

ENVIRONMENT PROTECTION ENACTMENT 2002

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STATE OF SABAH

I assent,

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TUN DATUK SERI PANGLIMA HAJI SAKARAN BIN DANDAI,
Yang di-Pertua Negeri.

19TH NOVEMBER, 2002.

No.12 of 2002

An Enactment to make provisions relating to the protection of environment and for matters connected therewith and incidental thereto.

ENACTED by the Legislature of the State of Sabah as follows:

PART I

PRELIMINARY

- | | |
|-------------------------------|---|
| Short title and commencement. | 1. This Enactment may be cited as the Environment Protection Enactment 2002 and shall come into force on such date as the Minister may, by notification in the <i>Gazette</i> , appoint. |
| Interpretation. | 2. In this Enactment, unless the context otherwise requires –

“agreement of environmental conditions” means an agreement signed by a person before commencement of any development activity prescribed under section 12; |

“Council” means the Environment Protection Council established under section 3;

“Department” means the Environment Protection Department;

“development activity” includes extraction of natural resources;

“Director” means the Director of the Environment Protection Department appointed under section 24;

“discharge” includes emit, deposit or allow to escape;

“environment” includes –

- (a) the external physical surroundings and conditions influencing development and growth of people, animals or plants and includes social, living or working conditions;
- (b) all natural and physical resources;
- (c) ecosystems and their constituent parts including people and communities; and
- (d) amenity, aesthetic and cultural values;

“environmental authority” means any department of the State or Federal Government, local authority or officer duly appointed by the Director under this Enactment to exercise the powers conferred or perform the duties imposed upon such environmental authority by this Enactment or to perform such duties or functions as may be directed by the Director for the implementation, execution or enforcement of any order or decision of the Director made under this Enactment;

“environmental hazard zone” means the environmental hazard zone area declared as such by the Minister under section 18;

“environmental protection area” means an area established as such by the Minister under section 11;

“Government” means the State Government of Sabah or the Federal Government;

“land” shall have the same meaning assigned to it under the Land Ordinance (Cap. 68);

Cap.68.

“Magistrate” shall have the same meaning assigned to it under the Interpretation and General Clauses Enactment 1963;

Enactment
No.34 of
1963.

“Minister” means the Minister for the time being responsible for environmental protection;

“mitigation declaration” means an agreement signed by a person before commencement of any development activity prescribed under section 12;

“natural resources” includes air, biological diversity of resources, forest and forest produce, gas, minerals, oil, land, rocks, soils, animals, birds, plants, marine and aquatic life and waters;

Enactment
No.2 of
1968.

“occupier” shall have the same meaning assigned to it under the Forest Enactment 1968;

Cap.68.

“owner” shall have the same meaning assigned to it under the Land Ordinance (Cap. 68);

“penalty” means a fine, imprisonment or other form of punishment;

“Permanent Secretary” means the Permanent Secretary of the Ministry which is for the time being responsible for the environmental protection;

Enactment
No.34 of
1963.

“person” shall have the same meaning assigned to it under the Interpretation and General Clauses Enactment 1963;

“pollutant” means any substance whether liquid, solid or gaseous, or micro-organisms, which directly or indirectly –

- (a) alters the quality of any environment or any part of any environment so as to adversely affect the environment;
- (b) is hazardous or potentially hazardous or prejudicial to health and safety;
- (c) change the temperature or the physical, biological or chemical characteristic and quality of the environment so as to adversely affect the environment; or
- (d) creates obnoxious odours, noise or radioactivity;

“pollution” means any direct or indirect alteration of the environment or any part thereof by discharging, emitting, or depositing wastes or pollutants thereby causing hazard to the environment or causing a condition which is hazardous or potentially hazardous to public health and safety or welfare, or to animals, birds, fish, aquatic life or plants;

“rules” includes regulations and by-laws;

“significant ” means the adverse effect of any activity which has or is likely to have on the environment due to the -

- (a) magnitude of the effect in relation to the spatial boundaries;
- (b) permanence of the effect;
- (c) irreversibility of the effect;
- (d) cumulativeness over time of the effect; or
- (e) risks of the effect in relation to health and safety;

“vegetation” includes forest;

“water” includes river water, lake water, underground water, coastal water and storm water.

PART II

ENVIRONMENT PROTECTION COUNCIL

3. (1) There shall be established for the purpose of this Enactment a body which shall be known as the “Environment Protection Council” (hereinafter referred to as “the Council”) whose function shall be to advise the State Government on matters pertaining to the implementation of this Enactment.

Establishmen
of
Environment
Protection
Council.

(2) The Council shall consist of the following members -

- (a) a Chairman, who shall be the Minister;
- (b) the Director of Environment Protection Department, who shall be the Secretary to the Council;
- (c) the State Attorney General or his authorised representative ;
- (d) the Secretary of Natural Resources or his authorised representative;
- (e) the Permanent Secretary of the Ministry of Tourism, Environment, Science and Technology or his authorised representative;
- (f) the Permanent Secretary of the Ministry of Agriculture and Food Industries or his authorised representative;
- (g) the Permanent Secretary of the Ministry of Local Government and Housing or his authorised representative;

- (h) the Director of Lands and Surveys or his authorised representative;
- (i) the Director of Forestry Department or his authorised representative;
- (j) the Director of Drainage and Irrigation Department or his authorised representative;
- (k) the Secretary-General of the Federal Ministry of Science, Technology and Environment or his authorised representative;
- (l) the Director of Federal Department of Environment (Sabah Region) or his authorised representative; and
- (m) 3 other members, who shall be appointed by the Minister.

(3) The Director shall have no right to vote at any meeting.

(4) The Minister may in respect of each member appointed, under paragraph (m) of subsection (2) appoint one person to be an alternate member to attend in place of the member at meetings of the Council if the member is for any reason unable to attend.

(5) When attending meetings of the Council, an alternate member appointed under subsection (4) shall for all purposes be deemed to be a member of the Council.

(6) An alternate member shall, unless the alternate member sooner resigns or the appointment is sooner revoked, cease to be an alternate member when the member in respect of whom he is an alternate member ceases to be a member of the Council.

Duration of office and eligibility for reappointment.

4. Every appointed member of the Council shall, unless the member sooner resigns or the appointment is revoked, hold office for a term not exceeding three years and shall be eligible for replacement.

Disqualification, resignation and vacation.

5. (1) The following persons shall be disqualified from being appointed or being members of the Council -

- (a) a person who is of unsound mind or is otherwise incapable of performing the required duties;
- (b) a person who has been found guilty of an offence involving fraud, dishonesty or moral turpitude; or
- (c) a person who is bankrupt.

(2) An appointed member of the Council shall be deemed to have vacated office –

- (a) upon death;
- (b) upon resignation;
- (c) upon failure to attend three consecutive meetings of the Council without the permission of the Chairman; or
- (d) if the member becomes disqualified under subsection (1);

and a new member shall be appointed for the unexpired period in accordance with the provisions under this Enactment.

6. (1) The Council shall meet once every four months of the year and shall, in addition, meet as and when convened by the Chairman.

Calling of meeting, quorum, voting, procedure and minutes.

(2) The Council meeting shall have a quorum of at least nine members.

(3) The Council decision shall be by majority votes.

(4) If there is an equality of votes, the Chairman shall have a casting vote in addition to his deliberative vote.

(5) Subject to this Enactment, the Council shall determine its own procedure.

(6) The Council shall keep minutes of all proceedings of the Council.

(7) The Chairman may invite or request a person, who is not a member of the Council, to attend any meeting of the Council for the purpose of advising it on a matter under discussion but the person so attending shall have no right to vote at the meeting.

7. The Chairman of the Council shall preside at all meetings of the Council.

Chairman to preside meetings.

8. Every member of the Council may be paid an allowance of such sum as may be determined by the Minister in respect of attendance at a meeting of the Council.

Payment of allowance.

PART III

GENERAL PROVISIONS RELATING TO POLICIES AND PROGRAMMES ON ENVIRONMENTAL PROTECTION

9. The Minister may direct the Director to formulate any environmental protection policy pursuant to and in accordance with the provisions under this Enactment.

Environmental protection policy.

Environmental protection programme .

10. (1) The Director may formulate any programme in respect of any measure for environmental protection in the following area –

- (a) any area where environmental pollution is currently significant; or
- (b) any area where environmental pollution is likely to become significant due to the rapidly increasing concentration of population or human activity.

(2) It shall be the duty of the Director or the environmental authority, as the case may be, to formulate an environmental protection action plan in respect of any area designated for environmental protection within such time as the Director may specify.

(3) The environmental protection action plan shall incorporate a system of integrated management of environmental protection, taking into consideration the significance of the problem and economic, social and environmental conditions which shall include -

- (a) control of pollution from point sources;
- (b) procurement and acquisition of land, materials, equipment, tools and appliances which are essential for the construction, installation, improvement, modification, repair, maintenance and operation of environmental protection facilities such as central waste water treatment plants or central waste disposal facilities;
- (c) inspection, monitoring and control of pollution; and
- (d) all costs, charges and expenses of and incidental to the carrying out of the environmental protection action plan.

Environmental protection area.

11. The Minister may, by notification in the *Gazette*, designate any area of land, whether alienated or unalienated, as an environmental protection area for the protection of the environment.

Reports on prescribed activities .

12. (1) The Minister may, by notification in the *Gazette*, prescribe the types of any development activity which is likely to have an adverse effect on the environment.

(2) The Director may, by notification in the *Gazette*, categorize such development activities prescribed under subsection (1) having regard to the significance of the adverse effect of such development activities on the environment.

(3) No person shall carry out any development activity which is categorized under subsection (2) unless such person has submitted an environmental

impact assessment report or a proposal for mitigation measures as the case may require and such report or proposal has been approved by the Director.

(4) The Director may direct an applicant to prepare and submit a master environmental impact assessment report in cases where a prescribed development activity consist of smaller individual projects to be carried out in phases and which is subject to multiple stages of review or approval.

(5) The Director shall, before the commencement of any prescribed development activity or subsequent prescribed development activity within the area in respect of which a master environmental impact assessment report has earlier been submitted, require the applicant to sign an agreement of environmental conditions or mitigation declaration, as the case may require.

(6) If the Director upon examining the environmental impact assessment report or the proposal for mitigation measures, is of the opinion that such report or proposal does not provided for the protection of the environment, he shall not approve such report or proposal.

13. The Director may require an environmental impact assessment report or a proposal for mitigation measures to be submitted by an applicant for any activity not prescribed under section 12 subsection (1) if the Director is of the opinion that such development activity has or is likely to have an adverse effect on the environment.

Reports on non-prescribed activities.

14. Any governmental authority shall immediately notify the Director in writing, if a development activity under their jurisdiction is included in the list of prescribed development activities or if the governmental authority is of the opinion that an environmental impact assessment report or a proposal for mitigation measures is required.

Environment: Authority to notify the Director.

15. The Director shall prepare procedures and guidelines for the preparation of environmental impact assessment and proposal for mitigation measures, and the issuance of agreement of environmental conditions and mitigation declaration.

Procedures and guidelines for environmental impact.

16. The Director may charge a reasonable fee from any person involved in the preparation of environmental impact assessment reports or proposal for mitigation measures for the processing of such environmental impact assessment reports or proposal for mitigation measures by the Department

Imposition of processing fees.

17. (1) The Minister may, by notification in the *Gazette*, prescribe the types and sizes of any activity causing pollution or likely to cause pollution to be controlled by way of licensing.

Licensing of prescribed activities.

(2) No person shall operate any activity prescribed under subsection (1) without a licence issued for that purpose and no person shall be issued with a licence unless the prescribed fee has been paid.

(3) The Director may revoke any licence issued to any person if the Director has reasonable cause to believe that the licensee has contravened any of the terms and conditions in the licence.

(4) The Director shall issue a notice to the licensee, prior to revocation of any licence.

Environmental hazard zone.

18. (1) The Minister may, by notification in the *Gazette*, declare any area as an environmental hazard zone if such an area is polluted and may cause significant risk to human health and safety or the environment.

(2) When an area is declared as an environmental hazard zone, the Director may impose such restrictions on the use of the area as the Director deems necessary to reduce environmental hazard in the area and its surroundings.

(3) The Minister may revoke any declaration in whole or in part in respect of any area so declared as an environmental hazard zone if the restrictions and precautions are no longer applicable to such area.

Imposition of product fee, etc.

19. The Minister may impose product fee, effluent fee, user fee or waste disposal fee at such rates as may be determined by the Minister from time to time.

Measures for protection of the environment.

20. For the purpose of carrying out the provisions of this Part, the Director may impose any measure or condition, necessary for the protection of the environment, the prevention or mitigation of any adverse effect on the environment in connection with any activity, which relates but not limited to –

- (a) any use of land, cultivation of land or the methods used thereof;
- (b) earthworks or land reclamation;
- (c) cutting of trees, clearing or destruction of vegetation or setting fire in any land;
- (d) excavation or dredging in water courses or altering the source and course of banks or streams;
- (e) any discharge of any pollutant into water, watercourses, lakes or foreshore, and the storage of such pollutant;
- (f) any activity relating to the production, storing, treating, transporting or disposal of waste;
- (g) any activity relating to any sewage line, waste water treatment plant, incineration plant and waste landfill and on the design, operation and maintenance of such line or plant;
- (h) any livestock activity and the disposal of animal or other organic waste;

- (i) any activity relating to the excavation or altering of any geographical or geological feature.

PART IV

ENVIRONMENT PROTECTION FUND

21. (1) There shall be established a fund to be known as the “Environment Protection Fund” (hereinafter referred to as the “Fund”) of the Department. Establishment of Environment Protection Fund.
- (2) The Fund shall be administered by a committee to be known as the “Environment Protection Fund Committee” consisting of –
- (a) the Permanent Secretary as Chairman;
 - (b) the State Treasurer or his authorised representative; and
 - (c) the Director.
22. (1) There shall be paid into the Fund –
- (a) such sum as may be appropriated by the Legislative Assembly necessary for the purposes of the Fund;
 - (b) the fees collected under sections 16, 17(2) and 19;
 - (c) any loan or grant given to the Government by the Federal Government for the purposes of the Fund;
 - (d) the fees collected under the Rules made hereunder; and
 - (e) any order directed by the Court under this Enactment.
- (2) All moneys paid into the Fund shall be deposited in any bank duly licensed under the Banking and Financial Institutions Act 1989. Moneys to be paid into the Fund.
23. The Fund shall be used for the following purposes -
- (a) the preparation and implementation of the environmental protection action plans;
 - (b) expenditures incurred in the establishment, protection, conservation and management of the environmental protection areas;
 - (c) research and development relating to environmental protection measures;
- Purposes of the Fund.

- (d) investigative works on environmental hazard and pollution; or
- (e) any work necessitated by the presence of or the likelihood of the occurrence of environmental hazard and pollution.

PART V

ADMINISTRATION

Functions and duties of the Director.

24. (1) There shall be a Director of the Environment Protection Department who shall be appointed from amongst members of the State Public Service and whose functions and duties shall be to -

- (a) carry out or perform any action necessary to protect, conserve, rehabilitate, restore or maintain sound environmental quality;
- (b) incorporate environmental protection into the planning of any development activity or utilization of any natural resource which is likely to have adverse effect on the environment;
- (c) regulate any development activity or utilization of natural resources which has or is likely to have adverse effect on the environment;
- (d) protect sensitive areas for the conservation of bio-diversity and the maintenance of environmental quality;
- (e) take any action necessary to protect the aesthetic, natural and scenic environmental quality;
- (f) promote cooperation and collaboration between federal, state and local authorities on the formulation and implementation of environmental protection policies and programmes;
- (g) promote environmental research, science and technology;
- (h) promote environmental awareness on the importance of environmental protection, conservation and quality;
- (i) conduct any survey, research or study on the state of the environment of the State or any part thereof necessary for the formulation and implementation of policies relating to environmental protection; and
- (j) carry out any function or duty in accordance with or pursuant to any of the provisions under this Enactment.

(2) There shall be such number of other officers as may be necessary or expedient for the due administration of this Enactment appointed by the State Public Service Commission.

(3) The Director may, in his absence, delegate the exercise of any of the powers of the Director under this Enactment to any officer of the Department.

(4) The Minister may give any specific or general direction to the Director not inconsistent with this Enactment.

25. Every person who exercises or carries out any function, power or duty or is required under this Enactment to do or carry out any act for which no time limit is imposed shall do so as soon as is reasonable and practicable in the circumstances.

Obligation to carry out any function, etc. within reasonable time.

26. (1) The Director may authorise any officer of the Department or any officer of any governmental authority to carry out any of the functions and powers as an environmental enforcement officer under this Enactment.

Environmental enforcement officer.

(2) The Director shall issue a letter of authority to every authorised environmental enforcement officer.

(3) Every environmental enforcement officer who exercises or purports to exercise any power conferred on such officer by this Enactment shall have with him and shall produce if required to do so, the letter of authority issued by the Director.

(4) The Director may revoke the letter of authority issued to any environmental enforcement officer upon his employment being terminated or for any reason deemed proper by the Director.

27. The Director may, by notice in writing, require any person, occupier or owner of any place or premise to furnish to the Director information relating to –

Furnishing of information to the Director.

- (a) any use of land or vegetation;
- (b) any damming, diversion, taking or use of any water;
- (c) any construction, drainage, excavation, reclamation, in or of any foreshore or seabed;
- (d) any equipment, control equipment or industrial plant found on such place or premise;
- (e) any pollutant found in such place or premise;
- (f) any emission, discharged or deposit of any pollutant in or on such place or premise; or
- (g) any book, record or document relating to the use of any equipment, control equipment or industrial plant.

PART VI

DUTIES AND RESTRICTIONS

Restrictions
on the use of
land.

28. (1) No person shall use any land in a manner which has or is likely to have a significant adverse effect on the environment.

(2) In this section, the word “use” in relation to any land means –

- (a) any alteration, erection, extension, placement, removal, use or demolition of any structure or part of any structure in, on, under or over the land;
- (b) any excavation, drilling, tunnelling or other disturbance of the land;
- (c) any destruction of, damage to or disturbance of the habitats of plants or animals in, on or under the land;
- (d) any deposit of any pollutant in, on or under the land; or
- (e) any entry of any pollutant onto, or passing across, the surface of the land.

Restrictions
on activities
along coastal
area.

29. No person shall, in or along any coastal area -

- (a) reclaim or drain any foreshore or seabed in a manner which has or is likely to have a significant adverse effect on the environment;
- (b) alter, erect, demolish, place, reconstruct or remove any structure or any part of a structure that is fixed in, on, under or over any foreshore or seabed in a manner which has or is likely to have a significant adverse effect on the environment;
- (c) damage, destroy or disturb any foreshore or seabed by excavating, drilling or tunnelling in a manner that has or is likely to have a significant adverse effect on the foreshore or seabed other than for the purpose of lawfully harvesting any plant or animal pursuant to any written law; or
- (d) deposit in, on or under any foreshore or seabed any pollutant in a manner that has or is likely to have a significant adverse effect on the foreshore or seabed.

Restrictions
on activities
affecting
bed of lake
or river.

30. No person shall, in relation to the bed of any lake or river -

- (a) alter, demolish, erect, extend, place, reconstruct or remove any structure or any part of a structure in, on, under or over the bed;

- (b) disturb by excavating, drilling or tunnelling the bed;
- (c) introduce or plant any plant or any part of a plant (whether exotic or indigenous) in, on or under the bed;
- (d) deposit any pollutant in, on or under the bed;
- (e) reclaim or drain the bed;
- (f) enter or pass across the bed of any river or lake; or
- (g) damage, destroy, disturb or remove any part or part of any plant (whether exotic or indigenous) or the habitats of any such plant or of animal in, on or under the bed of any lake or river;

in a manner which has or is likely to have a significant adverse effect on the environment.

31. No person shall dam, divert, take or use any –

- (a) water;
- (b) heat or energy from water; or
- (c) heat or energy from the material surrounding any geothermal water;

in a manner which has or is likely to have a significant adverse effect on the environment.

Restrictions on activities affecting water.

32. No person shall discharge any –

- (a) pollutant into water;
- (b) pollutant onto or into any land in circumstances which may result in pollutant (or any other pollutant emanating as a result of natural processes from that pollutant) entering water;
- (c) pollutant from any agricultural premise, industrial premise or any other premises into air; or
- (d) pollutant from any agricultural premise, industrial premise or any other premises into land;

in a manner which has or is likely to have a significant adverse effect on the environment.

Restrictions on discharge of pollutants.

Restrictions on activities affecting vegetation.

33. No person shall, in relation to any vegetation (whether indigenous or otherwise) –

- (a) alter, burn, convert, destroy, modify, mutilate, transform, transpose or vary such vegetation or any part of any vegetation; or
- (b) exploit such vegetation or any part thereof;

in a manner that has or is likely to have a significant adverse effect on environment.

Control of genetically modified organism or plant or animal.

34. No person shall introduce any genetically modified organism or plant or animal which has or is likely to have a significant adverse effect on the environment.

Duty to prevent adverse effect on the environment.

35. Every person shall have a duty to avoid, remedy or mitigate any adverse effect on the environment arising from any activity carried out by or on behalf of that person whether or not such activity is licenced or permitted in writing by the Director in accordance with this Enactment.

Exemption for research activities.

36. The Director may exempt the requirement of any of the provisions under this Enactment for any activity carried out by the Government for the purpose of research.

PART VII

ENFORCEMENT AND ANCILLARY POWERS

Director may issue abatement notice for the protection of environment.

37. (1) The Director may issue an abatement notice on any person requiring that person to cease, or prohibiting that person from commencing, anything done or to be done by or on behalf of that person which –

- (a) contravenes or is likely to contravene any of the provisions under this Enactment; or
- (b) is or is likely to be obnoxious, dangerous, offensive or objectionable to such an extent that it has or is likely to have an adverse effect on the environment.

(2) The Director may issue an abatement notice on any person requiring that person to do something that is necessary to ensure compliance by or on behalf of that person with any of the provisions under this Enactment and also necessary to avoid, remedy or mitigate any actual or likely adverse effect on the environment -

- (a) caused by or on behalf of that person; or
- (b) relating to any land of which the person is the owner or occupier.

(3) An abatement notice shall not be issued on any person unless the Director has reasonable grounds for believing that any of the circumstances in subsection (1) or subsection (2) exist.

(4) Every person who is issued with an abatement notice under this section shall comply with such notice within such time as the Director may stipulate in the notice having regard to the nature and significance of the act to be done, remedied, ceased or prohibited.

(5) Every abatement notice shall include but not limited to the following –

- (a) the name of the person to whom it is addressed;
- (b) the reasons for the notice;
- (c) the action required to be taken or ceased or not undertaken; and
- (d) the consequences of not complying with the notice.

(6) If any person, owner or occupier fails to carry out any work under any abatement notice, the Director may carry out the work necessary to give effect to such abatement notice, and any costs incurred therein shall be deemed to be a debt owed by such person, owner or occupier to the State Government and, until discharged, interest shall be paid thereon at the current market price.

(7) Any appeal under section 47 paragraph (c) shall not operate as a stay of the abatement notice issued under this section.

38. (1) Every environmental enforcement officer duly authorised in writing by the Director may at all reasonable times and with reasonable cause go on, into, under or over any place, premise or structure, except a dwelling house, for the purpose of inspection to determine whether or not –

Right of entry.

- (a) any of the provisions under this Enactment is being complied with; or
- (b) an abatement notice is being complied with.

(2) For the purpose of subsection (1), an environmental enforcement officer may –

- (a) take samples of water, air, soil or any organic matter;
- (b) take samples of any pollutant which is emitted, discharged or deposited or is likely to be or is of a class or kind that is usually emitted, discharged or deposited from such place, premise or structure;

- (c) take samples of any fuel used, or is likely to be used or usually in any trade, industry or process carried out in or on such place, premise or structure;
- (d) examine and inspect any equipment, control equipment, monitoring equipment or industrial plant;
- (e) examine any book, record or document relating to the performance or use of such equipment, control equipment, monitoring equipment or industrial plant; or
- (f) examine any book, record or document relating to the emission, discharge or deposit from such place, premise or structure.

(3) If the owner or occupier of a premise which is subject to inspection is not present at the time of the inspection, the environmental enforcement officer shall leave in a prominent and conspicuous position at the premise or attach to the structure, a written notice showing the date and time of the inspection and the name of the environmental enforcement officer carrying out the inspection.

(4) The Director or any authorised environmental enforcement officer may obtain from any governmental authority or any police station such assistance necessary for exercising such power under this section.

Authority to carry out any survey, etc.

39. For the purpose connected with any preparation, change or review of any environmental policy or plan under this Enactment, the Director may expressly authorise any environmental enforcement officer to –

- (a) carry out any survey, investigation, test or measurement;
- (b) take samples of any water, air, soil or vegetation; or
- (c) enter or re-enter land or any part thereof;

with or without such assistance, vehicles, appliances, machinery or equipment as is necessary for that purpose, provided that the environmental enforcement officer shall not enter any dwelling house.

Power to arrest and seize.

40. (1) If the Director or any authorised environmental enforcement officer has reason to believe that a person has committed an offence under this Enactment, the Director or any authorised environmental enforcement officer may arrest such person without a warrant and may seize any equipment, machinery, conveyance, tools or any other things believed to be used in the commission of the offence.

(2) Any person arrested under subsection (1) shall be brought to the nearest police station or be produced before a Magistrate to be dealt with as provided under the Criminal Procedure Code.

(3) The Director or any authorised environmental enforcement officer shall produce anything seized under this Enactment before a Magistrate Court within 24 hours from the time of seizure.

41. (1) Where anything seized cannot for practical reason be produced before a Magistrate, such thing seized shall be kept in the custody of the Director or any authorised environmental enforcement officer, until a direction is given by the Magistrate.

Custody
and
disposal
of things
seized.

(2) The Magistrate may release anything seized under this Enactment to the lawful owner, upon the lawful owner giving security to the satisfaction of the Magistrate.

(3) Anything seized under this Enactment if not claimed by any person within 30 days from the date of publication of the seizure in the local newspaper, such seized item shall be deemed to have been forfeited.

(4) If a claim is made within 30 days from the date of publication, the Director shall refer the claim to the Magistrate Court for a decision under this Enactment.

(5) The Magistrate to whom such reference is made under subsection (4) shall -

- (a) issue a summon requiring the claimant to appear before the Magistrate Court and shall proceed to hear such claim;
- (b) upon hearing, dismiss such claim and order the thing so seized to be disposed by the Director in accordance with the provisions under this Enactment or upon proof that no offence is committed under this Enactment, return such seized item to the claimant; or
- (c) order such seized item to be disposed by the Director in accordance with the provisions under this Enactment if the claimant fails to appear in Court without any reasonable excuse after the service of the summon.

(6) The Director, upon receipt of the order from the Magistrate, shall dispose the seized item by way of auction or tender and the proceeds of such sale shall be deposited in the Environment Protection Fund.

42. (1) Unless the Court orders to the contrary, the Director may dispose in a manner he deems proper anything seized if such thing is subject to speedy and rapid natural decay or deterioration.

Disposal of
perishable
things
seized.

(2) The Director shall keep any proceed of sale under subsection (1) in any bank until the Court disposes of the case.

Taking statements for the purpose of investigation.

43. For the purpose of investigation, the Director or any authorised environmental enforcement officer may take statement in accordance with section 112 of the Criminal Procedure Code.

No costs, damages, etc. on seizure.

44. No person shall in any proceeding before any Court in respect of anything seized in the exercise or purported exercise of the powers conferred under this Enactment be entitled to costs or to any damage or other relief other than an order for the return of such thing or the payment of their value unless such seizure was made *mala fide*.

Power to prosecute.

45. Any person authorised in writing by the Public Prosecutor pursuant to section 377 of the Criminal Procedure Code, may conduct prosecution under this Enactment.

PART VIII

ENVIRONMENT APPEAL BOARD

Establishment of the Environment Appeal Board.

46. (1) There shall be established for the purpose of this Enactment an Appeal Board which shall be known as the “Environment Appeal Board” whose function shall be to hear any appeal provided for under section 47.

(2) The members of the Appeal Board shall be appointed by the Minister and shall consist of -

- (a) a Chairman who shall be an ex-judge or a person who is fit to be a high court judge; and
- (b) 2 members, one of whom shall be a member of the State Civil Service.

(3) A member of the Appeal Board shall hold office for a period not exceeding 3 years and shall be eligible for reappointment.

(4) A member shall be entitled to such remuneration or allowances as the Minister may determine.

(5) The Minister may revoke the appointment of any member without assigning any reason for such revocation.

(6) A member of the Appeal Board having an interest in any matter before it shall, as soon as the member is aware of his interest, disclose the fact and nature thereof to the Chairman and shall take no part or further part in the proceedings of the Appeal Board and in such circumstances, the Minister may appoint a replacement member.

(7) Every disclosure of interest under subsection (6) shall be recorded.

(8) An award made by the Appeal Board shall be final and binding on all parties to the appeal.

(9) In considering an appeal, the Appeal Board shall hear the appellant and the Director.

(10) The Appeal Board shall deliver a reasoned decision.

(11) Prior to the Minister making rules to prescribe the procedure of the Appeal Board, the following procedures shall apply -

- (a) the appellant shall state the grounds of the appeal;
- (b) the appellant shall compile all the documents or correspondence relating to the decision and shall forward one copy to the Director;
- (c) the Appeal Board may direct the appellant to give written statements to substantiate the appeal and a copy thereof shall be extended to the Director;
- (d) the written statement shall be given within a period of one month or any extension allowed thereof;
- (e) the Appeal Board may allow any amendment to the statement;
- (f) the Appeal Board shall then fix a hearing date;
- (g) the hearing may be by way of a written statement which may contain facts and law;
- (h) if it is an oral hearing, the examination in-chief shall be by way of a written statement, subject to cross examination;
- i) allow expert witnesses and the cost shall be borne by the party who calls the witness;
- j) allow parties to have representations; or
- k) generally direct and do all such things as may be necessary or expedient for the expeditious determination of the appeal.

(12) In respect of an appeal before it, the Appeal Board shall have powers to -

- (a) summon the parties to the proceedings or any other person to attend before it to give evidence or other thing in the possession of that person or otherwise to assist the Appeal Board in its deliberations; or

(b) require any person to bind himself by an oath to state the truth.

(13) If the appellant fails to appear at the hearing without showing reasonable cause, the Appeal Board may dismiss the appeal.

(14) The hearing before the Appeal Board shall be open to the public.

(15) The decision of the Appeal Board shall be delivered within a period of three months after completion of the hearing.

(16) No costs shall be awarded in a hearing before the Appeal Board.

(17) The law of evidence shall not be applicable in a hearing before the Appeal Board.

(18) For the purposes of the Penal Code, the Appeal Board shall be deemed to be a court, and every member thereof shall be deemed to be a public servant.

Appeal. 47. Any person who is aggrieved by -

- (a) any decision of the Director under section 12;
- (b) any decision of the Director under section 17; or
- (c) an abatement notice issued under section 37;

may within 30 days from the date of the final decision of the Director made under paragraphs (a), (b) or (c), submit an appeal to the Director who shall forward such appeal to the Chairman of the Appeal Board.

PART IX

REGISTRATION OF ENVIRONMENTAL CONSULTANTS

Establishment of
Registration of Environmental
Consultants
Committee.

48. There shall be established for the purpose of this Enactment a Committee which shall be known as the "Registration of Environment Consultants Committee" whose function shall be to regulate and administer the registration of environmental consultants in the State of Sabah.

Members of
the
Committee.

49. (1) The Committee shall consist of –

- (a) the Permanent Secretary as Chairman;
- (b) the State Attorney-General or his authorised representative; and
- (c) the Director.

- (2) The Director shall be the Secretary of the Committee.
- (3) The resolution of the Committee shall be final.
50. (1) No person shall submit any environmental impact assessment report unless such report has been prepared by an environmental consultant duly registered as an environmental consultant and holds a valid certificate of practice issued by the Department. Registered environmental consultant to prepare reports.
- (2) The Director shall impose a fee for every issuance of certificate of practice.
- (3) Every certificate of practice shall be valid for a period not exceeding two years and may be renewable on application.
- (4) There shall be a Register of Environmental Consultants which shall be kept and maintained by the Director.

PART X

OFFENCES AND PENALTIES

51. Any person who fails to comply with the terms and conditions of an agreement of environmental conditions under section 12(5) shall be guilty of an offence and shall on conviction be liable to – Failure to comply with terms of agreement of environmental conditions.
- (a) a fine not exceeding one hundred thousand ringgit; or
- (b) an imprisonment for term not exceeding five years; or
- (c) both fine and imprisonment.
52. Any person who fails to comply with an abatement notice shall be guilty of an offence and shall on conviction be liable to – Failure to comply with abatement notice.
- (a) a fine not exceeding fifty thousand ringgit; or
- (b) an imprisonment for a term not exceeding two years; or
- (c) both fine and imprisonment.
53. Any person who fails to comply with the terms and conditions of a licence shall be guilty of an offence and shall on conviction be liable to – Failure to comply with licence conditions.
- (a) a fine not exceeding thirty thousand ringgit; or
- (b) imprisonment for a term not exceeding one year; or

- (c) both fine and imprisonment.

Failure to comply with terms and conditions of mitigation declaration.

54. Any person who fails to comply with the terms and conditions of a mitigation declaration under section 12(5) shall be guilty of an offence and shall on conviction be liable to –

- (a) a fine not exceeding fifty thousand ringgit; or
- (b) an imprisonment for a term not exceeding two years; or
- (c) both fine and imprisonment.

Penalty for non-possession of letter of authority, etc.

55. Any person who is in possession of a letter of authority without the approval of the Director or impersonating as an environmental enforcement officer shall be guilty of an offence and shall on conviction be liable to -

- (a) a fine not exceeding ten thousand ringgit; or
- (b) an imprisonment for a term not exceeding one year; or
- (c) both fine and imprisonment.

Penalty for obstructing, etc.

56. Any person who wilfully obstructs, hinders, resists or deceives the Director or any authorised environmental enforcement officer in the execution of any of the powers under this Enactment shall be guilty of an offence and shall on conviction be liable to –

- (a) a fine not exceeding ten thousand ringgit; or
- (b) an imprisonment for a term not exceeding one year; or
- (c) both fine and imprisonment.

Continued offence as separate offence.

57. For every single day an offence is continued, it shall be considered as a separate offence.

Compounding.

58. (1) The Director or any authorised environmental enforcement officer may compound an offence under this Enactment and such compound shall not be less than -

- (a) five thousand ringgit and not exceeding twenty thousand ringgit for an offence committed under section 51;
- (b) two thousand ringgit and not exceeding ten thousand ringgit for an offence committed under sections 52 and 54;
- (d) five hundred ringgit and not exceeding five thousand ringgit for an offence committed under section 53; or

- (e) one hundred ringgit and not exceeding ten thousand ringgit for an offence committed under section 55 and 56.

(2) If the offender fails to settle such compound within a period of one month from the date of the issuance of the compound notice, he shall be charged in Court.

59. Any debt owed to the State Government under this Enactment shall be paid to the Environment Protection Fund.

Debt owed to be paid to the Environment Protection Fund.

PART XI

RULES, SAVINGS AND REPEAL

60. (1) The Minister may make rules to give effect to the provisions under this Enactment.

Powers to make rules.

(2) Without prejudice to the generality of subsection (1), the Minister may provide rules for -

- (a) the establishment and management of any environmental protection area;
- (b) prescribing licencing scheme and fee for any prescribed activity which has or is likely to have an adverse effect on the environment;
- (c) prescribing environmental standards for air, water and soil or permissible noise, and the measurement and control of each standard not inconsistent with the provisions of any regulation or rules made under any written law;
- (d) prescribing rate and procedure for imposition of any product fee, effluent fee, emission fee, user fee or waste disposal fee;
- (e) any use of land, cultivation of land and the methods used thereof, earthworks, hill cutting or land reclamation;
- (f) cutting of trees, clearing or destruction of vegetation or setting fire in any land;
- (g) excavation or dredging in watercourses or altering the source and course of banks or streams;
- (h) any discharge of any pollutant into water, watercourses, lakes or sea and the storage of such pollutant;

- (i) any activity relating to the production, storing, treating, transporting or disposal of waste;
- (j) any activity relating to any sewage line, waste water treatment plant, incineration plant and waste landfill and on the design, operation and maintenance of such line or plant;
- (k) any livestock activity and the disposal of animal and other organic waste;
- (l) any activity relating to the excavation or altering of any geographical or geological feature;
- (m) prescribing the procedure for compounding offences;
- (n) prescribing fee to be paid for anything permitted or required to be done under this Enactment;
- (o) regulating and prescribing the practice and procedure of appeal to the Environment Appeal Board and the fees payable in respect thereof;
- (p) regulating and prescribing the practice and procedure for registration of environmental consultants and the fees payable in respect thereof;
- (q) prescribing the forms to be used for any purpose of this Enactment; and
- (r) generally prescribing such matters as may be necessary for more effectively carrying out the purposes under this Enactment.

Repeals and savings.

61. The Conservation of Environment Enactment 1996 is hereby repealed:

Provided that –

- (a) all appointments made and powers and authorities exercised or conferred under that Enactment shall, so far as they are not inconsistent with the provisions under this Enactment, be deemed to have been made, exercised or conferred under this Enactment;
- (b) notwithstanding anything contained in this Enactment, any agreement of environmental conditions entered or environmental impact assessment report submitted prior and still valid at the date of commencement of this Enactment shall be deemed to be an agreement of environmental conditions

entered or environmental impact assessment report submitted under this Enactment;

- (c) any order issued under that Enactment and still valid at the date of commencement of this Enactment shall be deemed to be an order issued under this Enactment.

CERTIFIED by me to be a true copy of the Bill passed by the Legislative Assembly on Friday, the 25th day of October, 2002.

DATUK FRANCIS T.N. YAP,
Deputy Speaker,
State Legislative Assembly.