

ENVIRONMENTAL QUALITY ACT, 1974

(Act 127)

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ENVIRONMENTAL QUALITY ACT, 1974

(Act 127)

An Act relating to the prevention, abatement, control of pollution and enhancement of the environment, and for purposes connected therewith.

[15.4.1975]

BE IT ENACTED by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I PRELIMINARY

1. Short title, application and commencement.

(1) This Act may be cited as the Environmental Quality Act, 1974 and shall apply to the whole of Malaysia.

(2) This Act shall come into force on such date as the Minister may appoint by a notification in the *Gazette* and the Minister may appoint different dates for the coming into force of different provisions of this Act and may bring all or any provisions thereof into force either in the whole of Malaysia to which the notification applies or such area as may be specified in the notification.

2. Interpretation.

In this Act, unless the context otherwise requires—

“beneficial use” means a use of the environment or any element or segment of the environment that is conducive to public health, welfare or safety and which requires protection from the effects of wastes, discharges, emissions and deposits;

“control equipment” includes—

- (a) any apparatus for collecting wastes;
- (b) any automatic device used for securing the more efficient operation of any equipment;

(c) any device to indicate or record pollution or to give warning of excessive pollution; and

(d) any other device used for the purpose of limiting pollution;

“Council” means the Environmental Quality Council established under section 4;

“Director General” means the Director General of Environmental Quality referred to in section 3;

“element” in relation to the environment means any of the principal constituent parts of the environment including water, atmosphere, soil, vegetation, climate, sound, odour, aesthetics, fish and wildlife;

“environment” means the physical factors of the surroundings of the human beings including land, water, atmosphere, climate, sound, odour, taste, the biological factors of animals and plants and the social factor of aesthetics;

“industrial plant” means any plant used for the generation of power or for any industrial use or for the operation of ships, dredges, locomotives, cranes or other machines;

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“Malaysian waters” means the territorial waters of Malaysia as determined in accordance with the Emergency (Essential Powers) Ordinance, No. 7 1969;

“Minister” means the Minister charged with the responsibility for environment protection;

“mixture containing oil” means a mixture with such oil content as may be specified by the Minister or, if such oil content is not specified, a mixture with an oil content of one hundred parts or more in one million parts of the mixture;

“monitoring programme” means all actions taken and equipment used for the purpose of detecting or measuring quantitatively or qualitatively the presence, amount or level of any substance, characteristic or effect;

“occupier” means a person in occupation or control of premises, and in relation to premises different parts of which are occupied by different persons, means the respective persons in occupation or control of each part;

“oil” means—

(a) crude oil, diesel oil, fuel oil and lubricating oil; and

(b) any other description of oil which may be prescribed by the Minister;

“owner” in relation to any premises means—

- (a) the registered proprietor of the premises;
- (b) the lessee of a lease including a sub-lease of the premises, whether registered or not;
- (c) the agent or trustee of any of the owners described in paragraphs (a) and (b) of this definition or where such owner as described in paragraphs (a) and (b) cannot be traced or has died, his legal personal representative;
- (d) the person for the time being receiving the rent of the premises whether on his own account or as agent or trustee for any other person or as receiver or who would receive if such premises were let to a tenant;

and in relation to any ship means the person registered as the owner of the ship or in the absence of registration, the person owning the ship except that in the case of a ship owned by any country and operated by a company which in that country is registered as the ship’s operator, “owner” shall include such country;

“pollutant” means any substance whether liquid, solid or gaseous which directly or indirectly—

- (a) alters the quality of any segment or element of the receiving environment so as to affect any beneficial use adversely; or
- (b) is hazardous or potentially hazardous to health;

and includes objectionable odours, radio-activity, noise, temperature change or physical, chemical or biological change to any segment or element of the environment;

“pollution” means any direct or indirect alteration of the physical, thermal, chemical, biological, or radioactive properties of any part of the environment by discharging, emitting, or depositing wastes so as to affect any beneficial use adversely, to cause a condition which is hazardous or potentially hazardous to public health, safety, or welfare, or to animals, birds, wildlife, fish or aquatic life, or to plants or to cause a contravention of any condition, limitation, or restriction to which a licence under this Act is subject;

“practicable” means reasonably practicable having regard, among other things, to local conditions and circumstances

and to the current state of technical knowledge and the term "practicable means" includes the provision and the efficient maintenance of plant and the proper use thereof and the supervision by or on behalf of the occupier of any process or operation;

"premises" includes messuages, buildings, lands, and hereditaments of every tenure and any machinery, plant, or vehicle used in connection with any trade carried on at any premises;

"prescribed" means prescribed by or under this Act or continued in operation by this Act;

"prescribed premises" means any premises prescribed by the Minister under section 18;

"segment" in relation to the environment means any portion or portions of the environment expressed in terms of volume, space, area, quantity, quality, or time or any combination thereof;

"ship" includes every description of vessel or craft or floating structure;

"soil" includes earth, sand, rock, shales, minerals and vegetation in the soil;

"trade" means any trade, business or undertaking whether ordinarily carried on at fixed premises or at varying places which results in the discharge of wastes and includes any activity prescribed to be a trade, business or undertaking for the purposes of this Act;

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"vehicle" means a structure capable of moving or being moved or used for the conveyance of any person or thing and which maintains contact with the ground when in motion;

"waste" includes any matter prescribed to be waste and any matter, whether liquid, solid, gaseous, or radioactive, which is discharged, emitted, or deposited in the environment in such volume, composition or manner as to cause an alteration of the environment.

PART II ADMINISTRATION

3. Director General and other officers.

(1) There shall be a Director General of Environmental Quality who shall be appointed by the Minister from amongst members of the public service and whose powers,

duties and functions shall be—

- (a) to administer this Act and any regulations and orders made thereunder;
- (b) to be responsible for and to co-ordinate all activities relating to the discharge of wastes into the environment and for preventing or controlling pollution and protecting and enhancing the quality of the environment;
- (c) to recommend to the Minister the environment protection policy and classifications for the protection of any portion of the environment or any segment of the environment with respect to the uses and values, whether tangible or intangible, to be protected, the quality to be maintained, the extent to which the discharge of wastes may be permitted without detriment to the quality of the environment, long range development uses and planning and any other factors relating to the protection and enhancement of the environment;
- (d) to control by the issue of licences the volume, types, constituents and effects of wastes, discharges, emissions, deposits or other sources of emission and substances which are of danger or a potential danger to the quality of the environment or any segment of the environment;
- (e) to undertake surveys and investigations as to the causes, nature, extent of pollution and as to the methods of prevention of pollution and to assist and co-operate with other persons or bodies carrying out similar surveys or investigations;
- (f) to conduct, promote and co-ordinate research in relation to any aspect of pollution or the prevention thereof and to develop criteria for the protection and enhancement of the environment;
- (g) to recommend to the Minister standards and criteria for the protection of beneficial uses and the maintenance of the quality of the environment having regard to the ability of the environment to absorb waste without detriment to its quality and other characteristics;
- (h) to co-opt any persons or bodies to form panels of experts whom he considers capable of assisting him in relation to special problems;

- (i) to publish an annual report on environmental quality not later than 30th September of the following year and such other reports and information with respect to any aspect of environmental protection;
- (j) to specify methods to be adopted in taking samples and making tests for the purposes of this Act;
- (k) to undertake investigations and inspections to ensure compliance with this Act or the regulations made thereunder and to investigate complaints relating to breaches of this Act or the regulations made thereunder;
- (l) to provide information and education to the public regarding the protection and enhancement of the environment;
- (m) to establish and maintain liaison and co-operation with each of the State Authorities in Malaysia and with other countries with respect to environment protection, pollution control and waste management;
- (n) to report to the Minister upon matters concerning the protection and enhancement of the environment and upon any amendments he thinks desirable to any law affecting pollution and environment and upon any matters referred to him by the Minister; and
- (o) to promote, encourage, co-ordinate and carry out planning in environmental management, waste management and pollution control.

(2) There shall be such number of Deputy Directors General of Environmental Quality and such other officers as may be necessary and expedient for the due administration of this Act who shall be appointed by the Minister from amongst members of the public service.

(3) The Minister may give to the Director General directions of a general character not inconsistent with this Act as to the exercise of the powers, duties and functions of the Director General under this Act and the Director General shall give effect to any directions so given.

(4) Unless excepted under any regulations made under this Act, any Deputy Director General and such other officer may exercise any powers, duties and functions of the Director General under this Act.

4. Establishment of the Environmental Quality Council.

(1) There is hereby established for the purposes of this Act a body by the name of the Environmental Quality Council whose functions shall be— *[Am. Act
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- (a) generally to advise the Minister on matters pertaining to this Act; and
- (b) to advise the Minister on any matter referred to it by the Minister.

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

- (a) a Chairman who shall be appointed by the Minister;
- (b) the Secretary General, Ministry of Science, Technology and the Environment or his authorized representative;
- (c) the Secretary General, Ministry of Trade and Industry or his authorized representative;
- (cc) the Secretary General, Ministry of Agriculture or his authorized representative; *[Ins. Act
A636]*
- (d) the Secretary General, Ministry of Labour or his authorized representative;
- (dd) the Secretary General, Ministry of Transport or his authorized representative; *[Ins. Act
A636]*
- (e) the Director General of Health or his authorized representative;
- (f) one member each from Sabah and Sarawak; who shall be appointed by the Minister after consultation with the Governments of the States of Sabah and Sarawak;
- (g) one member who shall be appointed by the Minister from among persons engaged in the petroleum industry;
- (gg) one member who shall be appointed by the Minister from nominations by the oil palm industry; *[Ins. Act
A636]*
- (h) one member who shall be appointed by the Minister from nominations by the Federation of Malaysian Manufacturers or if such Federation no longer exist from among persons engaged in manufacture;
- (hh) one member who shall be appointed by the Minister from nominations by the rubber industry; *[Ins. Act
A636]*
- (i) one member who shall be appointed by the Minister from among the academic staff of the Universities or Colleges in Malaysia.

(j) two members who shall be appointed by the Minister from among registered societies knowledgeable and having interests in matters pertaining to the environment.

(3) The Minister may in respect of each member appointed under paragraphs (f), (g), (gg), (h), (hh), (i) and (j) 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.

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

(5) An alternate member shall, unless he sooner resigns or his 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.

5. Duration of office and eligibility for re-appointment.

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

6. Disqualification, resignation and vacation from office.

(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 his duties;
- (b) a person who has been found guilty of an offence involving fraud, dishonesty or moral turpitude; and
- (c) a person who is a bankrupt or who has made an arrangement with his creditors.

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

- (a) upon his death;
- (b) upon his resignation;
- (c) upon his failure to attend three consecutive meetings of the Council without permission from the Minister;
or

(d) if he becomes disqualified under subsection (1), and a new member shall be appointed in his place in accordance with the provisions of this Act.

7. Calling of meetings, quorum, voting, procedure and minutes.

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

(2) Eight members shall be a quorum at any of the meetings of the Council. *[Am. Act
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(3) If on any question to be determined by the Council there is an equality of votes, the Chairman or if the Chairman is absent the presiding member shall have a casting vote in addition to his deliberative vote.

(4) Subject to this Act, the Council shall determine its own procedure.

(5) Minutes shall be kept of all proceedings of the Council and copies thereof shall be submitted to the Minister.

8. Presiding officer at meetings of the Council.

(1) The Chairman of the Council shall preside at all meetings of the Council.

(2) If, owing to absence or inability to act due to illness or any other cause, the Chairman of the Council is unable to preside at any meeting the members present shall elect one of their number to preside at that meeting.

(3) No business shall be transacted at any meeting of the Council in the absence of the Chairman until a member has been elected to preside over that meeting.

9. Remuneration.

Every appointed member may be paid a sum as may be determined by the Minister in respect of his attendance at a meeting of the Council.

PART III
LICENCES

10. Licencing authority.

The Director General shall be the licencing authority.

11. Licences.

(1) An application for a licence or for any renewal or transfer thereof shall be made to the Director General in such form as may be prescribed and shall unless the Director General allows payment by instalments be accompanied by the prescribed fee.

(2) An applicant for a licence or for the renewal or transfer thereof shall furnish in writing or otherwise such information as the Director General may consider necessary and relevant to the application.

(3) The Director General—

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(a) may grant any application for a licence or for a renewal or transfer thereof, either subject to conditions or unconditionally and where an application is granted subject to conditions, the conditions shall be specified in the licence to which the application relates;

(b) may during the currency of a licence revoke or vary any condition attached to the licence or attach new conditions thereto whether in addition to or in substitution for existing conditions and shall notify the holder of the licence of his action in that behalf; or

(c) shall not grant any application for a licence in respect of any premises the use whereof as such would contravene any town planning scheme, or any law respecting the use or development of land.

(4) The Director General shall, before varying any condition attached to the licence or attaching new conditions thereto, take into consideration—

(a) whether it would be practicable to adapt the existing equipment, control equipment or industrial plant to conform with the varied or new condition;

(b) the economic life of the existing equipment, control equipment or industrial plant, having regard to the date of purchase;

- (c) the quantity or degree of cut-back of emission, discharge or deposit of wastes to be achieved by the varied or new condition;
- (d) the estimated cost to be incurred by the licensee to comply with the varied or new condition; and
- (e) the nature and size of the trade, process or industry being carried out in the premises.

(5) In any case to which subsection (3) (c) applies, the application for the licence shall be deemed to be finally determined by the refusal to grant the application, or if an appeal is made against the refusal, upon the determination of the appeal.

12. Power to attach conditions to licences.

(1) Without affecting the generality of section 11, any condition attached to a licence by the Director General—

- (a) may require the holder of the licence—
 - (i) to repair, alter or replace any equipment in or on any premises specified in the licence;
 - (ii) to install and operate control equipment in or on any premises specified in the licence;
 - (iii) to repair, alter or replace any control equipment installed in or on any premises specified in the licence;
 - (iv) at his own expense, to conduct a monitoring programme designed to provide the Director General with information concerning the characteristics, quantity or effects of the emission, discharge or deposit in respect of which the licence is issued, which information recorded by such programme shall be supplied to the Director General at such time and in such manner as may be specified by the Director General; or
 - (v) to carry out any of the requirements imposed on him under the foregoing provisions of this paragraph within such period as may be specified in the conditions; or
- (b) may prohibit the holder of the licence from altering or replacing any control equipment installed in or on any premises specified in the licence except with the prior written permission of the Director General.

(2) Where under this Act a right of appeal is given against the decision of the Director General attaching a condition to a licence, any condition so attached has no force until the time limited for appealing against the condition has expired and, where an appeal against the condition has been duly made under this Act, until the hearing of the appeal confirms the decision of the Director General imposing the condition.

13. Duration and renewal of licences.

(1) A licence shall, unless otherwise specified in the licence or in any regulations made hereunder, remain in force for a period of one year from the date of its issue and may be renewed upon application made within the time stipulated hereunder.

*[Am. Act
A636]*

(2) The holder of a licence who desires to obtain a renewal of the licence shall, at any time being not less than three months nor more than four months before the date of the expiration of the licence or of the subsisting renewal thereof, as the case may be, apply in such form as may be prescribed to the Director General for a renewal of the licence.

(3) Any person who fails to apply for renewal within the time specified in subsection (2) shall pay a late fee of one per centum of the licence fee or ten ringgit whichever is the greater for every day of delay.

(4) Where any application for renewal is made after the expiry of the licence the Director General may refuse to renew same or may renew subject to an imposition of an expiry fee not exceeding five hundred per centum of the licence fee or ten thousand ringgit whichever is the greater.

(5) Where any application is made by post, the date on the postmark on the envelope shall be deemed to be the date on which the application was made and in cases where the Director General is unable to ascertain the date on the postmark, the application shall be deemed to have been made three days before the date on which such application was received by the Director General.

14. Transfer of licences.

Where the holder of a licence ceases to be the occupier of the premises specified in the licence the occupier of those premises may apply in such form as may be prescribed,

accompanied by the prescribed fee, to the Director General for approval of the transfer to him of the licence in respect of those premises.

15. Register of licences.

There shall be kept such registers of licences as may be prescribed.

16. Licensee to comply with licence.

(1) The holder of a licence shall comply in every respect with the terms and conditions thereof.

(2) Any holder of a licence who contravenes subsection (1) shall be guilty of an offence and shall be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a period not exceeding two years or to both, and to a further fine of one thousand ringgit for every day that the offence is continued after a notice by the Director General requiring him to comply with such term or condition specified therein has been served upon him. *[Ins. Act
A636]*

17. Licence fees.

(1) The Minister after consultation with the Council may prescribe the fees payable in respect of a licence, any transfer or renewal thereof.

(2) Different fees may be prescribed according to any one or more of the following factors—

- (a) the class of premises;
- (b) the location of such premises;
- (c) the quantity of wastes discharged;
- (d) the pollutant or class of pollutants discharged;
- (e) the existing level of pollution.

(3) Where upon inspection it is ascertained that the pollutants or class of pollutants discharged, emitted or deposited is different from or the quantity of wastes discharged, emitted or deposited is greater than, that declared by the occupier in his application for or renewal of licence, the Director General may recover such fees as would have been payable in respect of that pollutant or class of pollutant or extra quantity of discharge, emission or deposit.

(4) In calculating the fees payable under subsection (3), the occupier shall be deemed to have discharged, emitted or deposited that pollutant or class of pollutants or that quantity of wastes for a period of six months preceding the inspection or, if the application for or renewal of licence was made less than before six months the inspection for the period beginning from the application up to the inspection.

(5) No additional fees shall be payable under subsections (3) and (4) if the additional sum payable is less than ten per centum of the fees paid by the occupier during the corresponding period.

PART IV

PROHIBITION AND CONTROL OF POLLUTION

18. Prescribed premises to be licenced.

(1) The Minister after consultation with the Council may by order prescribe the premises (hereinafter referred to as prescribed premises) the occupation or use of which by any person shall, unless he is the holder of a licence issued in respect of those premises, be an offence under this Act.

(2) The provisions of subsection (1) do not apply to a person—

(a) who, on the date of the coming into operation of this Act, is the occupier of prescribed premises, and within the prescribed period after that date makes application for a licence in respect of those prescribed premises;

(b) who, where by virtue of any order made by the Minister from time to time amending any previous order made under this section, premises not previously prescribed premises become prescribed premises, is, consequent upon the order, the occupier of any prescribed premises, and who within the prescribed period after the publication of the order in the *Gazette* makes application for a licence in respect of those prescribed premises;

(c) who has made application for the transfer to him of a licence in respect of any prescribed premises and made the application within the prescribed

period after he became the occupier of those prescribed premises,

until his application has been finally determined.

(3) Any person found guilty of an offence under subsection (1) shall be liable to a fine not exceeding ten thousand ringgit or imprisonment for a period not exceeding two years or to both and to a further fine of one thousand ringgit for every day that the offence is continued after a notice by the Director General requiring him to cease the act specified has been served upon him. *[Ins. Act
A636]*

19. Prohibition against causing premises to become prescribed premises.

No person shall—

- (a) carry out any work on any premises that would cause those premises to become prescribed premises;
- or
- (b) construct on any land any building designed for or used for a purpose that would cause the land or building to become prescribed premises,

without the prior written permission of the Director General.

20. Requirement and approval of plans.

(1) Every application to carry out any work, building, erection or alteration specified in section 19 shall be submitted to the Director General and shall be accompanied by—

- (a) the plans and specifications of the proposed work, building, erection or alteration together with details of the control equipment if any to be installed;
- (b) a lay-out plan indicating the site of the proposed work, building, erection or alteration which will take place in relation to the surrounding areas;
- (c) the details of the trade, industry or process proposed to be carried on in such premises;
- (d) descriptions of waste constituents and characteristics; and
- (e) such other information which the Director General may require,

and the applicant shall pay the prescribed fee.

(2) The Director General may grant such application either subject to conditions or unconditionally and may require the licensee to provide and bear the cost of the control equipment and of a satisfactory monitoring programme:

Provided that no application shall be granted unless the applicant has obtained planning approval from the competent planning authority.

21. Power to specify conditions of discharge.

The Minister, after consultation with the Council, may specify the acceptable conditions for the emission, discharge or deposit of wastes or the emission of noise into any area, segment or element of the environment and may set aside any area, segment or element of the environment within which the emission, discharge or deposit is prohibited or restricted.

22. Restrictions on pollution of the atmosphere.

(1) No person shall, unless licenced, emit or discharge any wastes into the atmosphere in contravention of the acceptable conditions specified under section 21.

(2) Without limiting the generality of subsection (1), a person shall be deemed to emit or discharge wastes into the atmosphere if—

- (a) he places any matter in a place where it may be released into the atmosphere;
- (b) he causes or permits the discharge of odours which by virtue of their nature, concentration, volume or extent are obnoxious or offensive;
- (c) he burns any wastes of the trade, process or industry;
or
- (d) he uses any fuel burning equipment not equipped with any device or control equipment required to be fitted to such equipment.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a period not exceeding two years or to both and to a further fine not exceeding one thousand ringgit a day for every day that the offence is continued after a notice by the Director

General requiring him to cease the act specified therein has been served upon him.

23. Restrictions on noise pollution.

(1) No person shall, unless licenced, emit or cause or permit to be emitted any noise greater in volume, intensity or quality in contravention of the acceptable conditions specified under section 21.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable to a fine not exceeding five thousand ringgit or to imprisonment for a period not exceeding one year or to both and to a further fine not exceeding five hundred ringgit a day for every day that the offence is continued after a notice by the Director General requiring him to cease the act specified therein has been served upon him.

24. - Restrictions on pollution of the soil.

(1) No person shall, unless licenced, pollute or cause or permit to be polluted any soil or surface of any land in contravention of the acceptable conditions specified under section 21.

(2) Notwithstanding the generality of subsection (1), a person shall be deemed to pollute any soil or surface of any land if—

(a) he places in or on any soil or in any place where it may gain access to any soil any matter whether liquid, solid or gaseous; or

(b) he establishes on any land a refuse dump, garbage tip, soil and rock disposal site, sludge deposit site, waste-injection well or otherwise used land for the disposal of or a repository for solid or liquid wastes so as to be obnoxious or offensive to human beings or interfere with underground water or be detrimental to any beneficial use of the soil or the surface of the land.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a period not exceeding two years or to both and to a further fine not exceeding one thousand ringgit a day for every day that the offence is continued after a notice by the Director General

requiring him to cease the act specified therein has been served upon him.

25. Restrictions on pollution of inland waters.

(1) No person shall, unless licenced, emit, discharge or deposit any wastes into any inland waters in contravention of the acceptable conditions specified under section 21.

(2) Without limiting the generality of subsection (1), a person shall be deemed to emit, discharge or deposit wastes into inland waters if—

(a) he places any wastes in or on any waters or in a place where it may gain access to any waters;

(b) he places any waste in a position where it falls, descends, drains, evaporates, is washed, is blown or percolates or is likely to fall, descend, drain, evaporate or be washed, be blown or percolated into any waters, or knowingly or through his negligence, whether directly or indirectly, causes or permits any wastes to be placed in such a position; or

(c) he causes the temperature of the receiving waters to be raised or lowered by more than the prescribed limits.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a period not exceeding two years or to both and to a further fine not exceeding one thousand ringgit a day for every day that the offence is continued after a notice by the Director General requiring him to cease the act specified therein has been served upon him.

26. (Deleted by Act A636).

27. Prohibition of discharge of oil into Malaysian waters.

[Am. Act
A636]

(1) No person shall, unless licensed, discharge or spill any oil or mixture containing oil into Malaysian waters in contravention of the acceptable conditions specified under section 21.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable to a fine of not less

than one thousand ringgit and not exceeding twenty-five thousand ringgit or to imprisonment not exceeding two years or to both.

28. Special defences.

Where any person is charged for any offence under section 27 it shall be a defence to prove that such discharge or spillage was—

- (a) for the purpose of securing the safety of the vessel;
- (b) for the purpose of saving human life;
- (c) the result of damage to the vessel and that all reasonable steps were taken to prevent, to stop or to reduce the spillage;
- (d) the result of a leakage, which was not due to want of care, and that all reasonable steps have been taken to stop or reduce the leakage; or
- (e) the result of an effluent produced by operation for the refining of oil, and that all reasonable steps had been taken to eliminate oil from the effluent and that it was not reasonably practicable to dispose of the effluent otherwise than by discharging or spilling it into the Malaysian waters.

29. Prohibition of discharge of wastes into Malaysian waters.

(1) No person shall, unless licensed, discharge wastes into the Malaysian waters in contravention of the acceptable conditions specified under section 21. *[Am. Act
A636]*

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable to a fine not exceeding ten thousand ringgit or to imprisonment not exceeding two years or to both.

30. Power to prohibit use of any material or equipment.

The Minister after consultation with the Council may by order published in the *Gazette*—

- (a) prohibit the use of any materials for any process, trade or industry;
- (b) prohibit whether by description or by brand name the use of any equipment or industrial plant,

within the areas specified in the order.

31. Power to require occupier to install, operate, repair, etc.

(1) Where any pollutants are being or are likely to be emitted, discharged or deposited from any premises irrespective of whether such premises are prescribed premises or not, the Director General may by notice in writing require the occupier of those premises to—

- (a) install and operate control equipment or additional control equipment;
- (b) repair, alter or replace any equipment or control equipment on those premises;
- (c) erect or increase the height of any chimney,

within such time and in such manner as may be specified in the notice.

(2) Notwithstanding any other provisions to the contrary, the Director General may by notice direct the occupier of any premises to emit, discharge or deposit pollutants during such periods of day as he may specify and may generally direct the manner in which such occupier shall carry out his trade, industry or process or operate any equipment, industrial plant or control equipment therein.

32. Occupiers to maintain and operate equipment.

The occupier of any premises which is licensed under this Act shall maintain any equipment or control equipment installed on those premises in an efficient condition and shall operate the equipment or control equipment in a proper and efficient manner.

33. Power to prohibit or control licenced persons from discharging, etc. of wastes in certain circumstances.

(1) Where several persons are licensed under this Act to emit, discharge or deposit wastes into the same segment or element of environment and appears to the Director General that each of such persons is complying with the conditions of the licence but nevertheless the collective effect of the aggregate of such wastes is likely to cause a worsening of condition in that segment or element of the environment such as to affect the health, welfare or safety of human beings, or to threaten the existence of any animals, birds, wildlife, fish or other aquatic life, the Director General may, by notice serve on each of the licensees, requiring each of

them to abate such emission, discharge or deposit in the manner and within the period specified in the notice.

(2) Any person who contravenes the notice issued under subsection (1) shall be guilty of an offence and shall be liable to a fine not exceeding ten thousand dollars or to imprisonment not exceeding two years or to both and to a further fine not exceeding one thousand dollars a day for every day that the offence is continued after service on him of the notice specified in subsection (1).

34. Exemptions.

If the Director General is satisfied on the application of any person interested that it is expedient to do so for the purpose of enabling investigation or research relevant to the problem of pollution to be carried out without rendering the applicant liable to proceedings under this Act or the regulations made thereunder, the Director General may by notice in writing to the applicant exempt, wholly or to a limited extent any premises or any equipment or industrial plant subject to such conditions and for such period as may be specified in the notice.

34A. Report on impact on environment resulting from prescribed activities. *[Ins. Act A636]*

(1) The Minister, after consultation with the Council, may by order prescribe any activity which may have significant environmental impact as prescribed activity.

(2) Any person intending to carry out any of the prescribed activities shall, before any approval for the carrying out of such activity is granted by the relevant approving authority, submit a report to the Director General. The report shall be in accordance with the guidelines prescribed by the Director General and shall contain an assessment of the impact such activity will have or is likely to have on the environment and the proposed measures that shall be undertaken to prevent, reduce or control the adverse impact on the environment.

(3) If the Director General on examining the report and after making such inquiries as he considers necessary, is of the opinion that the report satisfies the requirements of subsection (2) and that the measures to be undertaken to prevent, reduce or control the adverse impact on the environment are adequate, he shall approve the report, with or without conditions attached thereto, and shall inform the person intending

to carry out the prescribed activity and the relevant approving authorities accordingly.

(4) If the Director General, on examining the report and after making such inquiries as he considers necessary, is of the opinion that the report does not satisfy the requirements of subsection (2) or that the measures to be undertaken to prevent, reduce or control the adverse impact on the environment are inadequate, he shall not approve the report and shall give his reasons therefor and shall inform the person intending to carry out the prescribed activity and the relevant approving authorities accordingly:

Provided that where such report is not approved it shall not preclude such person from revising and resubmitting the revised report to the Director General for his approval.

(5) The Director General may if he considers it necessary require more than one report to be submitted to him for his approval.

(6) Any person intending to carry out a prescribed activity shall not carry out such activity until the report required under this section to be submitted to the Director General has been submitted and approved.

(7) If the Director General approves the report, the person carrying out the prescribed activity, in the course of carrying out such activity, shall provide sufficient proof that the conditions attached to the report (if any) are being complied with and that the proposed measures to be taken to prevent, reduce or control the adverse impact on the environment are being incorporated into the design, construction and operation of the prescribed activity.

(8) Any person who contravenes this section shall be guilty of an offence and shall be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a period not exceeding two years or to both and to a further fine of one thousand ringgit for every day that the offence is continued after a notice by the Director General requiring him to comply with the act specified therein has been served upon him.

PART V

APPEAL AND APPEAL BOARD

35. Appeal.

- (1) Any person who is aggrieved by—
(a) a refusal to grant a licence or transfer of a licence;

- (b) the imposition of any condition, limitation or restriction on his licence;
- (c) the revocation, suspension or variation of his licence;
- (d) the amount which he would be required to pay under section 47;
- (e) any decision of the Director General under subsection (3) or (4) of section 34A; and *[Ins. Act A636]*
- (f) any decision of the Director General or any officer under subsection (2) or (5) of section 48A, *[Ins. Act A636]*

may within such time and in such manner as may be prescribed, appeal to the Appeal Board.

(2) The Appeal Board may after hearing the Director General and the appellants make such order as it deems fit.

36. Appeal Board.

(1) For the purpose of this Act there shall be appointed an Appeal Board consisting of three members, one of whom shall be the Chairman (hereafter in this section referred to as the Chairman).

(2) There shall also be a Deputy Chairman of the Appeal Board (hereafter in this section referred to as a Deputy Chairman) who shall only serve in the Appeal Board if the Chairman is unable to exercise his functions owing to illness, absence from the Federation or for any other cause whatsoever; and when the Deputy Chairman is to serve in the Appeal Board under the aforesaid circumstances he shall exercise the functions of the Chairman.

(3) The Chairman and the Deputy Chairman shall be persons nominated by the Lord President from amongst persons who for the seven years preceding the nomination have been advocates and solicitors of the High Courts in Malaysia or have been members of the judicial and legal service of the Federation and who shall be appointed by a notification in the *Gazette* by the Minister for a period not exceeding three years; and any person so appointed shall be eligible for reappointment.

(4) (a) The Chairman may call upon to serve on the Appeal Board any two members from a panel of persons appointed by notification in the *Gazette* by the Minister.

(b) The appointment of any member, other than the

Chairman and the Deputy Chairman shall be for a period of three years unless he sooner resigns or his appointment is sooner revoked.

(5) The Minister may revoke the appointment of the Chairman or Deputy Chairman or the appointment of the other members without assigning any reason therefor.

(6) A member of the Appeal Board having an interest in any matter before the Board shall disclose to the Appeal Board the fact of his interest and the nature thereof, and such disclosure shall be recorded and such member shall take no part in any proceedings of the Appeal Board relating to such matter.

(7) Every decision of the Appeal Board shall be made by the Chairman of the Appeal Board after considering the opinion of the other two members but in making his decision the Chairman shall not be bound to conform to the opinion of the other two members or either of them provided that the Chairman shall record his reasons for dissenting therefrom.

(8) In addition to all the powers granted to the Appeal Board under this Act the Appeal Board shall also have power to award costs or make any order in respect of an appeal before it.

(9) The rules of procedure for the hearing of appeal under this Act shall follow insofar as applicable, the Subordinate Courts Rules and the Chairman shall keep a record of such hearing.

(10) A member shall be entitled to such remuneration or allowances as may be determined by the Minister.

PART VI

MISCELLANEOUS

37. Occupier to furnish information.

(1) The Director General may by notice require the occupier of any premises to furnish to him within such period as may be specified in the notice such information relating to any equipment, control equipment or industrial plant found on such premises or as to any wastes discharged or likely to be discharged therefrom.

(2) Any person who, when required by the Director General to answer any question or to furnish any information, fails to answer such question or to furnish such information as is required or gives any answer or information that is false or misleading in any material respect shall be guilty of an offence and shall be liable to a fine not exceeding two thousand ringgit or to imprisonment not exceeding six months or to both.

38. Power to enter and inspect.

The Director General or any other officer duly authorized in writing by him may at any time enter any premises whether prescribed or otherwise and may—

- (a) examine and inspect any equipment, control equipment, monitoring equipment or industrial plant;
- (b) take sample of any pollutants that are emitted, discharged or deposited or are likely to be or are of a class or kind that are usually emitted, discharged or deposited from such premises;
- (c) examine any books, records or documents relating to the performance or use of such equipment, control equipment, monitoring equipment or industrial plant or relating to the emission, discharge or deposit from such premises;
- (d) photograph such premises as he considers necessary or make copies of any books, records or documents seen in the course of such examination; or
- (e) take sample of any fuel, substance or material used, likely to be used or usually used in such trade, industry or process carried on in or on such premises.

39. Service of notices.

(1) Every notice, order, summons or document required or authorized by this Act or any regulations made thereunder to be served on any person may be served—

- (a) by delivering the same to such person or by delivering the same to some adult member or servant of his family;
- (b) by leaving the same at the usual or last known place of abode or business of such person in a cover addressed to such person; or
- (c) by forwarding the same by registered post in a

prepaid cover addressed to such person at his usual or last known place of abode or business.

(2) A notice, order, summons or document required or authorized by this Act or any regulations made thereunder to be served on the owner or occupier of any premises shall be deemed to be properly addressed if addressed by the description of the "owner" or "occupier" of such premises without further name or description.

(3) A notice, order, summons or document required or authorized by this Act or any regulations made thereunder to be served on the owner or occupier of any premises may be served by delivering the same or a true copy thereof to some adult person on the premises or, if there is no such person on the premises to whom the same can with reasonable diligence be delivered, by affixing the notice, order, summons, or document to some conspicuous part of the premises.

40. Evidence.

(1) The contents of any document prepared, issued or served under, by virtue of or for the purposes of this Act shall until the contrary is proved be presumed to be correct and the production of any book purporting to show the licences issued under this Act shall be *prima facie* proof of the issue, lack of issue or date of expiry of such licences.

(2) Notwithstanding any other laws to the contrary, in any proceedings under this Act or the regulations made thereunder a certificate for the purpose of establishing the occupier of any premises or prescribed premises as the case may be which purports to be signed by the Collector of Land Revenue shall unless the contrary is proved be evidence of any facts stated therein.

(3) In any proceeding for offences against this Act or the regulations made thereunder where it is necessary to prove that any person was or was not licenced on a certain date or for a certain period or that a licence was subject to any specified condition, limitation or restriction or that a licence was suspended during a certain period a certificate in writing purporting to be signed by the Director General setting out that such person was or was not licenced on that date or any condition, limitation or restriction to which a licence issued to such person is subject or for or during that period or that the licence of such person was suspended during such period shall be *prima facie* evidence of the

facts stated therein and the Director General shall not be cross-examined on the contents of such certificate unless he has been served with ten days' notice stating the intention to do so and further stating the particulars which are intended to be challenged.

41. Penalty for offences not otherwise provided for.

Every omission or neglect to comply with, and every act done or attempted to be done contrary to, the provisions of this Act or any regulations made thereunder or any breach of the conditions and restrictions subject to, or upon which, any licence is issued under this Act or any regulations made thereunder shall be an offence against this Act and in respect of any such offence for which no penalty is expressly provided the offender shall be liable to a fine not exceeding five thousand ringgit or to imprisonment not exceeding one year or to both.

42. Attempts and abetments.

Whoever attempts to commit any offence punishable under this Act or any regulations made thereunder or abets the commission of such offence, shall be punished with the punishment provided for such offence.

43. Offences by bodies of persons and by servants and agents.

(1) Where an offence against this Act or any regulations made thereunder has been committed by a company, firm, society or other body of persons, any person who at the time of the commission of the offence was a director, manager, or other similar officer or a partner of the company, firm, society or other body of persons or was purporting to act in such capacity shall be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he had exercised all such diligence as to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

(2) Whenever it is proved to the satisfaction of the court that a contravention of the provisions of this Act or any regulations made thereunder has been committed by any clerk, servant or agent when acting in the course of his employment the principal shall also be held liable for such contravention and to the penalty provided thereof unless he proves to the satisfaction of the court that the same was

committed without his knowledge or consent or that he had exercised all such diligence as to prevent the same and to ensure the observance of such provisions:

Provided that nothing in this section shall be deemed to exempt such clerk, servant or agent from liability in respect of any penalty provided by this Act or regulations made thereunder for any contravention proved to have been committed by him.

44. Who may prosecute.

Prosecutions in respect of offences committed under this Act or regulations made thereunder may be conducted by the Director General or any officer duly authorized in writing by him or by any officer of any local authority to which any powers under this Act has been delegated.

45. Compounding of offences.

*[Am. Act
A636]*

(1) The Director General, any Deputy Director General, any Director, or any other public officer to whom the Director General has delegated such power in writing may in his discretion compound such offences against this Act or regulations made thereunder as may be prescribed by the Minister as offences which may be compounded by the Director General, any Deputy Director General, any Director, or any other public officer to whom the Director General had delegated such power in writing by collecting from the person reasonably suspected of having committed the same a sum of money not exceeding five hundred ringgit.

(2) The Minister may make rules to prescribe the method and procedure for compounding such offences.

46. Sessions Court and Court of a Magistrate of the First Class to have jurisdiction.

Notwithstanding any written law to the contrary, a Sessions Court in West Malaysia or a Court of a Magistrate of the First Class in East Malaysia shall have jurisdiction to try any offence under this Act and to award the full punishment for any such offence.

47. Power of recovery of costs and expenses.

*[Am. Act
A636]*

(1) Where any segment or element of the environment is polluted by any person in contravention of this Act or

the regulations made thereunder the Director General may take such action as is necessary to remove, disperse, destroy or mitigate the pollution and may recover from that person all costs and expenses incurred in connection therewith.

(2) A certificate of the Director General stating that—

(a) it is of the opinion that the person named in the certificate is responsible for such pollution shall be *prima facie* evidence for the purposes of any proceedings under this section;

(b) the sum incurred in carrying out all or any of the works required under subsection (1) shall be conclusive proof of the sum due and shall not be subject to any appeal or review in any court.

(3) All and any sum payable by such person shall be a first charge on any property or interest held by such person.

(4) For the purposes of sections 27 and 29 where the discharge or spillage of oil, mixture containing oil or wastes is from—

(a) any ship or two or more ships, the owner of such ship shall be liable or the owner of all such ships concerned shall be jointly and severally liable;

(b) any apparatus used in transferring oil, mixture containing oil or wastes to any ship from a place on land, the person in charge of the apparatus and the employer of that person shall be jointly and severally liable;

(c) any place on land, the occupier thereof shall be liable.

48. Power to detain and sell ships.

(1) Where the Director General has reason to believe that any discharge or spillage of oil or mixture containing oil was from any ship, he may detain the ship and the ship may be so detained until the owner deposits with the Government such sum or furnishes such security as would in the opinion of the Director General be adequate to meet the costs and expenses which would be incurred to remove or eliminate the oil or mixture containing oil.

(2) If such detained ship proceeds to sea before it is released the owner, the master and any person who sends

the ship to sea shall be guilty of an offence and shall be liable to a fine of not less than ten thousand ringgit or to imprisonment not exceeding two years or to both.

(3) Where the owner is unable to pay any fine imposed or the costs and expenses incurred in removing or eliminating the oil or mixture containing oil the Director General may apply to the court for the sale of such vessel and the proceeds used towards the fine or the costs and expenses of removing or eliminating the oil or mixture containing oil.

*[Ins. Act
A636]*

48A. Power to test and prohibit use of vehicle.

(1) The Director General or any officer duly authorized by him in writing may enter and inspect any vehicle in use and for that purpose may require any vehicle to be stopped, and may detain any vehicle during such time as is required for the inspection, and may require the driver of such vehicle to drive it to another place for the purpose of such inspection and may carry out, at the expense of the owner, all such tests and examinations as he considers desirable or necessary to satisfy himself that the provisions of this Act or any regulations made thereunder have been complied with in respect of the vehicle:

Provided that no vehicle shall be detained under this section for a period exceeding forty-eight hours or such longer period as the Director General may by writing authorize in any particular case.

(2) If, on such inspection, it appears to the Director General or officer that, by reason of any defects therein, such vehicle is or is likely to contravene this Act or any regulations made thereunder, he may prohibit the use of such vehicle:

Provided that where in the opinion of the Director General or officer the defects are such as can be remedied within any period not exceeding ten days, the prohibition shall not operate before the expiration of the period.

(3) Where, under subsection (2), the Director General or officer prohibits the use of a vehicle, he shall forthwith give written notice of such prohibition to the registered owner of the vehicle and to the person in charge thereof.

(4) In the case of prohibition on the grounds of such defects as are specified in the proviso to subsection (2), the notice given under subsection (3) shall specify the period within which the defects can in the opinion of such officer be remedied and may require the registered owner of the vehicle or the person

in charge thereof to produce for his inspection the vehicle at such convenient time and place as may be specified in the notice.

(5) A prohibition order made under subsection (2) which has become effective may be removed by the Director General or any officer duly authorized by the Director General in writing if he is satisfied that the vehicle is fit for use.

(6) Where the Director General or an officer withdraws or removes a prohibition he shall give notice of that withdrawal or removal to the registered owner of the vehicle.

(7) The Director General or the officer may by notice in writing require the registered owners of the vehicle to produce for his inspection, at such convenient time and place as may be specified in the notice, and document relating to the vehicle.

(8) If any person fails to comply with this section, or uses or permits to be used a vehicle at any time whilst a prohibition order under subsection (2) is in force in relation to such vehicle, he shall be guilty of an offence and shall be liable to a fine not exceeding five thousand ringgit or to imprisonment for a period not exceeding one year or to both.

48B. Assistance.

The Director General or any person duly authorized by him may require the assistance of any person in the event of pollution or an imminent threat of pollution to the environment.

49. Delegation.

(1) The Director General may by order delegate any of his powers, duties and functions under this Act with respect to the issue of licences, the investigation of offences and the enforcement of this Act to any public officer, any Government Department, any local authority or any committee of persons appointed by him.

(2) Where the Director General has delegated any power to any Government Department, to any local authority or to any committee, any officer of such Government Department or local authority or any member of such committee may exercise any of the powers which the Director General would be able to do had he been exercising the power himself.

(3) Nothing in this section shall preclude the Director General from any responsibility to protect the environment and from administering this Act.

(4) A delegation may be revoked or varied at any time by the Director General.

50. Secrecy.

Any person who discloses any information obtained by him in connection with the administration or execution of this Act or the regulations made thereunder in relation to any manufacturing process or trade secret used in carrying on any particular trade, industry or process shall, unless the disclosure was made for the purposes of this Act or of any criminal proceedings under this Act or with the consent of the person carrying on that trade, industry or process, be guilty of an offence and shall be liable to a fine not exceeding ten thousand ringgit or to imprisonment not exceeding five years or to both.

51. Regulations.

*[Am. Act
A636]*

(1) In addition to and not in derogation of any of the powers contained in any other provisions of this Act, the Minister after consultation with the Council may make regulations for or with respect to—

- (a) prescribing fees for examining plans, specifications and information relating to installations or proposed installations the subject of applications for licences or for any other forms of approval given under this Act or any regulations made thereunder;
- (b) prescribing standards or criteria for the implementation of any declared environmental policy or classification for the protection of the environment and for protecting beneficial uses;
- (c) prescribing standards or criteria for determining when any matter, action or thing is poisonous, noxious, objectionable, detrimental to health, or within any other description referred to in this Act;
- (d) prohibiting the discharge, emission, or deposit into the environment of any matter, whether liquid, solid, or gaseous, or of radio-activity and prohibiting or regulating the use of any specified fuel;
- (e) prescribing ambient air quality standards and emission standards and specifying the maximum permissible concentrations of any matter that may be present in or discharged into the atmosphere;
- (f) prohibiting the use of any equipment, facility,

- vehicle, or ship capable of causing pollution or regulating the construction, installation or operation thereof so as to prevent or minimize pollution;
- (g) requiring the giving of pollution warnings or alerts;
- (h) prohibiting or regulating the open burning of refuse or other combustible matter;
- (i) regulating the establishment of sites for the disposal of solid or liquid wastes on or in land;
- (j) defining objectionable noise and prescribing standards for tolerable noise;
- (k) prohibiting or regulating bathing, swimming, boating or other aquatic activity in or around any waters that may be detrimental to health or welfare or for preventing pollution;
- (l) any matter or thing which by this Act is authorized or required or permitted to be prescribed or which is necessary or expedient to be prescribed for carrying this Act into effect;
- (m) *(Deleted by Act A636).*
- (n) *(Deleted by Act A636).*
- (o) *(Deleted by Act A636).*
- (p) requiring any person handling, storing or using oil or mixture containing oil report discharges and spillages of oil or mixture containing oil into Malaysian waters;
- (q) requiring any person handling, storing or using oil or mixture containing oil to store such substance or material and equipment necessary to deal with any oil pollution of the Malaysian waters that may arise in the course of their business.
- (r) *(Deleted by Act A636).*
- (s) *(Deleted by Act A636).*

(2) Any such regulation may be general or may be restricted in operation as to time, place, persons or circumstances whether any such time, place, person or circumstance is determined or ascertainable before, at or after the making of the regulations.