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Announcement of the revised Environmental Audit Act

4 September 2002

(unofficial translation incorporating additional changes made in 2004)

In accordance with Article 2 of the Act of 16 August 2002 amending the Environmental Audit Act (Federal Law Gazette I p. 3167), the text of the revised Environmental Audit Act in the version in force since 21 August 2002 is hereby announced. The revised version takes account of

1. the Act of 7 December 1995 (Federal Law Gazette I p. 1591) which entered into force on 15 December 1995,
2. Article 4 of the Act of 19 December 1998 (Federal Law Gazette I p. 3836), which entered into force on 1 January 1999,
3. Article 32 of the Act of 9 September 2001 (Federal Law Gazette I p. 2331), which entered into force on 1 January 2002,
4. Article 26 of the Act of 27 April 2002 (Federal Law Gazette I p. 1467), which entered into force on 1 May 2002,
5. Article 1 of the Act of 16 August 2002 (Federal Law Gazette I p. 3167), which entered into force on 21 August 2002.

Bonn, 4 September 2002

The Federal Minister for the
Environment, Nature Conservation and Nuclear Safety
Jürgen Trittin

Only the German version of the text is legally binding !

Act on the Implementation of Regulation (EC) No. 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing voluntary Participation by Organisations in a Community Eco-Management and Audit Scheme (EMAS) (Environmental Audit Act – UAG)

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Only the German version of the text is legally binding !

Part 1

General Provisions

§ 1

Purpose of the Act

(1) The purpose of this Act is to ensure that Regulation (EC) No. 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing voluntary participation by organisations in a Community Eco-Management and Audit Scheme (EMAS) (OJ L 114 p. 1), as amended, is implemented effectively, in particular by

1. accrediting independent, reliable and competent environmental verifiers and environmental verification organisations,
2. carrying out effective supervision of accredited environmental verifiers and environmental verification organisations, and
3. keeping registers of verified organisations.

(2) Where results of the environmental audit are incorporated voluntarily or on the basis of a statutory obligation into an annual financial statement, an individual financial statement in accordance with international accounting standards (Article 325 paragraph 2a of the German Commercial Code), a management report, a consolidated financial statement or a consolidated management report, the responsibility of the financial auditor under Articles 322 and 323 of the German Commercial Code shall remain unaffected.

§ 2

Definition of terms

(1) For the purpose of this Act, the definitions laid down in Article 2 of Regulation (EC) No. 761/2001 shall apply. The supplementary definitions in paragraphs 2 to 4 shall also apply.

(2) For the purpose of this Act, environmental verifiers shall mean natural persons accredited under this Act to perform the functions laid down in Article 3 paragraph 2 letter d, paragraph 3, Annex III sections 3.4 and 3.5 and Annex V sections 5.4 and 5.5 of Regulation (EC) No. 761/2001 or who are accredited in another European Union Member State pursuant to Article 4 and Annex V sections 5.1 and 5.2 of Regulation (EC) No. 761/2001 under its national legislation.

(3) For the purpose of this Act, environmental verification organisations shall mean registered associations, public limited companies, commercial partnerships limited by shares, limited liability companies, registered cooperative associations, general commercial partnerships, limited commercial partnerships and partnership enterprises accredited under this Act to

perform the functions specified in Article 3 paragraph 2 letter d, paragraph 3, Annex III sections 3.4 and 3.5 and Annex V sections 5.4 and 5.5 of Regulation (EC) No. 761/2001, and associations which are accredited as environmental verification organisations in another European Union Member State pursuant to Article 4 and Annex V sections 5.1 and 5.2 of Regulation (EC) No. 761/2001 under its national legislation.

(4) For the purpose of this Act, accreditation fields shall mean the classification levels and sub-levels described in Commission Regulation (EEC) No. 761/93 of 24 March 1993 amending Council Regulation (EEC) No. 3037/90 on the statistical classification of economic activities in the European Community (OJ EC L 83 p. 1, L 159 p. 31) in conjunction with the German Classification of Economic Activities published by the Federal Statistical Office, edition 1993 (WZ 93). NACE Rev. 1 shall mean the common basis for statistical classifications of economic activities in the European Communities which is annexed to the said Regulation as stated in Article 2.

§ 3

(deleted)

Part 2

**Accreditation and supervision of
environmental verifiers and
environmental verification organisations,
Limitation of liability**

Section 1**Accreditation**

§ 4

Requirements to be met by environmental verifiers

(1) Environmental verifiers shall be deemed to possess the integrity, independence and competence required under Regulation (EC) No. 761/2001 to perform their functions if they satisfy the requirements specified in Articles 5 to 7. They must furnish evidence that they possess documented verification methodologies and procedures (including quality control and precautions to maintain confidentiality) for performing their functions as verifiers.

(2) The occupation of environmental verifier is not a business activity.

(3) On submitting their application, environmental verifiers shall provide the accreditation body with an address for service within the territory of the Federal Republic of Germany. Subsequent changes to the address for service shall be notified to the accreditation body within a period of four weeks following the change.

(4) In their vocational capacity, environmental verifiers shall be required to use the occupational title of "environmental verifier" (Umweltgutachter). Women may use the occupational title of "female environmental verifier" (Umweltgutachterin). Persons not accredited under Article 9 shall not be allowed to use this occupational title.

(5) After hearing the Environmental Verification Committee, the Federal Government may, by statutory ordinance not requiring the approval of the Bundesrat, define more closely the requirements set out in Articles 5 to 7 relating to the purpose specified in Article 1 paragraph 1 number 1.

§ 5

Integrity

(1) An environmental verifier shall be deemed to possess the necessary integrity if, on the basis of his personal characteristics, conduct and abilities, he is capable of properly performing the tasks entrusted to him.

(2) As a rule, no guarantee of integrity is provided by a person

1. who, as a result of violating the provisions of
 - a) criminal law relating to property offences, falsification of documents, insolvency offences, offences causing public danger and environmental offences,
 - b) immission control law, waste management law, water management law, nature conservation and landscape protection law, chemicals law, genetic engineering law, nuclear energy law or radiological protection law,
 - c) food, drug, plant protection or disease control law,
 - d) trade law or occupational safety and health law,
 - e) narcotics, firearms or explosives law,
 has been sentenced to a punishment or, in the case of letters b to e, to a fine in excess of one thousand German marks or five hundred euro,
2. who, repeatedly or in gross dereliction of duty,
 - a) has contravened the provisions pursuant to number 1 letters b to e, or
 - b) in his capacity as immission control officer, water protection officer, waste management officer, radiological protection officer within the meaning of Article 29 of the Radiation Protection Ordinance, or major accident officer within the meaning of Article 58a of the Federal Immission Control Act (*Bundes-Immissionschutzgesetz*), has failed to discharge his duties as such officer,
3. who has lost his eligibility for public office on the grounds of a conviction under criminal law,

4. who is living in insecure financial circumstances, except where this does not constitute a risk to the interests of the client or other persons, or
5. who is, for health reasons, permanently incapable of properly discharging the occupation of environmental verifier.

§ 6

Independence

(1) An environmental verifier must possess the required independence as laid down in Annex V section 5.2.1 subsections 3 and 4 of Regulation (EC) No. 761/2001.

(2) In general, the independence required pursuant to Annex V section 5.2.1 subsections 3 and 4 of Regulation (EC) No. 761/2001 cannot be guaranteed for any person who

1. in addition to his activity as an environmental verifier
 - a) is the owner of an organisation or of a majority interest in an organisation within the meaning of Article 2 letter s of Regulation (EC) No. 761/2001 in the same group according to NACE Rev. 1 as the one to which his activity as an environmental verifier relates,
 - b) is an employee of an organisation within the meaning of Article 2 letter s of Regulation (EC) No. 761/2001 in the same group according to NACE Rev. 1 as the one to which his activity as an environmental verifier relates,
 - c) is employed as a civil servant with lifetime tenure, as a soldier, or is under a contract of service to a legal entity under public law with the exception of the cases specified in paragraph 3,
 - d) performs activities as a judge or is employed under public law as a temporary election officer or holds an office under public law, unless the duties conferred upon him are performed on an honorary basis,
2. is required to follow directions on the basis of contractual or other relations in his activity as an environmental verifier even if such instructions oblige him to perform environmental verification acts that are contrary to his convictions,
3. is involved with third parties from an organisational, financial, capital-resources or human-resources point of view and it is not possible to rule out their influence on the performance of his duties as environmental verifier, especially as a result of stipulations in articles of association, partnership agreement or contract of service.

Number 1 letters a and b of the first sentence shall not apply to the case of appraisal of the environmental management system of an environmental verifier, an environmental

verification organisation or the holder of a certificate of specialised knowledge.

(3) An advisory activity as an employee of a Chamber of Industry and Commerce, a Chamber of Craft Trades, a professional organisation or other corporation under public law serving as a self-help institution for companies eligible to participate in the community scheme shall be compatible with the occupation of environmental verifier; this shall not apply if the employee is responsible in respect of his activity as an environmental verifier for registration tasks within the meaning of Article 7 of Regulation (EC) No. 761/2001 or is required to follow directions within the meaning of paragraph 2 number 2.

§ 7

Competence

(1) An environmental verifier shall be deemed to possess the necessary competence if, on the basis of his education, professional training and practical experience, he is capable of properly performing the tasks entrusted to him.

(2) Competence shall require

1. a degree in a relevant subject, in particular in the field of economics or business administration, natural sciences or engineering, biosciences, agriculture, forestry, geosciences, medicine or law, from a university within the meaning of Article 1 of the Framework Act on Universities (*Hochschulrahmengesetz*), except where the conditions specified in paragraph 3 are satisfied,
2. adequate specialised knowledge in accordance with Annex V section 5.2.1 letters a to g of Regulation (EC) No. 761/2001, examined in the following subjects:
 - a) methodology, implementation and appraisal of an environmental audit,
 - b) environmental management and the appraisal of environmental information (environmental statement and excerpts therefrom),
 - c) accreditation field specific environmental protection issues, with regard also to the environmental dimension of sustainable development, including the relevant legal and published administrative provisions, and
 - d) general environmental law, Commission guidelines drawn up pursuant to Article 4 and Article 14 paragraph 2 of Regulation (EC) No. 761/2001 and relevant environmental management standards,
3. at least three years full-time professional experience acting on his own responsibility, during which he gained practical knowledge of in-plant environmental protection.

(3) Exemption from the requirement of a university degree under paragraph 2 number 1 may be granted if,

within the accreditation fields for which accreditation is sought, the individual

1. possesses a technical college qualification, qualification as a master craftsman, or equivalent accreditation or recognition by a supreme Federal or *Land* authority or a corporation under public law, and
2. has performed functions in an executive capacity or as a self-employed person on a full-time basis for at least five years.

§ 8

Certificate of specialised knowledge

(1) Anyone who undertakes verification activities on behalf of an environmental verifier or environmental verification organisation on the basis of Regulation (EC) No. 761/2001 without himself being accredited as an environmental verifier must satisfy the requirements of integrity and independence pursuant to Articles 5 and 6. He must satisfy the requirements on competence under Article 7 paragraph 2 numbers 1 and 3 and must possess, in at least one of the subject areas specified in Article 7 paragraph 2 number 2, the specialised knowledge necessary for the performance of verification activities in one or more accreditation fields. Article 7 paragraph 3 shall apply *mutatis mutandis*.

(2) If the requirements pursuant to paragraph 1 are met, the accreditation body shall issue a certificate regarding the nature and extent of the specialised knowledge which shall indicate the subject areas and accreditation fields for which the individual possesses the required specialised knowledge ("certificate of specialised knowledge"). This shall permit the performance of verification activities solely in conjunction with an environmental verifier, who shall be responsible for signing reports and validations of environmental statements, which are to be co-signed by the holder of the certificate of specialised knowledge. Annex V sections 5.4.1 to 5.6 of Regulation (EC) No. 761/2001 shall, with the necessary modifications, apply to the verification activities and co-signatory obligations of the holder of the certificate of specialised knowledge.

§ 9

Accreditation as an environmental verifier

(1) Accreditation as an environmental verifier shall be granted by the accreditation body if the applicant satisfies the requirements pursuant to Article 4 paragraph 1 and Articles 5 to 7. Accreditation shall also cover accreditation fields for which the environmental verifier himself does not possess the necessary competence

1. if, having regard to Article 4 paragraph 6 of Council Regulation (EEC) No. 1836/93 of 29 June 1993 allowing voluntary participation by companies in the industrial sector in a Community Eco-Management and Audit Scheme (OJ L 168 p. 1) and Article 3 paragraphs

2 and 3 and Annex V sections 5.4, 5.5 and 5.6 of Regulation (EC) No. 761/2001, he has engaged persons with authority to sign who in respect of these accreditation fields

a) are accredited as environmental verifiers or

b) possess the necessary certificates of specialised knowledge and

2. if he ensures that the persons specified in number 1 letter b are given the opportunity to take part in further training on a regular basis.

The notice of accreditation shall specify in detail the accreditation fields for which the environmental verifier himself possesses the necessary competence and those for which accreditation is granted on the basis of the competent persons engaged within the meaning of number 1 of the second sentence.

(2) Insofar as the accreditation covers accreditation fields for which the environmental verifier does not possess the necessary competence himself, accreditation shall permit the performance of verification activities only in conjunction with the persons specified in paragraph 2, second sentence, number 1; in particular, such persons shall co-sign reports and the validation of environmental statements.

(3) Accreditation shall include the power under Article 12 paragraph 1 of Regulation (EEC) No. 1836/93 or under Article 9 paragraph 1 of Regulation (EC) No. 761/2001 to issue certificates in accordance with the certification procedures recognised by the Commission of the European Communities.

§ 10

Accreditation of an environmental verification organisation

(1) Accreditation of an environmental verification organisation shall be subject to the requirement that

1. at least one third of the personally liable shareholders or partners or members of the management board or of the managing directors

a) are accredited as environmental verifiers or

b) comprise persons in possession of certificates of specialised knowledge who are employed by the environmental verification organisation and at least one environmental verifier,

2. having regard to Article 3 paragraph 2 letter b, Annex III sections 3.2 and 3.4 and Annex V sections 5.4 to 5.6 of Regulation (EC) No. 761/2001, representatives with authority to sign or employees with authority to sign for the accreditation fields for which accreditation is sought

a) are accredited as environmental verifiers or

b) possess the necessary certificates of specialised knowledge and

3. it is ensured that the persons specified in number 2 are given the opportunity to take part in further training on a regular basis,

4. secure financial circumstances exist,

5. it shall not be possible for any economic, financial or other pressure to influence the verification activities or call into question the impartial performance of duties, for which purpose Article 6 paragraph 2 number 1 letter a and numbers 2 and 3 shall apply *mutatis mutandis*,

6. the organisation possesses an organisation chart giving detailed information about structures and fields of responsibility within the organisation and submits to the accreditation body on request such chart and a statement setting out its legal status, ownership situation and sources of finance, and

7. evidence is furnished to the accreditation body that the applicant possesses documented verification methodologies and procedures (including quality control and precautions for maintaining confidentiality) for performing its verification activities.

(2) Accreditation shall be granted by the accreditation body if the requirements of paragraph 1 are satisfied. Accreditation shall permit the performance of verification activities only in those accreditation fields for which the conditions in paragraph 1 number 2 are satisfied. The notice of accreditation shall specify in detail the accreditation fields for which the environmental verification organisation has at its disposal the necessary competent persons within the meaning of paragraph 1 number 2.

(3) Accreditation shall permit the performance of verification activities by competent persons within the meaning of paragraph 1 number 2 letter e only in conjunction with an accredited environmental verifier with the authority to sign as responsible for reports and the validation of environmental statements; the said persons must also affix their signatures.

(4) Article 9 paragraph 3 shall apply *mutatis mutandis*.

(5) The accredited environmental verification organisation shall include the title "environmental verifier(s)" in its name or company name. The title shall not be included in the name or company name if no accreditation under paragraph 2 has been awarded.

§ 11

Certification and accreditation procedures

(1) The procedure for issuing a certificate of specialised knowledge under Article 8 and for accreditation under Articles 9 and 10 shall require a written application. The

application shall be accompanied by the documentation necessary for the examination.

(2) The specialised knowledge of the environmental verifier shall be ascertained in oral examination by an examination board of the accreditation body. The oral examination shall cover

1. the subject areas mentioned in Article 7 paragraph 2 number 2 letters a to d, and
2. practical problems relating to the professional work of an environmental verifier.

(3) The scope of examination within the meaning of paragraph 2 number 1 shall be restricted insofar as the applicant has submitted certificates of specialised knowledge for specific subject areas or has already passed in individual subject areas in previous examinations for accreditation as an environmental verifier.

(4) Paragraphs 2 and 3 shall apply accordingly to the issuing of any certificate of specialised knowledge under Article 8.

(5) The Federal Government, after hearing the Environmental Verification Committee, may by means of statutory ordinance not requiring the approval of the Bundesrat prescribe

1. procedures under paragraph 1, including the retaking of examinations,
2. requirements regarding the qualifications of the members of the examining boards and the conduct of the oral examination under Article 12, and
3. written examinations in general or for specific subject areas or for specific accreditation fields as an integral part of the accreditation and certification procedures, and may issue detailed provisions on the content and conduct of the written examinations.

§ 12

Oral examination

(1) The oral examination shall be an integral part of the accreditation and certification procedures. A record shall be made of the essential content and course of the examination.

(2) For inclusion in the Environmental Verification Committee's list of examiners (Article 21 paragraph 1, second sentence, number 2), the persons concerned must

1. possess a university degree qualifying them to act as examiners in their subject area,
2. have at least five years of full-time practical professional experience on their own responsibility in the field of in-plant environmental protection, and
3. in cases of accreditation as examiners for the subject area pursuant to Article 7 paragraph 2 number 2

letter c, have at least five years of full-time professional experience on their own responsibility in a relevant accreditation field.

(3) The accreditation body shall select the examiners for the individual accreditation and certification procedures from the Environmental Verification Committee's list of examiners (Article 21 paragraph 1, second sentence, number 2) and appoint the chairperson. The examiners must in each case possess the necessary competence for those accreditation fields and subject areas for which the individual accreditation or certificate of specialised knowledge is sought. The examiner for the subject area "Law" pursuant to Article 7 paragraph 2 number 2 letter d must in addition be qualified to hold judicial office. The examination board shall consist of not less than three and not more than five members. At least one member of the examination board must in each case be accredited as an environmental verifier.

§ 13

(deleted)

§ 14

Accreditation register

(1) The accreditation body shall keep a register of environmental verifiers, environmental verification organisations and holders of certificates of specialised knowledge. The accreditation register shall contain the name, address and subject matter of the accreditations and certificates of the individuals and environmental verification organisations registered. The accreditation body shall in accordance with Article 7 paragraph 1 of Regulation (EC) No. 761/2001 submit to the Commission of the European Communities at monthly intervals by way of the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety an updated list of registered environmental verifiers and environmental verification organisations. This list, supplemented by the registered holders of certificates of specialised knowledge, shall at the same time be made available in suitable fashion to the Environmental Verification Committee, the competent supreme *Land* authorities and the body specified in Article 32 paragraph 2, first sentence.

(2) Anyone shall be entitled to inspect the accreditation register in accordance with the provisions of the Environmental Information Act (*Umweltinformationsgesetz*).

Section 2

Supervision

§ 15

Review of environmental verifiers, environmental verification organisations and

holders of certificates of specialised knowledge

(1) Environmental verifiers, environmental verification organisations and holders of certificates of specialised knowledge shall be reviewed by the accreditation body at regular intervals, namely at least every 24 months after the accreditation or certificate of specialised knowledge takes effect, to check whether the conditions for accreditation pursuant to Articles 9 and 10 and for the granting of the certificate of specialised knowledge pursuant to Article 8 are still satisfied. The quality of the verifications performed shall also be examined at the same time. This shall comprise a review, to be undertaken every 24 months, of the environmental statements validated by the environmental verifier or environmental verification organisation or co-signed by the holder of a certificate of specialised knowledge, and of the verification reports produced.

(2) In order to determine the existence of the necessary capabilities and competence, environmental verifiers and holders of a certificate of specialised knowledge shall be required to submit to a practical review during their work in organisations at least every six years after the accreditation takes effect. Organisations shall tolerate the conduct by the accreditation body of a review pursuant to the first sentence.

(3) The accreditation body may, if necessary, check for continued compliance with the accreditation conditions, and especially the required capabilities of the environmental verifier, environmental verification organisation or holder of a certificate of specialised knowledge, by means of a review in the environmental verifier's office or the office of the holder of a certificate of specialised knowledge (office audit). In such a case the review pursuant to paragraph 1, third sentence, is to be performed as part of the office audit.

(4) Notwithstanding paragraphs 1 to 3, appropriate supervisory measures may be taken for special reasons if the accreditation body has evidence that the environmental verifier or environmental verification organisation or holder of a certificate of specialised knowledge no longer satisfies the conditions for accreditation or is not properly discharging his duties under Regulation (EC) No. 761/2001.

(5) If, in the course of its supervisory activities, the accreditation body discovers deficits in the quality of a verification or other facts that could constitute grounds for temporary suspension or deletion in accordance with Article 6 of Regulation (EC) No. 761/2001, it shall inform the registration body of the contents of the supervisory report.

(6) Environmental verifiers, environmental verification organisations and holders of certificates of specialised knowledge shall be obliged to

1. keep duplicates of
 - a) agreements with companies on the subject matter and scope of verification,
 - b) reports to the management of the organisation,

c) verification programmes drawn up in consultation with the organisation,

d) validated environmental statements, updates and consolidated versions thereof, and validated environmental information, and

e) records of visits to the site and of interviews with site personnel

signed or co-signed by them within the meaning of Annex V section 5.5 subsection 5.5.1, first sentence, and subsection 5.5.4, and section 5.6, first and second sentences, to Regulation (EC) No. 761/2001 until the review by the accreditation body, but not longer than five years,

2. inform the accreditation body without delay of any changes which may influence the accreditation or certificate of specialised knowledge,
3. act impartially in the course of their verification activities,
4. furnish the accreditation body with the necessary information in preparation for the supervisory procedures which are to be undertaken at regular intervals and to submit to the accreditation body on request the documentation required for review purposes, in which context environmental verification organisations shall on request by the accreditation body also submit the documentation required for reviewing the environmental verifiers and holders of certificates of specialised knowledge employed by them, and
5. take into account, when verifying organisations, not only the statutory provisions in force at the individual sites of the organisation, but also the relevant officially published administrative provisions of Federal and *Land* authorities.

(7) Environmental verifiers and holders of certificates of specialised knowledge shall be obliged to undergo further training.

(8) The business premises of environmental verifiers, holders of certificates of specialised knowledge, environmental verification organisations and, in the case of a witness audit conducted pursuant to paragraph 2, first sentence, the verified organisation, may be entered during normal business hours if this is necessary to establish that the requirements under Articles 8 to 10 are satisfied.

(9) Environmental verifiers or environmental verification organisations shall also be subject to supervision under this Act even where they are authorised by virtue of their accreditation as environmental verifier or environmental verification organisation to perform activities on the basis of other legal regulations. Article 6 shall apply *mutatis mutandis* to the performance of activities by environmental verifiers or

environmental verification organisations on the basis of other legal regulations.

§ 16

Enforceable orders, Suspension

(1) The accreditation body may, in relation to environmental verifiers, environmental verification organisations and holders of certificates of specialised knowledge, take the measures necessary to ensure compliance with the requirements and obligations pursuant to Regulation (EC) No. 761/2001 and pursuant to this Act and any statutory ordinances adopted under this Act.

(2) The accreditation body may, in particular, impose a total or partial temporary ban on the continued performance of verification activities if environmental verifiers, environmental verification organisations or holders of certificates of specialised knowledge

1. contravene the obligations under Article 3 number 2 letter d in conjunction with Annex V sections 5.4 and 5.6 of Regulation (EC) No. 761/2001 by validating an environmental statement containing data and assessments that are incorrect, especially with regard to compliance with the environmental regulations in force for an organisation's site,
2. have not properly discharged their obligations under Article 15 paragraphs 6 and 7, or
3. have failed to obey an enforceable order issued by the accreditation body.

Such ban shall not be imposed or shall be withdrawn as soon as the obligations and enforceable orders under the first sentence are fulfilled or if, in cases where this is impossible after the event, there is no danger of the contravention being repeated.

§ 17

Withdrawal and revocation of accreditation and of certification / certificate? of specialised knowledge

(1) Accreditation and certificate of specialised knowledge shall be withdrawn with prospective effect if facts subsequently come to light which, if known, would have resulted in the accreditation or certificate of specialised knowledge having to be refused.

(2) Accreditation and certificates of specialised knowledge shall be revoked if

1. the environmental verifier or the holder of a certificate of specialised knowledge
 - a) has commenced an activity within the meaning of Article 6 paragraph 2 number 1 and has failed to cease performance thereof within a period set by the accreditation body,

- b) has lost his eligibility for public office on the grounds of a conviction under criminal law (Article 5, paragraph 2 number 3),

- c) has for health reasons become permanently incapable of proper performance of verification activities (Article 5 paragraph 2 number 5),

2. the environmental verification organisation no longer satisfies the requirements under Article 10 paragraph 1 number 1 and has failed to bring about a lawful situation within a period set by the accreditation body.

Accreditation shall be revoked in part if the requirements set out in Article 9 paragraph 1, second sentence, and Article 10 paragraph 1 number 2 cease to exist and are not restored within a period set by the accreditation body.

(3) Accreditation and certificates of specialised knowledge may, except as provided by the Administrative Procedures Act (*Verwaltungsverfahrensgesetz*), be revoked if

1. the environmental verifier has not provided an address for service within the territory of the Federal Republic of Germany (Article 4 paragraph 3),
2. during the performance of verification assignments, a dependent relationship existed in the individual case with the client company or with the site auditor or if powers of direction within the meaning of Article 6 paragraph 2 number 2 existed between the individual verifiers and there is a potential risk of repetition, or
3. enforceable orders issued by the accreditation body in the course of its supervisory activities are not complied with.

§ 18

Environmental verifiers and environmental verification organisations from other European Union Member States

(1) Environmental verifiers and environmental verification organisations accredited in another Member State of the European Union or in a state of the European Economic Area shall be required to notify the accreditation body of their verification activities pursuant to the second and third sentences before every verification activity in the territory of the Federal Republic of Germany at least four weeks prior to commencing such activity. Such notification shall give details of name, address, specialist qualifications and, in the case of environmental verifiers, nationality, and for environmental verification organisations the composition of the group of persons performing the verification. It shall also state the time and place of the verification, address of and contact persons at the organisation and, where necessary, the measures taken to ensure the required language skills and legal knowledge. Where necessary to ensure the quality of the verification, the accreditation body may demand additional evidence of language skills and legal

knowledge. Upon first notification, and thereafter at the request of the accreditation body, the notification must be accompanied by an original or authenticated copy of the accreditation and a sworn translation into German.

(2) Before the start of activities within the territory of the Federal Republic of Germany by environmental verifiers or environmental verification organisations accredited in another Member State of the European Union or a state of the European Economic Area, the accreditation body shall check whether they possess valid accreditation in the Member State. A review of the quality of the verification activities performed in the territory of the Federal Republic of Germany shall be made at regular intervals and at least every 24 months after the first notification. Article 15 paragraphs 5, 6 and 8 and Article 16 shall apply *mutatis mutandis*. To ensure the quality of the verification activities performed, the accreditation body may conduct a witness audit of the environmental verifier or environmental verification organisation during his or its work in organisations. Organisations shall tolerate the conduct of a witness audit pursuant to the fourth sentence.

(3) The accreditation body shall prepare a supervision report. If there is reason for not being satisfied with the quality of verifications, it shall transmit the supervision report to the environmental verifier or environmental verification organisation concerned, the accreditation body which granted accreditation, to the competent registration body and, in case of any further dispute, to the forum of accreditation bodies.

(4) Where necessary to establish that the requirements under Articles 7 to 10 are satisfied, the German business premises of the foreign environmental verifier or environmental verification organisation and of the organisation audited by the same may be entered during normal business hours to conduct the review pursuant to paragraph 2 sentence 4.

(5) If the environmental verifier or environmental verification organisation is not resident or represented within Germany, service of communications shall, except as otherwise prescribed by specific provisions under international law, take place following despatch of a copy of the notice by posting as registered mail; service shall be deemed to have taken place upon the expiration of a two-week period after posting.

§ 19

Prohibition of the validation of environmental statements

Persons who do not possess the required accreditation or certificate of specialised knowledge may not validate or co-sign an environmental statement under Article 3 paragraph 2 letter b and Annex V sections 5.4 and 5.6 of Regulation (EC) No. 761/2001.

§ 20

Supervisory procedure

The Federal Government, after hearing the Environmental Verification Committee, may by means of statutory ordinance not requiring the approval of the Bundesrat define details of the content and scope of the duties pursuant to Article 15 paragraphs 6 and 7 and the procedure for supervisory measures for the purpose specified in Article 1 paragraph 1 number 2.

Section 3

Environmental Verification Committee, Appeals authority

§ 21

Functions of the Environmental Verification Committee

(1) An Environmental Verification Committee shall be set up at the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety. The function of the Environmental Verification Committee shall be to

1. issue binding guidelines for the interpretation and application of Articles 4 to 18 and of the statutory ordinances adopted pursuant to these statutory provisions,
2. keep a list of examiners for appointment to the accreditation body's examination boards,
3. make recommendations regarding the nomination of independent experts by the appeals authority,
4. advise the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety on all matters of accreditation and supervision,
5. promote the propagation of EMAS.

The guidelines pursuant to number 1 of the second sentence shall be published in the Federal Gazette by the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety.

(2) The Environmental Verification Committee shall receive from the accreditation body every six months a report on the scope, content and problems of the accreditation and supervision activities. In particular, the report shall cover

1. the supervisory measures taken,
2. the practicability and need for updating of guidelines adopted under paragraph 1, second sentence, number 1 and
3. the need for regulation by means of new guidelines pursuant to paragraph 1, second sentence, number 1.

The Environmental Verification Committee shall be able to request reports on specific issues from the accreditation body.

§ 22

Members of the Environmental Verification Committee

(1) The members of the Environmental Verification Committee shall comprise

- 6 representatives of companies or their organisations,
- 4 representatives of environmental verifiers or their organisations,
- 2 representatives of the Federal administrative authority for the environment,
- 1 representative of the Federal administrative authority for industry,
- 4 representatives of the *Land* administrative authorities for the environment,
- 2 representatives of the *Land* administrative authorities for industry,
- 3 representatives of the trade unions,
- 3 representatives of the environmental associations.

They shall not be bound by any directions, and shall act on an honorary basis. The provisions of Articles 83 and 84 of the Administrative Procedures Act shall apply.

(2) The members of the Environmental Verification Committee shall possess a thorough specialised knowledge of in-plant environmental protection and have at least three years' practical experience.

(3) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall appoint the members of the Environmental Verification Committee plus a deputy for each member for a period of three years on the basis of proposals by the federal associations of industry, the liberal professions in agreement with the environmental verifiers' organisations, the trade unions and the environmental associations and the competent supreme Federal and *Land* authorities.

§ 23

Rules of procedure, chairperson and resolutions of the Environmental Verification Committee

(1) The Environmental Verification Committee shall draw up its own rules of procedure, which shall require the approval of the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety.

(2) The Environmental Verification Committee shall elect the chairperson and four deputies from among its members. They shall include one representative each of the companies, the environmental verifiers, the administrative

authorities, the trade unions and the environmental associations.

(3) The Environmental Verification Committee shall adopt resolutions

1. by a majority of two thirds of the statutory number of members in matters pursuant to Article 21 paragraph 1, second sentence, numbers 1 and 2,
2. by a majority of the statutory number of members in matters concerning the rules of procedure, and
3. by a majority of the members present in all other cases.

§ 24

Appeals authority

(1) The competent body for decisions on appeals against administrative acts by the accreditation body shall be the Federal administrative authority (*Bundesverwaltungsamt*), which shall in this respect be subject to the technical directions of the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety.

(2) The decision shall be taken by an official of the Federal administrative authority who is qualified to hold judicial office. The independent experts consulted by the appeals authority shall not be members of the Environmental Verification Committee. They shall possess a thorough specialised knowledge of in-plant environmental protection and have at least three years' practical experience.

(3) The appeals authority may attend meetings of the Environmental Verification Committee. It shall on request be allowed to speak.

§ 25

Appeals procedure

(1) Before any ruling on the appeal, the latter shall be discussed orally with those concerned. In case all concerned parties agree, the oral discussion may be waived. The appeals procedure shall otherwise not be bound by any particular form, except insofar as Articles 68 to 73 of the Regulations governing the Administrative Courts (*Verwaltungsgerichtsordnung*) contain specific legal provisions for the form of such procedure. The procedure shall be conducted in a simple and expedient manner.

(2) Insofar as the appeal against decisions by the accreditation body vested under Article 28 is successful, the expenses incurred by the appealing party as specified in Article 80 paragraph 1, first and second sentences, of the Administrative Procedures Act shall be reimbursed by the private-law entity of the accreditation body.

§ 26

Secretariat

A secretariat shall be established for the work of the Environmental Verification Committee. It shall be subject to the directions of the chairperson of the Environmental Verification Committee.

§ 27

Legal supervision

(1) The Environmental Verification Committee shall be under the supervision of the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (supervisory authority). Supervision shall include the lawfulness of the committee's work and, in particular, ensuring that its statutory duties are discharged.

(2) The supervisory authority may attend meetings of the Environmental Verification Committee. It shall on request be allowed to speak. It may demand written reports and submission of records.

(3) Resolutions pursuant to Article 21 paragraph 1, second sentence, numbers 1 to 3 shall require the approval of the supervisory authority. The supervisory authority may object to unlawful resolutions by the Environmental Verification Committee and, after prior objection, revoke them. If the Environmental Verification Committee fails to adopt resolutions or to take other action necessary to discharge its statutory duties, the supervisory authority may order that the necessary measures be taken within a specified period. The supervisory authority shall describe in detail the actions required. It may, if the order has been not been carried out by the Environmental Verification Committee, carry out its order itself or cause it to be carried out by another party.

(4) If the means of supervision specified in paragraph 3 prove inadequate, the supervisory authority may dissolve the Environmental Verification Committee. Once the dissolution order becomes non-appealable, the supervisory authority shall immediately appoint new members in accordance with Article 22 paragraph 3. It need not consider any persons nominated who were members of the dissolved committee.

Section 4**Administrative responsibility**

§ 28

Accreditation body

The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall be empowered to vest the functions of the accreditation body in one or more legal entities under private law by means of statutory ordinance not requiring the approval of the Bundesrat,

provided such entities are willing and qualified to perform the accreditation and supervision functions in a proper fashion. The accreditation body shall perform the functions of accreditation and surveillance of environmental verifiers and environmental verification organisations and holders of certificates of specialised knowledge in accordance with Article 4, Article 7 paragraph 1 and Annex V of Regulation (EC) No. 761/2001 and in accordance with this Act. It shall at regular intervals report to the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety and to the Environmental Verification Committee about the meetings and other activities of the forum of accreditation bodies of the Member States in accordance with Article 4 paragraph 8 of Regulation (EC) No. 761/2001.

§ 29

Supervision of the accreditation body

The accreditation body vested under Article 28 shall be under the supervision of the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (supervisory authority). Supervision shall include the lawfulness of accreditation and supervision activities, as well as decisions taken pursuant to Article 16 paragraph 2, Article 17 paragraph 3 numbers 2 and 3, and Article 18 paragraph 2, third sentence.

Section 5**Limitation of liability**

§ 30

Limitation of liability

Article 323 paragraph 2 of the German Commercial Code shall apply *mutatis mutandis* to the liability for damages of persons who have acted negligently.

§ 31

(deleted)

Part 3

Registration of verified organisations, Costs,
Fines,
Transitional and final provisions

Section 1

Registration of verified
organisations

§ 32

EMAS Register

(1) The entries in the EMAS Register shall show the sites or sub-sites at which the organisation runs an environmental management system satisfying the requirements of Regulation (EC) No. 761/2001. The running of the register and the other tasks set out in Articles 5 to 7 of Regulation (EC) No. 761/2001 shall be assigned to the Chambers of Industry and Commerce and the Chambers of Craft Trades. Where an organisation has two or more sites taking part in EMAS, entries shall be made by the registration body for the company's principal place of business. Supervisory measures shall be taken by the supervisory authority in agreement with the *Land's* highest authority responsible for environmental protection.

(2) The registration bodies shall by written agreement designate a joint body which shall at monthly intervals send an updated list of registered sites pursuant to paragraph 1, first sentence, to the Commission of the European Communities in accordance with Article 7 paragraph 2 of Regulation (EC) No. 761/2001. The list of registered sites shall at the same time be made available in suitable fashion to the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, the accreditation body, the Environmental Verification Committee and the competent supreme *Land* authorities. The joint body shall represent the registration bodies at the meetings of the registration bodies of the Member States under Article 5 paragraph 5 of Regulation (EC) No. 761/2001. For the purposes specified in Article 5 paragraph 5 of Regulation (EC) No. 761/2001 it shall be entitled to obtain data from the registration bodies and to disclose and use such data at the meetings of the registration bodies of the Member States and any working groups set up in the context thereof.

(3) The Chambers of Industry and Commerce and the Chambers of Craft Trades may agree in writing that the tasks performed by them pursuant to paragraph 1, second sentence, shall be wholly or partially assigned to a Chamber of Industry and Commerce or a Chamber of Craft Trades. Such agreement shall require the approval of the supervisory authority with the assent of the competent environmental authority.

(4) Anyone shall be entitled to inspect the EMAS Register in accordance with the provisions of the Environmental Information Act (*Umweltinformationsgesetz*).

(5) For the purpose of supervision of environmental verifiers, environmental verification organisations and holders of certificates of specialised knowledge, the registration body shall be allowed to inspect such data or documents of the registration body as are relevant to supervision.

§ 33

Entry in the EMAS Register

(1) The *prima facie* evidence that the organisation satisfies all the conditions of Regulation (EC) No. 761/2001 which are necessary for entry in the EMAS Register in accordance with Article 6 of Regulation (EC) No. 761/2001 shall, in particular, be deemed not to have been furnished if

1. the validation of the environmental statement is not signed on a responsible basis by an accredited environmental verifier or by an accredited environmental verification organisation, or
2. the persons who co-signed the validation of the environmental statement do not on the whole, as indicated by the content of their accreditation or certificate of specialist knowledge, possess the expert knowledge necessary for assessing the audited organisation.

For the purpose of *prima facie* evidence within the meaning of the first sentence, it is not necessary for the persons who validated the environmental statement to be employed at the same environmental verifier or the same environmental verification organisation; environmental verifiers and environmental verification organisations may also work together on the basis of separate agreements made for individual verification assignments (*ad hoc* cooperation). On the basis of verification contracts made up to 21 August 2002, holders of a certificate of specialised knowledge may undertake individual verification assignments under *ad hoc* cooperation arrangements with environmental verifiers or environmental verification organisations until 31 July 2006.

(2) An organisation with two or more sites shall be registered in accordance with Article 6 number 1 of Regulation (EC) No. 761/2001 with its sites and sub-sites participating in EMAS if it satisfies the requirements for registration at the participating sites and sub-sites.

(3) Before registering an organisation, including adding a new site or sub-site hitherto not included in the organisation's environmental management system, the registration body shall give the authorities responsible for environmental protection matters at the relevant site (environmental authorities) an opportunity to express their opinion on the proposed registration within a period of four weeks. In cases of registration of an organisation with two or more sites, the registration body shall communicate the

environmental authorities' statement to the Chambers of Industry and Commerce or the Chambers of Craft Trades that would have been the competent registration bodies if the individual sites had been registered separately. If the registration body is informed by the competent environmental authority about a breach of the environmental provisions in force at one of the organisation's sites, it shall refuse to register the applying organisation until evidence is furnished in accordance with Article 6 number 4 of Regulation (EC) No. 761/2001 that such breach has been remedied. If the environmental authority or the registration body is of the opinion that there has been a breach of environmental provisions in force at one of the organisation's sites, and if the organisation disputes the existence of such a breach, the decision on registration shall be suspended until final clarification between the environmental authority and the organisation. Before the registration body refuses to register an organisation in accordance with Article 6 number 4 of Regulation (EC) No. 761/2001 on the grounds of a breach of environmental provisions in force at a site, the organisation concerned shall be given an opportunity to express its opinion in accordance with Article 6 numbers 5 and 6 of Regulation (EC) No. 761/2001. The registration body shall inform the management of the organisation in accordance with Article 6 number 5, second sentence, of Regulation (EC) No. 761/2001 about the reasons for the measures taken and about the discussions held with the competent environmental authority.

(4) The registration bodies and the joint body shall be entitled to store the data necessary for the purpose of performing their functions under this Act.

(5) The registration body shall inform the environmental authorities about the result of the registration procedure.

§ 34

Maintenance of registration, Procedure in cases of infringement, Deletion and temporary suspension of registration

(1) If the environmental authority finds that a registered organisation is in breach of environmental provisions, it shall inform the registration body accordingly.

(2) If there is any indication of a breach of environmental provisions in force at one of the organisation's sites, the registration body shall inquire of the environmental authority whether there is a breach of environmental law.

(3) Upon presentation of the consolidated version of the environmental statement for the purpose of maintaining registration in accordance with Article 6 number 3 in conjunction with Annex III section 3.1 of Regulation (EC) No. 761/2001, the registration body shall examine whether it possesses information within the meaning of paragraph 1 or indications within the meaning of paragraph 2.

(4) Before the registration body

1. deletes or temporarily suspends the registration of an organisation under Article 6 numbers 3 or 4 of Regulation (EC) No. 761/2001 on the grounds of subsequent non-compliance with relevant requirements at the site or
2. deletes or temporarily suspends the registration of an organisation under Article 6 number 4 of Regulation (EC) No. 761/2001 on the grounds of a breach of an environmental provision in force at the site or
3. temporarily suspends the registration of a site under Article 6 number 2 of Regulation (EC) No. 761/2001 on the grounds of insufficiently thorough performance of the verification activities by the environmental verifier,

the organisation concerned and, in the case of number 2, the competent environmental authority for the site concerned shall be given an opportunity to express its opinion in accordance with Article 6 numbers 5 and 6 of Regulation (EC) No. 761/2001. If the organisation, citing justifiable reasons, disputes the existence of breaches within the meaning of numbers 1 to 3 of the first sentence and furnishes *prima facie* evidence that deletion or temporary suspension from the register would lead to considerable economic or other disadvantages for the organisation, then the deletion or temporary suspension from the register shall only be effected if an enforceable administrative act, non-appealable administrative order imposing a fine or non-appealable conviction under criminal law exists in respect of the breaches within the meaning of numbers 1 to 3 of the first sentence. The registration body shall inform the management of the organisation in accordance with Article 6 number 5, second sentence, of Regulation (EC) No. 761/2001 about the reasons for the measures taken and about the discussions held with the competent environmental authority.

(5) The registration of an organisation with two or more sites shall be deleted or temporarily suspended if one or more sites no longer comply with the requirements of Article 6 numbers 2 to 4 of Regulation (EG) No. 761/2001.

(6) The registration body shall inform the environmental authority about the result of the registration maintenance procedure in accordance with Article 6 number 3 of Regulation (EC) No. 761/2001.

§ 35

Registration procedures

The Chambers of Industry and Commerce and the Chambers of Craft Trades may, by means of by-laws which shall require the approval of the supervisory authority in agreement with the supreme *Land* authority responsible for environmental protection, make more detailed provisions regarding procedures for the registration and deletion of sites or sub-sites of companies¹ belonging to the chamber and for temporary suspension of registrations in accordance with

Article 5 paragraphs 3 and 4 and Article 6 of Regulation (EC) No. 761/2001. Such by-laws shall also apply to organisations that are not members of a Chamber.

Section 2

Costs, Provisions governing the imposition of fines

§ 36

Costs

(1) Fees and expenses shall be charged for official acts performed on the basis of this Act.

(2) After hearing the Environmental Verification Committee, the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall be empowered by statutory ordinance not requiring the approval of the Bundesrat to determine the level of fees charged for official acts by the accreditation body and the appeals authority on the basis of this Act, the elements for which fees shall be payable and the expenses, and to lay down fixed rates and framework rates.

(3) The Chambers of Industry and Commerce and the Chambers of Craft Trades shall be empowered to determine in their by-laws the level of fees charged for official acts by the registration body. Article 11 paragraph 1 of Regulation (EC) No. 761/2001 shall be observed in this context. Such by-laws shall require the approval of the supervisory authority with the assent of the competent environmental authority. Article 35, second sentence, shall apply.

§ 37

Provisions governing the imposition of fines

(1) It shall be an administrative offence to deliberately or negligently

1. contravene Article 4 paragraph 3 by failing to provide an item of information or failing to do so correctly or in time,
2. contravene Article 4 paragraph 4, second sentence, in conjunction with the first sentence, by using the occupational title specified therein,
3. contravene Article 10 paragraph 5, second sentence, in conjunction with the first sentence, by including the title specified therein in the company or name,
4. contravene Article 15 paragraph 6 number 1 by failing to keep a duplicate or failing to do so for the prescribed period,
5. contravene Article 15 paragraph 6 number 2 by failing to notify the accreditation body or failing to do so in time,
6. contravene Article 15 paragraph 6 number 4 by failing to

submit a document or failing to do so in time,

7. act in breach of an enforceable order pursuant to Article 15 paragraph 4 or pursuant to Article 16 paragraph 1, including in conjunction with Article 18 paragraph 2, third sentence,
8. contravene Art. 18 paragraph 1, first sentence, by failing to make a notification or failing to do so correctly, in full or in time,
9. contravene Article 19 by validating an environmental statement or co-signing a validation,
10. contravene a statutory ordinance pursuant to Article 20 or an enforceable order issued pursuant to such a statutory ordinance, insofar as such statutory ordinance makes reference to this administrative fine provision with respect to the elements of a specific offence,
11. contravene Article 8 paragraph 1 of Regulation (EC) No. 761/2001 by using the EMAS logo without being in possession of a current EMAS registration,
12. contravene Annex V section 5.4.3, third sentence, of Regulation (EC) No. 761/2001, including in conjunction with Article 8 paragraph 2, third sentence, by validating or co-signing an environmental statement or
13. contravene a directly effective provision in legal acts of the European Community within the scope of application of this Act, insofar as a statutory ordinance pursuant to paragraph 2 issued after hearing the Environmental Verification Committee makes reference to such administrative fine provision with respect to the elements of a specific offence.

(2) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall, insofar as is necessary for enforcement of the legal acts of the European Communities, be empowered to define, by statutory ordinance not requiring the approval of the Bundesrat, the elements of offences which are punishable as administrative offences under paragraph 1 number 13.

(3) In the cases specified in paragraph 1 numbers 2 to 4, 7, 9, 11, 12 and 13, the administrative offence shall be punishable by an administrative fine of up to twenty-five thousand euro, in the cases specified in paragraph 1 numbers 1, 5, 6, 8 and 10 by an administrative fine of up to five thousand euro.

Section 3

Transitional and final provisions

§ 38

Transitional provisions

(1) Accreditations issued before 21 August 2002 in respect of environmental verifiers, environmental verification organisations and holders of certificates of specialised knowledge shall remain valid even after such date.

(2) Generally recognised evidence of qualifications issued before 21 August 2002 pursuant to Article 13 paragraph 2 of the Environmental Audit Act of 7 December 1995 (Federal Law Gazette I p. 1591), as most recently amended by Article 26 of the Act of 27 April 2002 (Federal

Law Gazette I p. 1467), shall remain valid even after 21 August 2002. Article 9 paragraph 1 number 1 letter c, Article 10 paragraph 1 number 2 letter c, Article 11 paragraph 3, Article 15 paragraph 3, Article 19 and Article 33 paragraph 1 number 2 of the Environmental Audit Act in the amended version specified in the first sentence shall continue to be applied to generally recognised evidence of qualifications within the meaning of the first sentence which were issued before 21 August 2002.

§ 39

(Entry into force)

Only the German version of the text is legally binding !
