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Act 127

ENVIRONMENTAL QUALITY ACT 1974

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ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title, application and commencement
2. Interpretation

PART II

ADMINISTRATION

3. Director General and other officers
4. Establishment of the Environmental Quality Council
5. Duration of office and eligibility for reappointment
6. Disqualification, resignation and vacation from office
7. Calling of meetings, quorum, voting, procedure and minutes
8. Presiding officer at meeting of Council
9. Remuneration

PART III

LICENCES

10. Licensing authority
11. Licences
12. Power to attach conditions to licences
13. Duration and renewal of licences
14. Transfer of licences
15. Register of licences
16. Licensee to comply with licence
17. Licence fees

PART IV

PROHIBITION AND CONTROL OF POLLUTION

Section

18. Prescribed premises to be licensed
19. Prohibition against causing vehicle, ship or premises to become prescribed conveyance or prescribed premises
20. Requirement and approval of plans
21. Power to specify conditions of emission, discharge, *etc.*
22. Restrictions on pollution of the atmosphere
23. Restrictions on noise pollution
24. Restrictions on pollution of the soil
25. Restrictions on pollution of inland waters
26. (*Deleted*)
27. Prohibition of discharge of oil into Malaysian waters
28. Special defences
29. Prohibition of discharge of wastes into Malaysian waters
- 29A. Prohibition on open burning
- 29AA. Exclusion from “open burning”
- 29B. Owner or occupier of premises liable for open burning
- 29C. Defence
30. Power to prohibit use of any material or equipment
- 30A. Power to control use of substance and product and to state environmental labelling
- 30B. Power to specify rules on deposit and rebate schemes
31. Power to require occupier to install, operate, repair, *etc.*
- 31A. Prohibition order, *etc.*
32. Owner or occupier to maintain and operate equipment
33. Power to prohibit or control licensed persons from discharging, *etc.* of wastes in certain circumstances
- 33A. Environmental audit
34. Exemptions
- 34A. Report on impact on environment resulting from prescribed activities

PART IVA

CONTROL OF SCHEDULED WASTES

Section

- 34B. Prohibition against placing, deposit, *etc.*, of scheduled wastes

PART V

APPEAL AND APPEAL BOARD

- 35. Appeal
- 36. Appeal Board

PART VA

PAYMENT OF CESS AND ENVIRONMENTAL FUND

- 36A. Research cess
- 36B. Establishment of Environmental Fund
- 36C. Environmental Fund Committee
- 36D. Contribution into the Fund
- 36E. Application of the Fund

PART VI

MISCELLANEOUS

- 37. Owner or occupier to furnish information
- 38. Power to stop, board, search, *etc.*
- 38A. Power to examine person acquainted with case
- 39. Service of notices
- 40. Evidence
- 41. Penalty for offences not otherwise provided for
- 42. Attempts and abetments
- 43. Offences by bodies of persons and by servants and agents
- 44. Prosecution
- 45. Compounding of offences
- 46. Sessions Court and Court of a Magistrate of the First Class to have jurisdiction

Section

- 46A. Power to seize vehicle or ship
- 46B. Power of forfeiture and disposal
- 46C. Seizure and forfeiture of vehicle or ship
- 46D. No costs or damages arising from seizure unless seizure made without reasonable cause
- 46E. Compensation for loss or damage to property
- 47. Power of recovery of costs and expenses
- 48. Power to detain and sell vehicle or ships
- 48A. Power to test and prohibit use of vehicle
- 48B. Assistance
- 49. Delegation
- 50. Secrecy
- 51. Regulations

LAWS OF MALAYSIA

Act 127

ENVIRONMENTAL QUALITY ACT 1974

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

[15 April 1975, P.U. (B) 113/1975]

BE IT ENACTED by the 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

Short title, application and commencement

1. (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.

Interpretation

2. In this Act, unless the context otherwise requires—

“aircraft” includes any kind of vehicle which may be used for the conveyance of passenger or goods by air;

“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;

“Committee” means the Environmental Fund Committee established under section 36c;

“computer” means any device, identified by whatever name or description, for recording, storing, processing, retrieving or producing any information or matter, or for performing any one or more of those functions; and, where two or more computers carry out any one or more of those functions in combination, conjointly, or in succession, they shall be treated as a single computer;

“control equipment” includes—

- (a) any apparatus for collecting wastes;
- (b) any automatic device or facility 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 or facility 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;

“document” means any matter expressed, described, or represented in whatever manner, upon any substance, material, thing or article, including any matter embodied in a disc, tape, film, sound track or device, by means of—

- (a) any letter, figure, mark, symbol, signal, sign or any other form of expression, description or representation;
- (b) a visual recording (whether of any still or moving image);
- (c) a sound recording, or any electronic, magnetic, mechanical or other recording, or by any sound, electronic impulse or other data; or

(d) a recording, or transmission, over a distance of any matter by any, or any combination, of the means mentioned in paragraph (a), (b) or (c), or in this paragraph;

“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;

“environmental audit” means a periodic, systematic, documented and objective evaluation to determine—

(a) the compliance status to environmental regulatory requirements;

(b) the environmental management system; and

(c) the overall environmental risk of the premises;

“environmental management system” means a system comprising of an organizational structure with its responsibilities, practices, procedures, processes and resources for implementing and maintaining the system relating to the management of the environment;

“environmental risk” means any risk, hazard or chances of bad consequences that may be brought upon the environment;

“environmentally hazardous substances” means any natural or artificial substances including any raw material, whether in a solid, semi-solid or liquid form, or in the form of gas or vapour, or in a mixture of at least two of these substances, or any living organism intended for any environmental protection, conservation and control activity, which can cause pollution;

“Fund” means the Environmental Fund established under section 36B;

“goods” includes environmentally hazardous substances, pollutants and wastes;

“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;

“inland waters” means any reservoir, pond, lake, river, stream, canal, drain, spring or well, or any part of the sea above the low water line along the coast, or any other body of natural or artificial surface or subsurface water;

“local authority” includes any person or body of persons appointed under any written law to exercise and perform the powers and duties which are conferred or imposed on a local authority under any written law;

“Malaysian waters” means the territorial waters of Malaysia as determined in accordance with the Emergency (Essential Powers) Ordinance, No. 7 1969 [*P.U. (A) 307A/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—

- (a) any premises;
- (b) in relation to premises where different parts of which are occupied by different persons, the respective persons in occupation or control of each part; or
- (c) any vehicle, ship or aircraft;

“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—

(a) any premises, means—

- (i) the registered proprietor of the premises;
- (ii) the lessee of a lease including a sublease of the premises, whether registered or otherwise;
- (iii) the agent or trustee of any of the owners described in subparagraphs (i) and (ii) of this definition or where the owner as described in subparagraphs (i) and (ii) cannot be traced or has died, his legal personal representative; or
- (iv) 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 the premises were let to a tenant;

(b) any ship, means—

- (i) the person registered as the owner of the ship;
- (ii) in the absence of registration, the person owning the ship;
- (iii) 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 the country; or
- (iv) the agent or trustee of any of the owners described in subparagraphs (i), (ii) and (iii), or where the owner as described in subparagraphs (i) and (ii) cannot be traced or has died, his legal personal representative;

(c) any vehicle or aircraft, means the person registered as the owner of the vehicle or aircraft;

“pollutants” means any natural or artificial substances, whether in a solid, semi-solid or liquid form, or in the form of gas or vapour, or in a mixture of at least two of these substances, or any objectionable odour or noise or heat emitted, discharged or deposited or is likely to be emitted, discharged or deposited from any source which can directly or indirectly cause pollution and includes any environmentally hazardous substances;

“pollution” means any direct or indirect alteration of the physical, thermal, chemical, or biological properties of any part of the environment by discharging, emitting, or depositing environmentally hazardous substances, pollutants or 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 or plant;

“prescribed” means prescribed by or under this Act or continued in operation by this Act;

“prescribed conveyance” means a vehicle or ship prescribed by the Minister under section 18 as a prescribed conveyance;

“prescribed premises” means any premises prescribed by the Minister under section 18;

“prescribed product” means any product prescribed by the Minister under paragraph 30A(1)(b);

“scheduled wastes” means any waste prescribed by the Minister in the regulations as scheduled wastes;

“segment” in relation to the environment means any portion 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;

“transit” means the continuous passage from one border to another border through Malaysian territory and waters without storage;

“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 scheduled waste, or any matter whether in a solid, semi-solid or liquid form, or in the form of gas or vapour which is emitted, discharged or deposited in the environment in such volume, composition or manner as to cause pollution.

PART II

ADMINISTRATION

Director General and other officers

3. (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 30 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;
- (ll) to administer the Fund;
- (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.

Establishment of the Environmental Quality Council

4. (1) There is established for the purposes of this Act a body by the name of the Environmental Quality Council whose functions shall be—

- (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 International Trade and Industry or his authorized representative;
- (cc) the Secretary General, Ministry of Domestic Trade and Consumer Affairs or his authorized representative;
- (ccc) the Secretary General, Ministry of Agriculture and Agro-Based Industry or his authorized representative;
- (d) the Secretary General, Ministry of Human Resources or his authorized representative;
- (dd) the Secretary General, Ministry of Transport or his authorized representative;
- (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;
- (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;
- (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 (2)(f), (g), (gg), (h), (hh), (i) and (j), 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.

Duration of office and eligibility for reappointment

5. 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.

Disqualification, resignation and vacation from office

6. (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.

Calling of meetings, quorum, voting, procedure and minutes

7. (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.

(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.

(6) The Minister 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 has no right to vote at the meeting.

Presiding officer at meetings of the Council

8. (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.

Remuneration

9. 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

Licensing authority

10. The Director General shall be the licensing authority.

Licences

11. (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—

(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 conditions 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 paragraph (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.

Power to attach conditions to licences

12. (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.

Duration and renewal of licences

13. (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.

(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 case 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.

Transfer of licences

14. 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.

Register of licences

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

Licensee to comply with licence

16. (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 twenty-five 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.

Licence fees

17. (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 six months before 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

Prescribed premises to be licensed

18. (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.

(1A) The Minister, after consultation with the Council, may by order prescribe the vehicle or ship used for the movement, transfer, placement or deposit of wastes (hereinafter referred to as prescribed conveyance) the use of which by any person shall, unless he is the holder of a licence issued in respect of the prescribed conveyance, be an offence under this Act.

(2) 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) or (1A) shall be liable to a fine not exceeding fifty 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.

Prohibition against causing vehicle, ship or premises to become prescribed conveyance or prescribed premises

19. No person shall—

- (a) carry out any work on any vehicle or ship, or premises that would cause the vehicle or ship, or premises to become a prescribed conveyance or prescribed premises, as the case may be; 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.

Requirement and approval of plans

20. (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.

Power to specify conditions of emission, discharge, etc.

21. The Minister, after consultation with the Council, may by regulations specify the acceptable conditions for the emission, discharge or deposit of environmentally hazardous substances, pollutants or 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.

Restrictions on pollution of the atmosphere

22. (1) No person shall, unless licensed, emit or discharge any environmentally hazardous substances, pollutants or 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 one hundred thousand ringgit or to imprisonment for a period not exceeding five 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.

Restrictions on noise pollution

23. (1) No person shall, unless licensed, 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 one hundred thousand ringgit or to imprisonment for a period not exceeding five years 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.

Restrictions on pollution of the soil

24. (1) No person shall, unless licensed, 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 one hundred thousand ringgit or to imprisonment for a period not exceeding five 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.

Restrictions on pollution of inland waters

25. (1) No person shall, unless licensed, emit, discharge or deposit any environmentally hazardous substances, pollutants or 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 one hundred thousand ringgit or to imprisonment for a period not exceeding five 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*).

Prohibition of discharge of oil into Malaysian waters

27. (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 not exceeding five hundred thousand ringgit or to imprisonment for a period not exceeding five years or to both.

Special defences

28. 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.

Prohibition of discharge of wastes into Malaysian waters

29. (1) No person shall, unless licensed, discharge environmentally hazardous substances, pollutants or wastes into the 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 not exceeding five hundred thousand ringgit or to imprisonment for not exceeding five years or to both.

Prohibition on open burning

29A. (1) Notwithstanding anything to the contrary contained in this Act, no person shall allow or cause open burning on any premises.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(3) For the purposes of subsection (1)—

“open burning” means any fire, combustion or smouldering that occurs in the open air and which is not directed there through a chimney or stack;

“premises” includes any land.

Exclusion from “open burning”

29AA. (1) The Minister may by order published in the *Gazette* declare that any fire, combustion or smouldering for the purpose of any activity specified in that order is not open burning as defined in and for the purpose of section 29A so long as such activity is carried out in accordance with or under such conditions as may be specified in the order and not in the place or area specified in the order.

(2) Notwithstanding that any fire, combustion or smouldering is excluded from the definition of open burning under subsection (1) or that it is for the purpose of any activity specified in an order made under subsection (1), no person shall allow or cause such fire, combustion or smouldering to occur in any area if the Director General notifies, by such means and in such manner as he thinks expedient,—

- (a) that the air quality in the area has reached an unhealthy level; and
- (b) that the fire, combustion or smouldering for the purpose of any activity other than those specified in the notification would be hazardous to the environment.

(3) In addition to the circumstances referred to in subsection (2), the Minister may by order published in the *Gazette* specify the circumstances in which no person shall cause any fire, combustion or smouldering for the purpose of any activity specified in the order to occur notwithstanding that it is excluded from the definition of open burning under subsection (1) or that it is for the purpose of any activity specified in an order made under subsection (1).

Owner or occupier of premises liable for open burning

29B. If open burning occurs on any premises—

- (a) the owner; or
- (b) the occupier,

of the premises who has control over such premises shall be deemed to have contravened subsection 29A(1) unless the contrary is proved.

Defence

29C. In any prosecution under section 29A or 29B, it shall be a defence if the person, owner or occupier of the premises proves—

- (a) that the open burning occurred outside his control or without his knowledge or connivance or consent; or

(b) that he—

- (i) took all reasonable precautions; or
- (ii) exercised all due diligence,

to prevent the commission of the offence as he ought to have taken and exercised having regard to the nature of his responsibility in that capacity and to all the circumstances.

Power to prohibit use of any material or equipment

30. 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.

Power to control use of substance and product and to state environmental labelling

30A. (1) The Minister, after consultation with the Council, may by order published in the *Gazette*—

- (a) prescribe any substance as an environmentally hazardous substance which requires the substance to be reduced, recycled, recovered or regulated in the manner as specified in the order; and
- (b) prescribe any product as a prescribed product for sale and that the product shall contain a minimum percentage of recycled substances and to carry an appropriate declaration on its recycled constituents, method of manufacture and disposal.

(2) Any order made under subsection (1) may specify rules on the use, design and application of the label in connection with the sale of the substance or product which claims to be environmentally friendly.

(3) Any person who fails or refuses to comply with the order made under subsection (1) shall be guilty of an offence and shall be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a period not exceeding five years or to both.

Power to specify rules on deposit and rebate schemes

30B. The Minister, after consultation with the Council, may specify the guidelines and procedures on deposit and rebate schemes in connection with the disposal of products that are considered—

- (a) environmentally unfriendly; or
- (b) causing adverse constraint on the environment,

for the purpose of collecting the products efficiently in order to ensure that the recycling or disposal of the products is done in an environmentally sound manner.

Power to require owner or occupier to install, operate, repair, etc.

31. (1) Where any environmentally hazardous substances, pollutants or wastes are being or are likely to be emitted, discharged or deposited from any vehicle, ship or premises irrespective of whether the vehicle, ship or premises are prescribed under section 18 or otherwise, or from any aircraft, the Director General may by notice in writing require the owner or occupier of the vehicle, ship or premises, or aircraft, to—

- (a) install and operate any control equipment or additional control equipment;
- (b) repair, alter or replace any equipment or control equipment;
- (c) erect or increase the height of any chimney;
- (d) measure, take a sample of, analyse, record and report any environmentally hazardous substances, pollutants, wastes, effluents or emissions containing pollutants;
- (e) conduct a study on any environmental risk;
- (f) install, maintain and operate monitoring programme at the expense of the owner or occupier; or
- (g) adopt any measure to reduce, mitigate, disperse, remove, eliminate, destroy or dispose of pollution,

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 owner or occupier of any vehicle, ship, or premises, or aircraft to emit, discharge or deposit environmentally hazardous substances, pollutants or wastes during such periods of day as he may specify and may generally direct the manner in which the owner or occupier shall carry out his trade, industry or process or operate any equipment, industrial plant or control equipment therein.

(3) Any person who contravenes the notice issued under subsection (1) or (2) shall be guilty of an offence and shall be liable to a fine not exceeding twenty-five 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 service on him of the notice specified in subsection (1) or (2).

Prohibition order, etc.

31A. (1) The Minister, after consultation with the Council, may by order published in the *Gazette* specify the circumstances whereby the Director General may issue a prohibition order to the owner or occupier of any industrial plant or process to prevent its continued operation and release of environmentally hazardous substances, pollutants or wastes either absolutely or conditionally, or for such period as he may direct, or until requirements to make remedy as directed by him have been complied with.

(2) The Minister, in circumstances where he considers that the environment, public health or safety is under or likely to be under serious threat, may direct the Director General—

- (a) to issue an order requiring a person to cease all acts that have resulted in the release of environmentally hazardous substances, pollutants or wastes; and
- (b) to effect and render any machinery, equipment, plant or process of the person inoperable.

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

Owner or occupier to maintain and operate equipment

32. The owner or occupier of any vehicle, ship or premises irrespective of whether the vehicle, ship or premises are prescribed under section 18 or otherwise, or aircraft shall maintain any equipment or control equipment installed on the vehicle, ship or premises, or aircraft in good condition and shall operate the equipment or control equipment in a proper and efficient manner.

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

33. (1) Where several persons are licensed under this Act to emit, discharge or deposit environmentally hazardous substances, pollutants or 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 fifty thousand ringgit or to imprisonment for a period not exceeding five 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 service on him of the notice specified in subsection (1).

Environmental audit

33A. (1) The Director General may require the owner or occupier of any vehicle, ship or premises, irrespective of whether the vehicle, ship or premises are prescribed under section 18 or otherwise, to carry out an environmental audit and to submit an audit report in the manner as may be prescribed by the Minister by regulations made under this Act.

(2) For the purpose of carrying out an environmental audit and to submit a report thereof, the owner or occupier so directed shall appoint qualified personnel who are registered under subsection (3).

(3) For the purpose of this section, the Director General shall maintain a list of qualified personnel who may carry out any environmental audit and submit a report thereof.

Exemptions

34. 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.

Report on impact on environment resulting from prescribed activities

34A. (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 one hundred thousand ringgit or to imprisonment for a period not exceeding five 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 IVA

CONTROL OF SCHEDULED WASTES

Prohibition against placing, deposit, etc., of scheduled wastes

34B. (1) No person shall—

- (a) place, deposit or dispose of, or cause or permit to place, deposit or dispose of, except at prescribed premises only, any scheduled wastes on land or into Malaysian waters;
- (b) receive or send, or cause or permit to be received or sent any scheduled wastes in or out of Malaysia; or
- (c) transit or cause or permit the transit of scheduled wastes,

without any prior written approval of the Director General.

(2) The Director General may grant the written approval either subject to conditions or unconditionally.

(3) For the purpose of this Act, any act of receiving or sending, or transit of any scheduled wastes with an approval obtained through falsification, misrepresentation or fraud or which does not conform in a material way with the relevant documents in such form as may be prescribed, shall be an offence.

(4) Any person who contravenes this section shall be guilty of an offence and shall be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a period not exceeding five years or to both.

PART V

APPEAL AND APPEAL BOARD

Appeal

35. (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 34A(3) or (4); and
- (f) any decision of the Director General or any officer under subsection 48A(2) or (5),

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.

Appeal Board

36. (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 Chief Justice 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 Malaysia 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 VA

PAYMENT OF CESS AND ENVIRONMENTAL FUND

Research cess

36A. (1) For the purpose of conducting, promoting or co-ordinating research in relation to any aspect of pollution or the prevention thereof, the Minister, after consultation with the Minister of Finance and the Council, may make an order for the imposition and collection, or variation or cancellation of an imposition, of a cess on the waste generated.

- (2) Any order made under subsection (1) may provide—
- (a) for different rates of cess to be imposed in respect of the different types of waste generated including the volume and composition of waste;
 - (b) for the manner of collection of the cess by the Director General; and
 - (c) for the exemption of any person or class of persons, or in respect of any waste generated other than for research purposes, from payment of the cess.
- (3) The cess collected under this section shall be paid into the Fund established under section 36B.

Establishment of Environmental Fund

36B. (1) There shall be established a fund to be known as the Environmental Fund which shall be operated as a Trust Account within the Federal Consolidated Fund.

- (2) The Fund shall consist of—
- (a) such sums of money as may be provided from time to time by the Government;
 - (b) all donations and contributions received from within or outside Malaysia;
 - (c) all moneys paid to or received by the Director General from the cess imposed or collected in accordance with section 36A; and
 - (d) all moneys paid or received in accordance with section 36D.

Environmental Fund Committee

36C. (1) There shall be established a committee to be known as the Environmental Fund Committee which shall have control of the Fund.

- (2) The Committee shall consist of the following members:
- (a) the Director General who shall be the Chairman;

(b) two Senior Environmental Officers to be appointed by the Minister; and

(c) two public officers to be appointed by the Minister.

(3) No meeting of the Committee shall be held in the absence of the Director General.

(4) The quorum for a meeting of the Committee shall be three persons.

(5) Subject to this Act, the Committee may determine its own proceedings.

Contribution into the Fund

36D. The Minister, after consultation with the Council, may require any person engaged in—

(a) the exploration, extraction, refining, production, bulk movement, distribution or storage, of oil;

(b) the production, bulk movement, distribution or storage, of environmentally hazardous substances; or

(c) the bulk movement or storage, of waste,

to contribute to the Fund at a rate that he may specify.

Application of the Fund

36E. The Fund shall be administered for the purpose of—

(a) conducting, promoting and coordinating research in relation to any aspect of pollution or the prevention thereof;

(b) recovering of waste, or removing, dispersing, destroying, cleaning, disposing of or mitigating pollution;

(c) preventing or combatting the following occurrences:

(i) a spillage discharge or dumping of oil;

(ii) a discharge, deposit or dumping, of environmentally hazardous substances; or

(iii) a discharge, deposit or dumping, of waste; and

- (d) encouraging conservation measures against any damage that may be caused by any of the occurrences spelt out under subparagraph (c)(i), (ii) or (iii).

PART VI

MISCELLANEOUS

Owner or occupier to furnish information

37. (1) The Director General may by notice require the owner or occupier of any vehicle, ship, premises or aircraft to furnish to him within the period as may be specified in the notice information relating to—

- (a) the ownership of the vehicle, ship, premises or aircraft;
- (b) the use of raw materials, environmentally hazardous substances, or any process, equipment, control equipment or industrial plant found on the vehicle, ship, premises or aircraft;
- (c) any environmentally hazardous substances, pollutants or wastes discharged or likely to be discharged therefrom; or
- (d) any environmental risk that is likely to result from the use of the raw materials, environmentally hazardous substances or process.

(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 for a period not exceeding six months or to both.

Power to stop, board, search, etc.

38. Where the Director General or any officer duly authorized in writing by him is satisfied, or has reason to believe that any person has committed an offence under this Act, he may, if in his opinion it is necessary to do so for the purpose of investigating

the offence, without a warrant, stop, board and search any vehicle, ship or aircraft, or enter any premises, irrespective of whether the vehicle, ship or premises are prescribed under section 18 or otherwise, and may—

- (a) inspect, examine, seize or detain any equipment, computer, or industrial plant;
- (b) inspect, examine, seize or detain any book, record, licence, permit, certificate or document relating to—
 - (i) the performance or use of the equipment or industrial plant;
 - (ii) environmentally hazardous substances, pollutants or wastes; or
 - (iii) any matter required to be carried on board a vehicle, ship or aircraft under this Act or under any other written law;
- (c) inspect, examine, seize or detain any scheduled wastes or environmentally hazardous substances and any vehicle or ship used in the conveyance of the scheduled wastes or environmentally hazardous substances;
- (d) make such enquiries and physical inspection of the ship, equipment, gear, stores and cargo as may be necessary;
- (e) make copies of, or take extracts from, any book, record or documents so seized and detained;
- (f) inspect, examine or take a sample of any substance, material or matter used, or which is likely to be used or usually used in any trade, industry or process carried on in or on the vehicle, ship, premises, or aircraft; or
- (g) take a sample of any environmentally hazardous substances, pollutants or wastes that are emitted, discharged or deposited, or are likely to be emitted, discharged or deposited from the vehicle, ship, premises, or aircraft.

Power to examine person acquainted with case

38A. (1) The Director General or any officer duly authorized in writing by him in carrying out an investigation under this Act may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined.

(2) The person referred to in subsection (1) shall be bound to answer all questions relating to the case put to him by the Director General or any officer duly authorized in writing by him:

Provided that the person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge, penalty or forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth, whether or not the statement is made wholly or partly in answer to questions.

(4) The Director General, or any officer duly authorized in writing by him, in examining a person under subsection (1) shall first inform the person of subsections (2) and (3).

(5) A statement made by a person under this section shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumb-print, as the case may be, after it has been read to him in the language in which he made it and after he has been given an opportunity to make any corrections he may wish, and where the person examined refuses to sign or affix his thumb-print on the statement, the Director General or any officer duly authorized in writing by him shall endorse thereon under his hand the fact of the refusal and the reason for it, if any, as stated by the person examined.

Service of notices

39. (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.

Evidence

40. (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 licensed 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 licensed on that date or any condition, limitation or restriction to

*NOTE—In the case of Peninsular Malaysia, it shall be construed as the District Land Administrator—see Act A587.

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.

Penalty for offences not otherwise provided for

41. 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 ten thousand ringgit or to imprisonment for a period not exceeding two years or to both.

Attempts and abetments

42. 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.

Offences by bodies of persons and by servants and agents

43. (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.

Prosecution

44. No prosecution shall be instituted for an offence under this Act or the regulations made thereunder without the consent in writing of the Public Prosecutor.

Compounding of offences

45. (1) The Director General or any Deputy Director General, or any other public officer or any local authority to whom the Director General has delegated such power in writing, may compound any offence under this Act or the regulations made thereunder which is prescribed by the Minister to be a compoundable offence by accepting from the person reasonably suspected of having committed the offence a sum of money not exceeding two thousand ringgit.

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

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

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

*NOTE—See section 111 of the Subordinate Courts Act 1948 [Act 92].

Power to seize vehicle or ship

46A. Any vehicle or ship that is used in the transportation of or the disposal of waste in contravention of this Act or any regulations made thereunder may be seized by the Director General pending the outcome of any proceedings under this Act:

Provided that the Director General may release the vehicle or ship so seized upon the furnishing of a bond or other security that is adequate to cover the value of the vehicle or ship.

Power of forfeiture or disposal

46B. Where it is proven to the satisfaction of the court that the vehicle or ship seized under this Act is used in the commission of an offence, the court shall order that the vehicle or ship be forfeited and disposed of in the manner as the court may direct.

Seizure and forfeiture of vehicle or ship

46c. (1) Where any vehicle or ship is seized under this Act and there is no prosecution within one month from the date of seizure in respect of the matter, the vehicle or ship shall be deemed to be forfeited at the end of that period unless before that date a written claim on it is made in the manner set out in subsections (2), (3) and (4).

(2) Any person asserting that he is the owner of the vehicle or ship referred to in subsection (1) and that it is not liable to forfeiture may personally or by his agent authorized in writing give a written notice to the officer duly authorized in writing by the Director General in whose possession the vehicle or ship is held that he is making a claim on the vehicle or ship.

(3) On receipt of the notice referred to in subsection (2) the officer duly authorized in writing by the Director General shall refer the claim to the Director General who shall direct such officer to refer the matter to a Sessions Court Judge for a decision.

(4) The Sessions Court Judge to whom the matter is referred under subsection (3) shall issue a summons requiring the person asserting that he is the owner of the vehicle or ship, and the person from whom it was seized, to appear before the Sessions Court Judge, and upon their appearance or default to appear, due service of the summons being proved, the Sessions Court Judge shall proceed to the examination of the matter and on proof that an offence under this Act has been committed and that the vehicle or ship was the subject matter of or was used in the commission of the offence shall order the vehicle or ship to be forfeited and shall, in the absence of such proof, order its release.

(5) Any vehicle or ship deemed to be forfeited or forfeited under this section shall be delivered to the Director General and shall be disposed of by the Director General—

(a) in accordance with the directions given by the Sessions Court Judge; or

(b) in the manner as he deems fit.

No costs or damages arising from seizure unless seizure made without reasonable cause

46D. In any proceedings before any court in respect of any vehicle or ship seized in the exercise of any power conferred under this Act, a person shall not be entitled to the costs of the proceedings or to any damages or other relief other than an order for the return of the vehicle or ship seized or the payment of its value unless the seizure was made without reasonable cause.

Compensation for loss or damage to property

46E. After a person has been convicted for an offence against this Act or any regulations made thereunder, the court, in addition to imposing a penalty for the offence, may, where it appears to the court that any other person has, by reason of the commission of, or the omission resulting in the offence, suffered loss or damage to any property, order the person so convicted to pay the other person the costs and expenses incurred or compensation for loss or damage to the property and any other costs, in the amount as the court considers fit.

Power of recovery of costs and expenses

47. (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.

Power to detain and sell vehicle or ships

48. (1) Where the Director General has reason to believe that any discharge or spillage of oil or mixture containing oil or scheduled wastes was from a vehicle or ship, he may detain the vehicle or ship and the vehicle or ship may be 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 or scheduled wastes.

(2) If the detained vehicle or ship proceeds to move before it is released, the owner or master, or any person who causes the vehicle or ship to move shall be guilty of an offence and shall be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a period not exceeding five years or to both.

(3) Where the owner of the vehicle or ship is unable to pay the costs and expenses incurred in removing or eliminating the oil or mixture containing oil or scheduled wastes, the Director General may apply to the court for the sale of the vehicle or ship and use the proceeds to pay for the costs and expenses of removing or eliminating the oil or mixture containing oil or scheduled wastes.

Power to test and prohibit use of vehicle

48A. (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 his 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, any 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.

Assistance

48B. 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.

Delegation

49. (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.

Secrecy

50. 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 for a period not exceeding five years or to both.

Regulations

51. (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, 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;
- (ee) prescribing ambient water quality standards and discharge standards and specifying the maximum permissible loads that may be discharged by any source into inland waters, with reference either generally or specifically to the body of waters concerned;
- (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 to 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)*;
- (t) regulating environmental audit and the submission of an audit report and the appointment of qualified personnel to assist the Director General in carrying out an environmental audit of any vehicle, ship or premises, irrespective of whether the vehicle, ship or premises are prescribed under section 18 or otherwise, and their manner of operation, and prescribing the fees chargeable;
- (u) prohibiting or regulating the manufacture, storage, transportation, or the application or use, emission, discharge, or deposit into the environment, of any environmentally hazardous substances;
- (v) regulating measures to assess, control, reduce or eliminate environmental risk;
- (w) regulating the competency of persons qualified to maintain and operate any equipment or control equipment.

(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 circumstances is determined or ascertainable before, at or after the making of the regulations.

LAWS OF MALAYSIA**Act 127****ENVIRONMENT QUALITY ACT 1974**

LIST OF AMENDMENTS

Amending law	Short title	In force from
Act 160	Malaysian Currency (Ringgit) Act 1975	29-08-1975
P.U. (A) 357/1980	Subordinate Courts Act (Extension) Order 1980	01-06-1981
Act A636	Environmental Quality (Amendment) Act 1985	10-01-1986
Act A885	Constitution (Amendment) Act 1994	24-06-1994
Act A953	Environmental Quality (Amendment) Act 1996	01-08-1996
Act A1030	Environmental Quality (Amendment) Act 1998	21-08-2000
Act A1102	Environmental Quality (Amendment) Act 2001	s. 2: 28-06-2001 s. 3, 4, 5, 6: 19-07-2001

LAWS OF MALAYSIA

Act 127

ENVIRONMENT QUALITY ACT 1974

LIST OF SECTIONS TO AMENDED

Section	Amending authority	In force from
2	Act A636 Act A953 Act A1102	10-01-1986 01-08-1996 28-06-2001
3	Act A953	01-08-1996
4	Act A636 Act A953	10-01-1986 01-08-1996
7	Act A636 Act A953	10-01-1986 01-08-1996
11	Act A636	10-01-1986
13	Act A636	10-01-1986
16	Act A636 Act A953	10-01-1986 01-08-1996
18	Act A636 Act A953	10-01-1986 01-08-1996
19	Act A953	01-08-1996
21	Act A953 Act A1102	01-08-1996 19-07-2001
22	Act A953	01-08-1996
23	Act A953	01-08-1996
24	Act A953	01-08-1996
25	Act A953	01-08-1996
26	Act A636	10-01-1986
27	Act A636 Act A953	10-01-1986 01-08-1996

Section	Amending authority	In force from
28	Act A636	10-01-1986
29	Act A636 Act A953	10-01-1986 01-08-1996
29A	Act A1030 Act A1102	21-08-2000 19-07-2001
29AA	Act A1102	19-07-2001
29B	Act A1030	21-08-2000
29C	Act A1030	21-08-2000
30A	Act A953	01-08-1996
30B	Act A953	01-08-1996
31	Act A953	01-08-1996
31A	Act A953	01-08-1996
32	Act A953	01-08-1996
33	Act A953	01-08-1996
33A	Act A953	01-08-1996
34A	Act A636 Act A953	10-01-1986 01-08-1996
34B	Act A953	01-08-1996
35	Act A636	10-01-1986
36	Act A953	01-08-1996
36A	Act A953	01-08-1996
36B	Act A953	01-08-1996
36C	Act A953	01-08-1996
36D	Act A953	01-08-1996
36E	Act A953	01-08-1996
37	Act A953	01-08-1996
38	Act A953	01-08-1996

Section	Amending authority	In force from
38A	Act A953	01-08-1996
41	Act A953	01-08-1996
44	Act A1030	21-08-2000
45	Act A636 Act A953	10-01-1986 01-08-1996
46A	Act A953	01-08-1996
46B	Act A953	01-08-1996
46C	Act A953	01-08-1996
46D	Act A953	01-08-1996
46E	Act A953	01-08-1996
47	Act A636	10-01-1986
48	Act A953	01-08-1996
48A	Act A636	10-01-1986
48B	Act A636	10-01-1986
50	Act A953	01-08-1996
51	Act A636 Act A953	10-01-1986 01-08-1996
Throughout the Act	Act 160	29-08-1975
