA within 10 days of receipt of a complete permit application and shall resolve all concerns of USEPA prior to issuing a permit.

(d) Except for applications seeking modifications that the executive secretary deems to be minor modifications, for each application, renewal, or modification of a permit belonging to a major source or non-major HAP source, the executive secretary shall provide for public notice, an opportunity for public comments, and an opportunity for public hearing in accordance with section 24.0120.

**History:** 2000, PL 26-22.

#### **24.0120 Stationary air pollution source permits—Public participation.**

(a) Where public participation is deemed appropriate by the executive secretary or is required by law, the executive secretary shall notify the public of the availability in one location of all information on the subject matter, including all information submitted by the applicant, except for that deemed confidential, the commission's draft permit and the commission's analysis, and any other information deemed appropriate. Such notice shall

be mailed to any interested person upon request and shall be published in a newspaper of general circulation which is printed and issued at least twice weekly.

(b) The commission shall provide a period of not less than thirty (30) days following the date of the public notice during which time interested persons may submit written comments on the subject matter, permit application, the commission's analysis and draft permit, and other appropriate considerations. The period for comment may be extended at the sole discretion of the executive secretary.

(c) The executive secretary, at his sole discretion, may hold a public hearing if such hearing would aid in a permit decision. Any person may request a public hearing. Hearing requests shall be in writing and shall be filed within the thirty (30) day comment period prescribed in paragraph (b) and shall indicate the interest of the party filing the request and the reasons why a hearing is warranted. The executive secretary shall publish the public notice for a public hearing at least thirty days in advance of the hearing date.

**History:** 1972, PL 12-45 § 1, 2000, PL 26-22.

#### **24.0121 Permits-Issuance.**

(a) For new and existing major stationary sources of air pollution and non-major HAP sources, within 12 months of the receipt of any complete permit application, the commission shall issue such permit unless it is determined that the proposed construction, reconstruction, operation or modification will not be in accordance with this chapter or rules and regulations promulgated under this chapter, in which case an order shall be issued for the prevention of such construction, reconstruction, operation or modification.

(b) For new and existing non-major sources of air pollution and all other sources of pollution, the commission shall issue a permit within 90 days unless it determines that the construction, reconstruction, operation, or modification will not be in accordance with this chapter or the rules and regulations established pursuant thereto.

(c) The commission may attach to a permit any reasonable conditions which, at the discretion of the chairman or the executive secretary, will ensure compliance with the rules and standards adopted pursuant to this chapter.

(d) In no case shall a stationary air pollution source permit issued pursuant to this chapter exceed five (5) years duration.

**History:** 1972, PL 12-45 § 1, 2000, PL 26-22.

#### **24.0122 Permits—Refusal—Hearing and decision.**

In addition to any other remedies available on account of the issuance of any order prohibiting any construction, reconstruction, operation or modification, and prior to invoking any such remedies, the person or persons aggrieved thereby shall, upon request in accordance with the rules of the commission, be entitled to a hearing on the order. Following such hearing, the order may be affirmed, modified or withdrawn.

**History:** 1972, PL 12-45 § 1, 2000, PL 26-22.

#### **24.0123 Permits—Judicial review.**

The applicant and any person who participated in the public comment process, if provided, may obtain judicial review in the courts of this Territory of the final action on a permit issuance, significant modification or renewal application. This is in addition to judicial review otherwise available under 24.0160.

**History:** 2000, PL 26-22.

#### **24.0124 Permits-Maintenance of items submitted on application.**

Any features, machines or devices constituting parts of or called for by plans, specifications or other information submitted pursuant to 24.0119 shall be maintained in good working order.

**History:** 1972, PL 12-45 § 1, 2000, PL 26-22.

#### **24.0125 Permits-Renewal, suspension, termination, modification or revocation.**

The commission shall provide, by rule for the termination, renewal, suspension, reopening, modification or revocation and re-issuance of any permits which it may require pursuant to 24.0115 through 24.0127.

**History:** 1972, PL 12-45 § 1, 2000, PL 26-22.

**24.0126 Commission not authorized to specify equipment.**

Nothing in 24.0115 through 24.0127 shall be construed to authorize the commission to require the use of machinery, devices or equipment from a particular supplier or produced by a particular manufacturer if the required performance standards may be met by machinery, devices, or equipment otherwise available.

**History:** 1972, PL 12-45 § 1, 2000, PL 26-22.

**24.0127 Compliance with law.**

The absence or failure to issue a rule or order pursuant to this section shall not relieve any person from compliance with any emission or discharge control requirements or with any other provision of law.

**History:** 1972, PL 12-45 § 1, 2000, PL 26-22.

**24.0130 Inspection of modes of transportation.**

The commission may carry out a program of inspection and testing of all modes of transportation to enforce the plans applicable to emission standards when necessary and practicable and to control or limit the operation of motor vehicles and other modes of transportation when in the opinion of the executive secretary such modes of transportation are producing or pose an immediate danger of producing unacceptable levels of air pollution.

**History:** 1972, PL 12-45 § 1, 2000, PL 26-22.

**24.0131 Inspection of buildings and other places.**

Any duly authorized officer, employee or representative of the commission may enter and inspect, during reasonable hours, any building or place, except a building primarily designed for and used exclusively for a private residence, for the purpose of investigating an actual or suspected, or potential source of pollution and ascertaining compliance or noncompliance with this chapter and the rules and regulations issued pursuant to it.

**History:** 1972, PL 12-45 § 1, 2000, PL 26-22.

**24.0132 Refusing or obstructing entrance of authorized personnel prohibited.**

No person may refuse entry or access to any authorized representative of the commission who requests entry for purposes of inspection and who presents appropriate credentials; nor may any person obstruct, hamper, or interfere with any such inspection.

**History:** 1972, PL 12-45 § 1.

**24.0133 Report to owner or operator when requested.**

If the owner or operator of inspected premises so requests, he shall receive a report setting forth all facts found which relate to compliance status.

**History:** 1972, PL 12-45 § 1.

**24.0134 Tests and samples-Responsibility of owner or operator.**

(a) The commission may conduct tests and take samples of actual or suspected pollutants, fuel, process materials, or other materials which affect or may affect emission or discharge of pollutants from any source.

(b) Upon request of the commission, the person responsible for the source to be tested shall provide necessary holes in stacks, ducts or pipes, and such other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the emission or discharge of pollutants.

(c) If an authorized employee of the commission, during the course of an inspection, obtains a sample of any pollutant, fuel, process material or other material, he shall give the owner or operator of the equipment or fuel facility a receipt for the sample obtained.

(d) The commission may require the owner or operator of any source emitting or discharging pollutants to install monitoring equipment or devices, conduct such tests and take such samples as the commission shall prescribe and submit periodic reports on the nature and amount of such discharges or emission to the commission.

**History:** 1972, PL 12-45 § 1, 2000, PL 26-22.



#### **24.0140 Variance-Application--Exception.**

(a) Except as provided in subsection (c), any person who owns or is in control of any plant, building, structure, establishment, process, or equipment may apply to the commission for a variance from rules or regulations.

(b) A variance, or a renewal of a variance, shall not be a right of the applicant or holder thereof but shall be in the discretion of the commission.

(c) A person shall not apply for, nor shall the commission grant, a variance from any federal requirement or from any of the stationary air pollution source permit program rules or regulations adopted pursuant to 24.0115 and this chapter.

**History:** 1972, PL 12-45 § 1, 2000, PL 26-22.

#### **24.0141 Variance-Hearing-Decision.**

(a) The commission may grant a variance if, after public hearing on due notice, it finds that:

(1) the emissions or discharges occurring or proposed to occur do not endanger or tend to endanger human health or safety; and

(2) compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(b) No variance shall be granted pursuant to this section until the commission has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

**History:** 1972, PL 12-45 § 1.

#### **24.0142 Variance-Renewal.**

(a) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance.

(b) No renewal may be granted except on application therefore, made at least 60 days prior to the expiration of the variance.

(c) Immediately upon receipt of an application for renewal, the commission shall give public notice of such application in accordance with rules and regulations of the commission.

(d) If complaint is made to the commission on account of the variance, no renewal thereof shall be granted unless, following a public hearing on the complaint on due notice, the commission finds that renewal is justified.

**History:** 1972, PL 12-45 § 1.

#### **24.0143 Variance-Limitation.**

Any variance or renewal thereof shall be subject to the following limitations:

(a) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement, or control of the pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measures that the commission may prescribe.

(b) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the commission, is requisite for the taking of the necessary measures. A variance granted on this ground shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

(c) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in subsections (a) and (b), it shall be for not more than 1 year.

**History:** 1972, PL 12-45 § 1, 2000, PL 26-22.

#### **24.0144 Variance-Judicial review.**

(a) Any person adversely affected by a variance or renewal granted by the commission may obtain judicial review by proceeding in the High Court of American Samoa.

(b) Notwithstanding any provision of 24.0157 through 24.0165, judicial review of the denial of a variance or denial of a renewal thereof may be had only on the ground that the denial was arbitrary or capricious.

**History:** 1972, PL 12-45 § 1.

#### **24.0145 Limitation of application of emergency procedure.**

Nothing in 24.0140 through 24.0145, and no variance or renewal granted pursuant to 24.0140 through 24.0145 shall be construed to prevent or limit the application of the emergency provisions and procedures of 24.0154 and 24.0155 to any person or his property.

**History:** 1972, PL 12-45 § 1.

#### **24.0150 Notice of violation-Hearing.**

(a) Whenever the commission has reason to believe that a violation of any provision of this chapter, or rule or regulation adopted under this chapter, has occurred, it may cause written notice to be served upon the alleged violator or violators.

(b) The notice must specify the provisions of this chapter, or rule or regulation alleged to be violated, and the facts alleged to constitute a violation, and may include an order that necessary corrective action be taken within a reasonable time.

(c) Any such order becomes final unless, no later than 10 days after the date the notice and order are served, the person or persons named therein request in writing a hearing before the commission. Upon such request, the commission shall hold a hearing. In lieu of an order, the commission may require that the alleged violator or violators appear before the commission for a hearing at a time and place specified in the notice and answer the charges complained of, or the commission may initiate further action pursuant to this section or 24.0166 through 24.0169.

**History:** 1972, PL 12-45 § 1.

#### **24.0151 Violation-Order.**

(a) If, after a hearing, the commission finds that a violation or violations have occurred, it shall affirm or modify its order previously issued, or issue an appropriate order or orders for the prevention, abatement, or control of the emissions or discharges involved or for the taking of such other corrective action as may be appropriate.

(b) Any order issued as part of a notice or after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the emissions or discharges.

**History:** 1972, PL 12-45 § 1.

#### **24.0152 Failure to comply with order-Injunction.**

(a) In the event the offender fails to comply with the order issued by the commission, the commission, in addition to other remedies set out in this chapter, may apply to the High Court for an injunction requiring the offender to cease doing business until such time as the offender shall furnish definitive plans and specifications, satisfactory to the commission, to show compliance with this chapter the rules and regulations pursuant to it and the order of the commission.

(b) The High Court shall grant such injunction unless the High Court finds from a review of all evidence which was before the commission that the commission acted arbitrarily or capriciously.

(c) When the offender furnishes the plans called for under this section, the commission shall immediately petition the High Court to lift such injunction.

**History:** 1972, PL 12-45 § 1.

#### **24.0153 Voluntary compliance.**

Nothing in this chapter prevents the commission from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

**History:** 1972, PL 12-45 § 1.

#### **24.0154 Emergency order, hearing, and decision.**

(a) Notwithstanding any other provision of this chapter, if the chairman or executive secretary of the commission finds that a generalized condition of pollution exists or that emissions or discharges of one or more pollution sources is causing imminent danger to human health, welfare, or the environment and that it creates an emergency requiring immediate action to protect human health, welfare, or the environment, the chairman, or the executive secretary with the concurrence of the Governor, shall order persons causing or contributing to the pollution to reduce or discontinue immediately the emission or discharge of pollutants, and such order shall fix a place and time not later than 24 hours thereafter for a hearing to be held before the commission.

(b) Not more than 24 hours after the commencement of such hearing, and without adjournment thereof, the commission shall affirm, modify, or set aside the order of the chairman or executive secretary.

**History:** 1972, PL 12-45 § 1, 2000, PL 26-22.

#### **24.0155 Emergency restraining orders.**

Notwithstanding any other provision of this chapter, the commission, upon receipt of evidence that a pollution source or combination of sources is presenting imminent and substantial endangerment to the health and welfare of persons or the environment, may bring a suit to immediately restrain any person causing or contributing to such pollution.

**History:** 1972, PL 12-45 § 1, 2000, PL 26-22.

#### **24.0156 Other powers of Governor and officers not limited.**

Nothing in 24.0150 through 24.0156 may be construed to limit any power the Governor or any other officer may have to declare an emergency and act on the basis of such declaration if such power is conferred by statute or constitutional provision, or is inherent in the office.

**History:** 1972, PL 12-45 § 1.

**24.0157 Hearings on rules and regulations.**

No rule and no amendment or repeal thereof, shall take effect except after public hearing on due notice as provided in the Administrative Procedure Act, 4.1001 et seq.

**History:** 1972, PL 12-45 § 1.

**24.0160 Judicial review of commissions orders.**

(a) Any person aggrieved by an order of the commission may have judicial review thereof by filing a petition with the High Court of American Samoa no later than 20 days after being notified that the order has been entered. The petition shall seek an order by the High Court which directs the commission to modify or withdraw its order affecting the petitioner.

(b) Relief shall be granted only when the High Court finds from a review of all the evidence which was before the commission that the commission acted arbitrarily or capriciously.

**History:** 1972, PL 12-45 § 1.

**24.0165 Emergency orders not limited.**

Nothing in 24.0157 and 24.0160 shall be construed to require a hearing prior to the issuance of an emergency order pursuant to 24.0154 and 24.0155.

**History:** 1972, PL 12-45 § 1.

**24.0166 Pollution of air-Penalty.**

(a) A person who violates any provision of this chapter, or any rule in force pursuant to it, relating to the emission of air pollutants, stationary air pollution source permit conditions, fees and filing requirements, inspections, entry or monitoring activities, or any order issued by the executive secretary, the commission or its authorized representatives, shall be guilty of an infraction and subject on account thereof to pay a fine not to exceed \$10,000 for each separate offense. Each day of violation constitutes a separate offense.

(b) In addition to any other remedy provided by this chapter, the executive secretary is authorized to impose by order administrative penalties for violations of this chapter or any permit requirement or regulation in force pursuant thereto not to exceed \$10,000 per day for each separate offense. An administrative penalty shall not be imposed without first providing the alleged violator with notice and opportunity for a hearing in accordance with the provisions of the Administrative Procedures Act, A.S.C.A. 4.1001 et seq.

(c) Any person who knowingly violates any stationary air pollution source permit rules adopted by the commission pursuant to this chapter, including any condition in a permit or any fee or filing requirement, shall be guilty of a felony punishable by a fine not to exceed ten-thousand (\$10,000) dollars per day or by imprisonment for a term not to exceed 2 years, or by both, for each separate violation.

(d) Any person who knowingly makes any false material statement, representation or certification upon any form or in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method required by the commission to be maintained under this chapter or the rules in force pursuant thereto, shall be guilty of a felony punishable by a fine not to exceed ten-thousand (\$10,000) dollars per day or by imprisonment for a term not to exceed 2 years, or by both, for each separate violation.

(e) The burden of proof or degree of knowledge or intent required under the laws of this Territory for establishing violations under this section shall be no greater than the burden of proof or degree of knowledge or intent required by the Clean Air Act, as amended, 42 U.S.C. 7401 et seq.

(f) A civil penalty or criminal fine sought or agreed upon by the commission under this section shall be appropriate to the violation.

(g) Any fines and penalties collected under this section shall be deposited in the Stationary Air Pollution Source Special Fund established pursuant to 24.0117.

**History:** 1972, PL 12-45 § 1; and 1980, PL 16-90 § 36, 2000, PL 26-22.

**Amendments:** 1980 Amended to conform with penalties provided for in Title 46, criminal Justice.

#### **24.0167 Pollution of water-Penalty.**

Any person who violates any provision of this chapter, or any rule in force pursuant to it, relating to the discharge of water pollutants, shall be guilty of an infraction and upon

conviction sentenced to pay a fine of not more than five-hundred (\$500) dollars for each initial separate violation, and not more than one-thousand (\$1,000) dollars for each subsequent separate violation.. Each day of violation constitutes a separate offense.

**History:** 1972, PL 12-45 § 1; and 1980, PL 16-90 § 37, 2000, PL 26-22.

**Amendments:** 1980 Amended to conform with penalties provided for in Title 46, criminal Justice.

#### **24.0168 Violation of confidential records provisions-Penalty.**

Any person who willfully violates 24.0109 is guilty of an infraction and upon conviction, sentenced accordingly.

**History:** 1972, PL 12-45 § 1, and 1980, PL 16-90 § 38

**Amendments:** 1980 Amended to conform with penalties provided for in Title 46, criminal Justice.

#### **24.0169 Enforcement of chapter. rules and regulations and orders not limited.**

Action pursuant to 24.0166, 24.0167 and 24.0168 is not a bar to enforcement of this chapter, or rules in force pursuant to it, by injunction or other appropriate remedy, and the commission shall have the power to institute and maintain in the name of this territory any and all such enforcement proceedings.

**History:** 1972, PL 12-45 § 1